Consultation on draft regulations to implement the Kigali Amendment in New Zealand – Exposure Draft for Feedback

Ministry for the Environment seeks feedback on the proposed amendments to the Ozone Layer Protection Regulations 1996 to implement the Kigali Amendment to the Montreal Protocol. The Institute of Refrigeration, Heating and Air Conditioning Engineers (IRHACE) provide that feedback.

Thank you for the opportunity to consult and provide this submission.

This submission is made on behalf of the membership organisation IRHACE, The Institute of Refrigeration, Heating and Air Conditioning Engineers of New Zealand. The main aim of our membership, all of whom are independent engineers and technicians in the HVAC&R industry, is to foster a continuing development policy and framework for IRHACE members to support a more skilled and technically competent membership.

With our unique industry knowledge of many facets of this consultation we have strong views. We also welcome the continued collaboration with the Ministry for the Environment and Ministers and hope it will achieve the changes to the amendments IRHACE has been seeking with the Ministry for over 12 months. IRHACE are disappointed to advise, our prior concerns have not been heeded by the Ministry, despite repeated approaches. At the 26th September 2018, meeting with Minister Parker we as part of the HFC Phasedown Committee had the opportunity to outline many of our concerns and we reiterate these concerns again below, due to their not being afforded due consideration in the abovementioned draft regulations

IRHACE do support the amendments to the regulations in principal, however wish to see change in many of the recommendations. In response to the Ministry requests over the past 15 months IRHACE have as part of the HFC Phasedown Committee , repeatedly made approaches and recommendations to the Ministry. These concerns have been largely ignored. These concerns are further explained in detail below. We also provide some corrections to errors in the draft.

Key concerns to the draft regulations

7B and **7C**. There is a discrepancy in the dates for Application for eligibility to apply for grandparented permit, in one section (7B) they are listed as 1st March and 18th March in another (7C). The correct date requires your clarification.

We question the viability of time frames mooted for permit issuants. In fact, concerns were raised by our entities 0n 23rd February 2018 during the consultation in Auckland. At the time the September application date was mooted by MfE due to timing issues with the availability of data from EPA (this won't be an issue in coming years) again reinforcing the need to pull the date forward.

Whilst **7B** Application for eligibility to apply for grandparented permit is to be March, 1st or 18th (we recommend 1 March each year)

7D Transfer of eligibility to apply for grandparented permit As mentioned previously we disagree with the suggestion that grandparented permit can be transferred between sectors i.e. from refrigeration to foam production. We see no advantage in this and are of the view that the foam industry should be encouraged to phase out of HFC's. Trading between sectors seems to also fly in the face of the 'spirit' of the phasedown.

7E Revocation of eligibility to apply for grandparented permit**.** This is flawed methodology. The EPA should not have the right to revoke permit if not used within a 2-year period. The 'use it or lose it' model is an outdated and unworkable model from the 1970's, which makes no consideration of contemporary peaks and troughs, nor global pressures.

7F Grandparented permits to import new bulk HFC's asks to apply for permits by 1 September with the issue of the permit to be some time in October. This timeframe is unworkable, as this is too short a lead time to land imports by 1 January of the following year. We recommend application by 1 August (at latest) for granting of permit by 1 September each year, to meet the required lead times for delivery.

We note advice from EPA at the meeting on 11th October 2018 that, the earlier permit is applied for, the sooner applicants can receive notification.

We propose that EPA include a deadline to confirm issuance, these changes should also be documented in the regulations

From another perspective, we question the ability of EPA to process permits in a 30-day period, to be fair to applicants. Regardless, without defined and fair date ranges (as early as possible) for applications and approval, the scheme will be unworkable.

7G Threshold for Special Permits. Under these draft regulations with the timeframes suggested, those with only Special Permits will be disadvantaged as they will rely on waiting until the grandfathered applications have been approved at the end of the year. These applicants are potentially waiting until the last minute for an application.

