



Chronic odour

If an odour occurs in the forest, but an enforcement officer is not present to validate it – did it still occur?



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assessment of
chronic odour

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Conclusions

Redvale landfill

[2015] NZEnvC 178

- Appeal of consent decision.
- Appeals relate to closure date of landfill and conditions of consent (not the matter of grant or refusal)
- Odour the most contentious issue



Redvale landfill

[2015]NZEEnvC178

- Dispute about effectiveness of odour consent condition and FIDOL factors
- Court concluded that the *problem not so much the effectiveness of FIDOL factors, but rather the Council's practical ability to apply them*
- Court states that *the current enforcement regime at Redvale is unsatisfactory from the point of view of both residents and Waste Management*





Not a new issue...

Defining chronic odour

NZ Mushrooms

[2007] NZEnvC 060

- Slowly accumulated stress from recurring odours can make people more sensitive and more likely to interpret any one episode as being objectionable
- Cumulatively significant adverse effect - even though individual events might not be considered objectionable by an investigating officer
- Long term assessment of cumulative impact is therefore required to determine whether odours are objectionable

Test of offensive and objectionable

NZ Mushrooms

[2007] NZEnvC 060

“how would the odours be perceived by an ordinary reasonable person exposed to them on a regular basis in their place of work or home”



High volume flow and/or open sources means odour cannot be easily captured and controlled



These rely on good management *and* adequate separation distances



Compliance with consent relies on opinion of an officer



Odour often transient in nature



Officers not always nearby



May not be realistic, efficient, or practical for officer to visit every complaint

CHALLENGES ASSESSING AND MANAGING CHRONIC ODOUR



so what do we do?

Minimum response

- If the odour is transient, log the complaint, and pass it on to the consent holder
- Default approach with limited resources



Minimum response

- Unsatisfactory for complainants and consent holder
- Undermines confidence in effectiveness of odour condition
- Compliance - important right?



Proactive response

- Chronic effects cannot be assessed from a few field investigations
- If complaints suggest a chronic effect, a proactive response is needed
- Make a plan
- Involve discharger and community and if possible



Complain

Proactive response

- Consider for example:
 - Tools outlined in GPG
 - EW draft strategy for odour prevention
 - EW odour investigation guideline

Complain

Importance of good management



Examples:

- Relationship management– the importance of being a good neighbor!
- Improve odour control
- Improve separation distances
- Enforcement

Assessment tools

ASSESSMENT



Community consultation is **the first** tool to consider e.g:

- Complaint history
- Interview complainant and neighbours
- Encourage “complaints”
- Community reference person



CASE STUDIES

BROILER sheds: case study I

- 32 complaints between March 2014 and July 2015
- All complaints from one neighbor
- Mostly about odour (from chicken farm) experienced at his cow shed
- Officers responded with a site visit 8 times

BROILER sheds: case study I

- Officers assessed complaint history and undertook 8 proactive visits at times when complaints most likely
- 5 different officers undertook assessments
- Officers interviewed 3 other neighbors



BROILER sheds: case study I

FIDOL assessment considered all information, e.g:

- Community feedback
- Compliance history
- Results of field assessments
- Separation distance guidelines
- Experience at similar sites

