



STAFF REPORT

TO: Environment & Planning Committee

FROM: Carl Cheeseman, Co-Ordinator Compliance Monitoring

REFERENCE: C653

SUBJECT: **COMPLIANCE MONITORING UPDATE REPORT: 1 APRIL-30 JUNE 2007 - EP07/07/03** - Report Prepared for 12 July 2007 Meeting.

1. INTRODUCTION

This report outlines the complaints, incidents and general monitoring undertaken as part of the Compliance Monitoring departments programme of work over the period 1 April – 30 June 2007.

2. COMPLAINTS

Over the reporting period a total of 177 complaints were received by the department. While complaints related to a broad range of activities, the predominant complaint was associated with air discharges, with a significant proportion relating to outdoor burning and the remainder discharges from domestic fuel burners. As always illegal rubbish dumping around the district accounted for a large number of complaints and man hours involved with clearing and investigating for potential offenders.

3. ENFORCEMENT

3.1 Abatement Notices

A total of 14 Abatement notices were issued over the period for a range of offences against the Resource Management Act 1991. All but two were complied with on time with no further intervention. Of the two outstanding notices, one received an infringement fine for the failure and was subsequently complied with and the other is due to be resolved through a broader meeting of affected parties.

3.2 Infringement Fines

During the period a total of nine infringement fines were issued. Of these three were for offences against the Resource Management Act with the remainder for offences against the Litter Act as a result of dumping and abandoned vehicles.

3.3 Enforcement Orders

No enforcement orders were sought over the reporting period.

3.4 Prosecution

One prosecution was finalised during this period with a Golden Bay dairy farmer appearing in the Environment Court for sentence where he pleaded guilty to the discharge of dairy effluent into a tributary of the Puppu springs. He was fined \$13,500 plus costs. Full sentencing notes are attached as an appendix to this report.

4. CONSENT MONITORING

During the period a total of 98 consents were monitored as part of a targeted programme of monitoring across all regional and district consented activities. Overall compliance with conditions was good at around 80% full compliance particularly in some sectors which achieved better rates.

Of the specific targeted monitoring programmes compliance undertakes the following is reported.

- **Dairy Effluent Discharges**

20 dairy effluent discharge consents remain operative. All were assessed as part of the dedicated monitoring programme of the 150 dairy farms in the district. Details of consent performance in this sector are contained in the annual dairy monitoring compliance report which is due before Council in August.

- **Domestic Wastewater**

No consent monitoring was achieved in this area due to the level of demand on the officer in responding to complaints about failing wastewater systems operating as permitted activities and other discharges.

- **Metered Ground and Surface Water Takes**

The closing stages of the water metering season occurred during the period covered in this report. A detailed analysis of monitoring is covered in the End of Season Water Metering Report is contained within this.

- **Marine Farms**

All the marine farms operating within the district were monitored within this last three month period with no issues of non compliance.

- **District and Regional Land Use**

40 district and regional land use consents were monitored over this period. Unfortunately a further 670 land use consents still remain outstanding. At present the Compliance Officer – Land Use, with assistance where possible, is endeavouring to reduce this backlog through targeted monitoring and rationalisation of old outstanding consents.

- **Gravel**

Most of the river and land based gravel extractions were monitored over this period with no significant non compliance detected. Some minor non compliance or procedural deficiencies was detected with some land based consented activities which required follow up. No enforcement action was taken during this period. This is an improvement on the situation in the past.

- **Coastal Activities**

Several Council coastal projects were monitored during this period including the construction of the Old Mill walkway at Ruby Bay. No non compliance was detected.

5. GENERAL MATTERS

Proposed Changes to the Dairy Effluent Monitoring Strategy

Due to the consistent level of compliance achieved in our dairy farms over recent years as a result of the Councils targeted monitoring programme opportunity exists for a reduced level of monitoring across the farms operating as permitted activities. It is now proposed to undertake full compliance audits of these farms over a two year period i.e. one visit every two years as opposed to annually. This equates to about 65 farms visited each year. This will provide incentive for farms to maintain good compliance and enable us to spread our limited staff resources elsewhere. It is still intended to provide annual compliance assessments against all 20 consented dairy farms operating in the district.