- There is risk of importers with grandparent permits 'gaming' the system to block out until the last possible time those who will rely on Special Permits.
- There is also a possibility that those with special permits may also game the Special Permit system closing other importers out of the excess entitlement and disadvantaging current importers.
- The permit system mooted in these regulations also gives no consideration to unforeseen events such as shipping delays, force majeure or strikes even, which could affect the ability to land refrigerant within the calendar year window.

Both scenarios are unfair, and timeframes and processes should be reviewed and reworded in the regulations prior to ratification, to ensure common sense and fairness prevails for all permit holders.

7H Exporters permits to import new bulk HFC's As with many of the formats recommended in the regulations, this timeframe is too tight to be viable and does not allow for normal lead times.

8(4) conflicts with **7** With HFCs you can only transfer entitlement/permit, however in clause 7D grand-parent eligibility can be transferred to another party.

This regulation requires documented clarification.

Questions and Answers (FAQ's)

We wish to comment on the FAQ's #22, #23, #24, #25, which contradict one another and potentially mislead readers.

In #29 and #30, you note October 2019 for Grandparented permits to be granted. As mentioned earlier this is unworkably late for imports that need to be here for 1 January

We also recommend that MfE and EPA confirm the actual dates for issuance and document in the regulations and not rely on the vague and unworkable timeframes listed in this draft, this will then provide business certainty.

Other Issues to be addressed

These draft regulations are imprecisely worded. We ask that the below issues are given due consideration and included in the final regulations prior to ratification. We reference the issues to the draft regulations where possible.

Potential anticompetitive aspects of gaming permit applications

Our industry is concerned about rorting of permit applications, **7H, Regulation 23(7)**. With the current wording of the regulation, there is undoubtedly risk of permit applications being subject to 'strategic' applications, so shut other applicants out, often potentially applicants who rely on special permits. Without some strong parameters and clear wording of the regulations, there is a risk of gaming of the application system for the stronger importers to hold off other importers.

The 'spirit' of the application system must be worded within the regulations in such a way to ensure this is not possible.

Clarification of the appeal process

Of course, not all importers will be satisfied with the outcome of permit applications. The reasons for importers being declined may be many and varied. MfE and EPA however have to date only provided vague criteria for applications and less information of how the criteria to decline or handle appeals will be managed. Fair and transparent criteria must be documented and agreed prior to ratification. This will allow importers to make their application understanding the outcome and therefore make applications in an informed manner.

Another key element of the appeal process is to ensure that those who are unsuccessful are provided with fair clarification of declines for their permit applications. We are suggesting that a simple 'NO' would be unacceptable and unfair. MfE and EPA must provide clarification on their notification process for unsuccessful applicants along with.

The MfE and EPA must document a fair procedure for applications and appeals prior to ratification to ensure all importers have a fair opportunity.

A Ban on Export of Recycled Bulk HFC's

It is wrong there are no controls on export of used HFC's for export **Regulation 23 (7).** IRHACE support a ban on export of recycled bulk HFC's. There is risk of exporters gaining commercial advantage by exporting HFC's and claiming ETS Credits. This will be at a cost to the Crown as there is no means of recouping this cost. And the importing country would potentially see the advantage.

Exporting used HFC's for use outside NZ, does not reduce the environmental impact, instead transfers that impact to another country, whilst being funded by NZ.

Procedures must be developed prior to ratification, to ensure export of bulk HFC's is controlled or banned as part of the regulation.

We reiterate to Ministry for the Environment

In previous consultation and meetings, we have discussed the below concerns at length with various members of the Ministry, both in writing and in meetings. Our concerns have not been allayed by officials, nor have they been accounted for in the draft regulations. Given the effort made by industry to repeatedly raise these, we question the value of engaging on these processes. However, we again warn the Government of significant negative consequences for NZ if the below continue to be ignored.

Import of Appliances Pre-Charged with Refrigerant

IRHACE have stridently opposed the oversite on the part of the Ministry regarding the import of pre-charged Appliances and continue to do so.