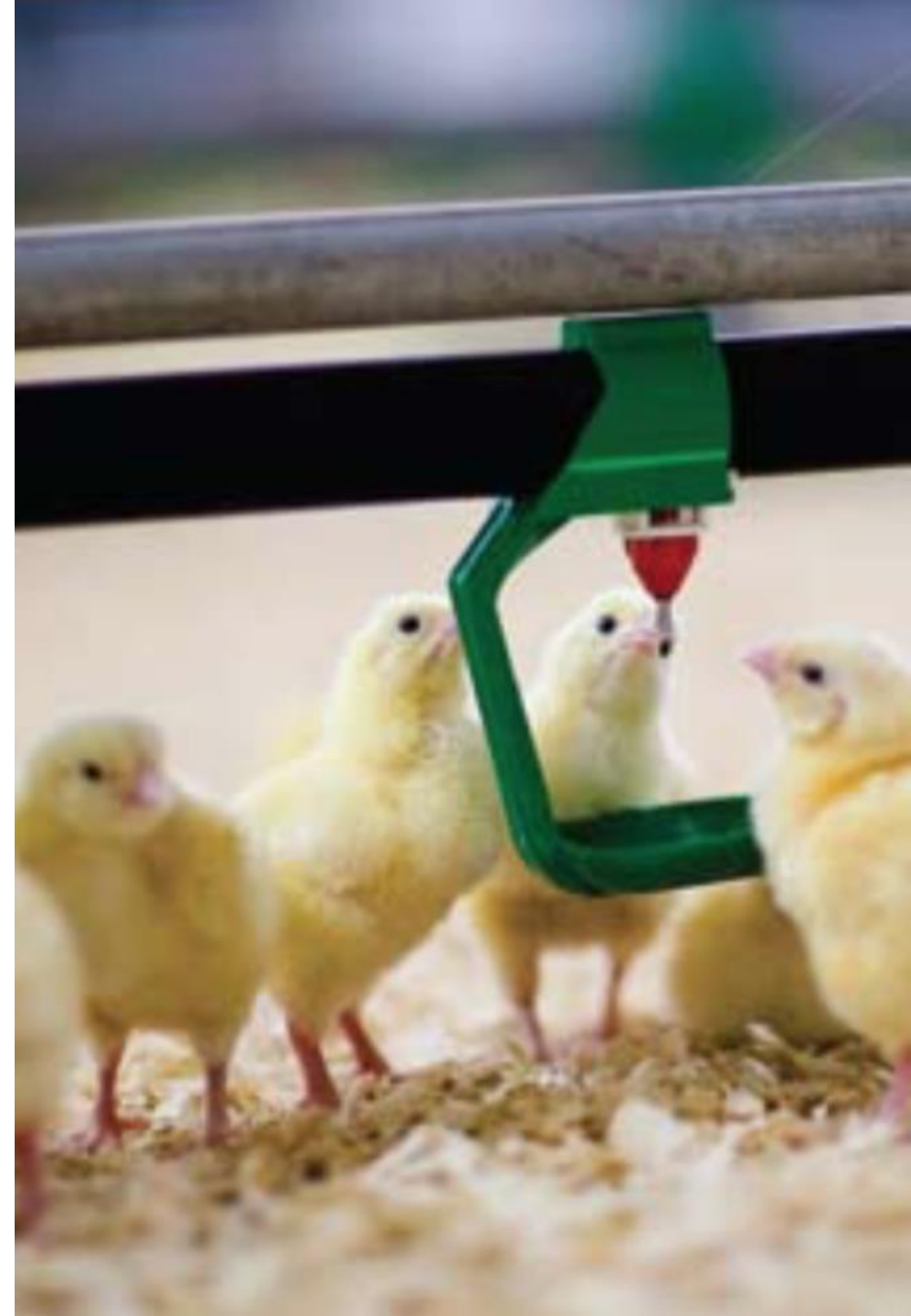
PHOTO: VICEPA



Broiler sheds: case study I

Overall conclusions of officer assessment:

- Complainant is not representative of the ordinary reasonable person
- Site is considered to be in compliance with odour condition



Broiler sheds: case study 2

- Application for consent to expand existing broiler operation
- 68 complaints received between 31 March 2017 and 5 April 2018
- No site visits by enforcement officer in response to complaints
- Complaints from 5 different individuals
- Other neighbors described adverse effects in submissions



Broiler sheds: case study 2

- Consultant's AEE for the applicant:
 - Based on field assessments on four separate occasions and experience at similar sites
 - Concluded that the site should not cause significant adverse effects
- Assessment failed to recognise that submitters and complainants were in fact reporting adverse effects at this site



Broiler sheds: case study 2

Council's consultant reviewed files, visited site, met complainants and concluded:

- No indication that complainants are overly sensitive or vexatious
- Reasonable to assume that complainants are correctly identifying the source of the odour



Broiler sheds: case study 2

FIDOL assessment for officer's report based primarily on information from complainants and submitters

Overall conclusions in officer's report:

- Complainants are representative of ordinary reasonable person
- Some neighbours are adversely affected by odour from the existing operation
- Site is **not** considered to be in compliance with odour condition



KEY POINTS



Test of offensive and objectionable:

“how would the odours be perceived by an ordinary reasonable person exposed to them on a regular basis in their place of work or home”

Community feedback **critical** for assessment of chronic effects

KEY POINTS



People exposed to chronic odours may be more sensitive than enforcement officers or assessors – **this is an ordinary and reasonable response to chronic odours!**

KEY POINTS



Site visits in response to complaints not always practical (or necessary).

However:

enforcement officer should do **adequate** site visits, to:

- confirm that complainants are correctly identifying source of odour, and
- evaluate sensitivity of complainants

Ideas?

Feedback?

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