Increasing Numbers of Unauthorised Structures in the Coastal Marine Area

After receiving complaints, Compliance in conjunction with the Harbourmaster recently conducted a detailed survey of the Torrent Bay area with regard to new and existing structures in the CMA. Staff are currently assessing the results however it appears that a number of unauthorised structures have appeared in recent times. This mirrors the apparent continuing creep of unauthorised structures in areas around the districts coastline. It is likely that Compliance will need to focus attention on this issue in the near future which is likely to create work and generate some resistance from those affected.

Improvements in Hazardous Facilities (HF) monitoring and compliance.

A dedicated database is currently under construction allowing better management and reporting of all the districts HF sites. In the field Compliance staff are making good progress on assuring full compliance with all sites classified as hazardous. At present the majority of our known sites are now fully compliant or are in the process of upgrading to meet the Council's requirements. Along with dairy this is one of our best performing sectors.

HSNO enforcement

Incidents for which Council is the default agency have now been reported. This is an area where Council has advised ERMA that our capacity and inclination to be involved in HSNO monitoring is minimalist. It is likely however that a decision will have to be made as to what effort Council puts into this Act in future years as we see gaps appearing in the central government systems and because we are already involved in HF monitoring.

The Council is represented on Hazardous Substances Technical Liaison Committee (HSTLC) which has been resuscitated after some years in recess. The Co-ordinator Compliance-Monitoring and Co-ordinator Regulatory will represent Council on this committee which is chaired by the Fire Service.

Air Discharges Particularly in and Around the Richmond Airshed

As previously highlighted, outdoor burning particularly around the Richmond environs, caused an increase in complaints to Council in May as the fire ban approached. Many of the fires were associated with crop and shelter belt removal and a significant number of these fires were conducted in a poor or inappropriate manner. This has highlighted the need for a further push for better education and intervention with horticulturalist undertaking outdoor burning.

With the recent advertising of the new rules relating to solid fuel burners and Richmond's overall air quality a steady increase in complaints relating to discharge from domestic wood burners has put pressure on compliance staff. At present the response has been to log the complaint and try to provide education to the offending householder, however the expectation from the community appears to be for Council to provide a more decisive approach. With the pressing need to implement an effective compliance and enforcement strategy, work is now underway towards finalising a dedicated programme using additional resources provided in the 2007/2008 budget.

Failing Wastewater Systems

Due to ongoing complaints and subsequent detection of non complying domestic wastewater systems the programmed wastewater consent monitoring is now well behind. This redirection of effort has meant that many failed or failing wastewater systems have now been upgraded as a result of enforcement action in one form or another and a good working relationship has developed between many of the service providers and Council. As a result many of the wastewater service providers are supplying contract maintenance schedules for systems under their control and this data provides a valuable insight into performance of many of the systems not otherwise monitored by council.

Good progress continues to be made on the construction of a database that allows better management and reporting on the ever increasing number of wastewater systems that require monitoring throughout the district.

Remote Signage

Always the subject of complaints and controversy, signage across the district continues to occupy staff time in compliance. At present Motueka's commercial zone is the subject of a drive towards better compliance as a result of complaints received from disgruntled shop owners and an unwillingness of other shops to comply. At present the drive is focussed primarily towards an educational/advisory strategy but may result in some enforcement action for continued non-compliance. This is likely to be replicated in the Richmond CBD in the next few months after similar complaints from the public and the Richmond retailer's representative organisation, Richmond Unlimited, about the proliferation of sandwich boards on the main street.

6. STAFFING

In April Warren Galbraith moved to the Motueka Service Centre to replace Colin Michie who formally retired. Warren has effectively taken over Colin's programmes including monitoring forestry activities. To allow a seamless transition in Motueka and a controlled exit strategy for Colin he is now working on reduced hours until 5 October 2007. Dave Shaw replaced Warren in the Richmond office as the Compliance Officer – Land Use.