We acknowledge the New Zealand's obligations under the Montreal Protocol is to Bulk HFC's, however the implications of importing of pre-charged appliances with no care for product stewardship and therefore the potential for importers circumventing their responsibilities cannot be overlooked. The Ministry continue to dismiss our protestations with nebulous suggestions such as the situation for pre-charged appliances could possibly be reviewed in 5 years. This is not acceptable to us

Our industry will not rest if our protestations are ignored further. We now acknowledge that time has run out for this issue to be included in regulation prior to ratification. Pre-charged appliance imports must be fairly considered, post ratification.

We ask the Ministry prior to ratification, formally commit to a review of this issue within 12 months of ratification. To ensure there is sufficient refrigerant available and adequate stewardship is exercised is the only option.

The other solution our industry recommend is to include climate impact import targets to ensure that pre-charged imports are required to move to low GWP technologies, in a similar model to the bulk phasedown under Kigali.

Mandatory Product Stewardship Scheme

Without recognition of a mandatory Product Stewardship Scheme such as that operated by Refrigerant Recovery NZ, the responsibility to collect and destroy used SGG refrigerants in an environmentally acceptable manner won't occur. Such a scheme requires funding, currently voluntary which will not support the long-term viability of the scheme.

We also believe a mandatory product stewardship scheme could be easily be introduced, linked to the phasedown by ensuring that participation in the scheme be a prerequisite for obtaining a permit.

A mandatory scheme implemented now, will however go a long way to managing the tail of SGG refrigerants as the phase-down progresses.

Government must support mandatory product stewardship of all refrigerants entering NZ to ensure NZ can be confident it will be able to collect and destroy SGG refrigerants without seeking public funds. Linking such a scheme to permit applications and the regulations is a simple and clear method of management.

Reporting of all imports Imports, 7C & 7G

The import of refrigerants such as HFO's and HC's, not covered under the Kigali Amendment must be recorded and accounted for. To have a comprehensive record of these refrigerants would provide important information on the effectiveness of the transition to lower climate impact refrigerant and manage any change where necessary.

Importers should be required under the regulations to provide this data regularly.

Phase-out dates for high-GWP HFC's

Whilst our industry is committed to ensuring adequate supply of high-GWP refrigerants after ratification, to allow a viable transition to lower-GWP refrigerants. We also appreciate the need to change habit and to influence purchase decisions especially as the cost of carbon units continues to rise.

To mitigate resistance to change, there will be a need to encourage move to equipment to support low- GWP refrigerants and recommend a ban or phase-out date on higher-GWP refrigerant versions to accelerate the needed change.

Our industry asks that this be written into regulation, prior to ratification, to ensure this is progressed.

Health & Safety Implications with the introduction of low-GWP Refrigerants

Lastly, it cannot go unsaid. Without suitable regulation to ensure every engineer and technician in our industry is adequately trained, is a disaster is waiting to happen. None of us want to see that. These low-GWP refrigerants are potentially highly toxic, flammable and or volatile. Inexperienced engineers have potential to create havoc if effective training is not a mandatory requirement.

We appreciate MBIE and Work safe are committed to developing a Certificate of Compliance with our industry which if mandatory for all concerned will go a long way to mitigate any health & safety concerns that may arise with these low-GWP refrigerants.

In summary

These draft regulations ignore reality and a workable framework to ensure an effective ratification.

Clear terminology and realistic, workable dates must be developed, agreed and documented prior to ratification. Failure to do so will result in a lack of faith in the Ministry and potential for chaos in the refrigeration sector and wider primary producing industries, with the potential for insufficient refrigerant to service these vital industries.

We have identified in this submission many of the key regulations which require review and these revisions and concerns must be heeded and documented in the final regulations to ensure continuity of supply and a fair and just ratification.

We also point out we are willing to further to consult with you on these said revisions.

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