7. THREE MONTH FORECAST

- Summary reports of the season's farm dairy compliance survey will be sent to individual farms that were part of the district wide survey.
- Work will begin in preparation of the new water metering season
- A new focus will start on wastewater monitoring in an effort to undertake sampling of as many consented wastewater discharges as possible over the peak of the summer period.
- Work will continue on reducing the outstanding monitoring of Land Use consents
- Non complying signage in the Richmond CBD will be the subject of a compliance drive.

6. RECOMMENDATIONS

It is recommended that this report be received.

Carl Cheeseman
Co-ordinator Compliance

**IN THE DISTRICT COURT
AT NELSON**

CRI-2007-042-629

TASMAN DISTRICT COUNCIL
Informant

v

BRENT JOHN PAGE
Defendant

Hearing: 28 May 2007

Appearances: Mr K Beckett for Informant
Mr G Barkle for Defendant

Judgment: 28 May 2007

SENTENCING NOTES OF JUDGE B P DWYER

[1] Mr Page you appear for sentence on one charge under the Resource Management Act of discharging a contaminant, namely dairy shed effluent, into water. Such a discharge breaches the provisions of s15 and 338 of the Resource Management Act and is regrettably an offence which is not uncommon in the dairy farming industry, although I note that yours is apparently the first prosecution in the Tasman region for some time. You have pleaded guilty and you are convicted accordingly.

[2] The facts which have led to your prosecution are these:

- On 23 September 2006 the Council received a complaint from a member of the public about pollution of a tributary stream to the Waikoropupu River.
- On 27 September Council officers checked the stream and found the water to be murky and discoloured. The bottom of the stream was covered in a mat of brown sludgy algae and long green filament algae.

- The officers undertook an inspection of your nearby dairy farm and the site of a new dairy shed, which had been in use since the start of the dairy season on 1 August. An effluent collection system was incorporated into the new cowshed, but was not in fact operating and instead dairy shed effluent was being delivered to an earth dam. The dam had been constructed without resource consent, either in, or immediately adjacent to the bed of the stream, which was badly polluted downstream.
- Inspection showed that the effluent was seeping from the walls and floor of the dam into the streambed and flowing downstream from there. The stream in question flows approximately 1600 metres from the dam to the Waikoropupu River.
- Analysis of samples taken at the base of the dam showed extremely heavily polluted water, which was unsafe for stock consumption and human contact and toxic to aquatic organisms.
- Samples taken at the confluence of the stream and the river indicated a dilution of the level of contaminants due to the addition of water from other creeks and ground water. However, the stream water was still heavily polluted at that point.
- It appears that the proper effluent disposal system for the new dairy shed was commissioned within a day or so of the Council's visit to the property thereby terminating the discharge from the dam, although it also appears that the effluent remaining in the dam at that time was allowed to simply seep away into the stream.

[3] Both your own Counsel and Mr Beckett for the Council have identified the relevant matters for the Court to take into account in determining the appropriate penalty. Those factors were identified in a High Court decision known as the *Machinery Movers* case. Additionally, this Court must also apply sentencing principles identified in the Sentencing Act 2002. Those factors and principles are identified and applied to ensure that there is a reasoned and considered approach to sentencing and to ensure a degree of consistency to sentencing between different offenders, bearing in mind however that no two factual situations will ever be entirely the same. In your case Counsel have directed the Court to the following considerations.

[4] Firstly, the environment affected and the extent of damage. Your Counsel contends that the particular stream and area is of no greater environmental importance than any other stream or area in the vicinity. Although that may be the case, the Court does not regard that submission as being particularly helpful. If every farmer in the catchment of the Waikoropupu River had that attitude the outcome for the river would be disastrous. You dispute the amount of effluent that might have entered the stream because, you say, you were not milking 480 cows on the farm that early in the season. However, there would have been effluent from a large number of cows going into the stream for a period of eight to ten weeks. I note that the Council has not charged you on a continuing basis. The best which can be said about the environmental impact of the discharge is that it has been discontinued and hopefully there are no permanent effects.

[5] Secondly, there is the matter of deliberateness of the offence. Your Counsel submits that the offence was not deliberate in that you did not intend effluent to discharge into the creek. I accept that is so. However, that is not the full story. You deliberately constructed a dam in or near the stream and put effluent and wash water into it. You did so without obtaining a resource consent. You say that you did not realise that the dam was inadequately lined nor that a pipe, which could discharge directly into the stream, had been installed. Even the most cursory of inspections on your part would have revealed the shortcomings in the dam. The presence of a discharge pipe to the creek was immediately obvious, although I accept that the photographic evidence indicates there was in fact no discharge through the pipe. If your explanation that you did not know that a discharge pipe had been put in the dam is to be accepted, and I do accept that, that means that you did not go and inspect the dam once after the dairy shed was commissioned on about 1 August. Similarly, the seepage from the dam to the creek was immediately apparent to the Council officers and would have been apparent to you had you checked. Your Counsel describes your actions as careless and negligent. In my view, the failure to undertake any check on the working of the effluent system for a new dairy shed for a period of eight to ten weeks can only be viewed as a deliberate decision or a deliberate direction of priorities elsewhere. Although you may not have intended the discharge which occurred, that discharge occurred because of your failure to take any care at all to ensure that the system was working adequately. That may not be seen as deliberate, however, it was carelessness of a very high degree.

[6] Thirdly, your attitude. Because of the dispute as to the cause of the 2005 discharge, which had previously led to the issue of an abatement notice, I will disregard that previous incident. However, in view of the findings set out above, which are based on your Counsel's submissions, I agree with the Council's description of your attitude as being one of indifference to your obligation in this particular instance.

[7] I note that you have no previous convictions. You have a long record of community involvement in a number of areas and an excellent farming history. Those matters are to your credit. I have also had regard to the references, which were handed to the Court, including the references, which were received this morning. They show a degree of support for you from other people involved in the community. That is also to your credit. I note however, that one of the purposes of sentencing for environmental offences is to discourage further offending, not only by the offender, but also by others in the community.

[8] I turn now to consider the appropriate penalty to be imposed. The submissions, which have been made today, compare three cases, *Hohia*, *Sorrenson* and *Plateau Farms*. I was the sentencing Judge in the first two cases. In terms of the scale of your farming operation it is considerably closer to those two cases than the large *Plateau Farms* operation. There are other similarities as well as some differences. Comparisons are not easy in environmental offending.

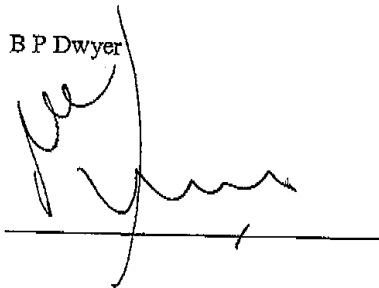
[9] It is always relevant to have regard to the fact that Parliament regarded offences under the Resource Management Act as serious matters. A monetary penalty of up to \$200,000.00 may be imposed as well as a term of imprisonment.

[10] In both the *Hohia* and *Sorrenson* cases, I held that a starting point for consideration of penalty was in the order of \$15,000.00 to \$20,000.00. I noted then, as I note now, that the latter figure \$20,000.00 represents ten percent of the maximum available penalty, although I accept that sentencing is not an accounting exercise.

[11] I have taken into account the fact that you are a first offender. However, that is counterbalanced in this case by the indifference which you showed towards ensuring that your new effluent system was working properly. Under the circumstances I consider that the appropriate starting point for consideration of penalty is the sum of \$20,000.00. You will receive due credit for a guilty plea.

[12] I accordingly determine that the appropriate fine is the amount of \$13,500.00. In accordance with s342 of the Resource Management Act, I direct that 90% of the fine is to be paid to the Tasman District Council. Additionally, you will pay \$505.20 to the Council in reimbursement of the costs of analysis of water samples, pursuant to the Costs in Criminal Cases Regulations, Court costs \$130.00 and Solicitors costs \$113.00.

B P Dwyer

A handwritten signature in black ink, appearing to read 'B P Dwyer', is written over a horizontal line. The signature is cursive and somewhat stylized.

District Court Judge/Environment Judge