

Report No:	REP12-09-01
File No:	C653
Date:	10 September 2012
Decision Required	

REPORT SUMMARY

Report to: Environment & Planning Committee
Meeting Date: Thursday, 20 September 2012
Report Author: Kat Bunting, Compliance Officer
Subject: **2011-2012 FARM DAIRY EFFLUENT COMPLIANCE**

EXECUTIVE SUMMARY

This report presents the compliance results from the 2011/2012 farm dairy survey, in particular compliance with respect to Resource Consent conditions for the discharge of treated dairy effluent to water, and the discharge of dairy effluent to land as a Permitted Activity under the Tasman Resource Management Plan (TRMP). Also presented are Tasman's current statistics with respect to the national targets of the Clean Stream Accord.

In the 2011/2012 season a total of 143 dairy sheds had active discharges in the Tasman District. Of those 136 farm dairies operated as Permitted Activities and the remaining seven held Resource Consents to discharge treated effluent to water.

At these inspections each farm was assessed against Resource Consent conditions for the discharge of treated dairy effluent to water, or against the Permitted Activity Rule 36.1.2.3 (the discharge of animal to land). The final compliance results for all 143 farms were:

- 94.4% - Fully Compliant
- 4.2% - Non- Compliant
- 1.4% - Significantly Non-Compliant

Tasman District currently has 133 farms that supply Fonterra and are therefore subject to the national targets of the Clean Streams Accord. The 2011/2012 reporting period saw further efforts by most farms towards meeting the Accord targets. At the end of this current season, Tasman's Accord statistics are:

- 95% of streams have stock excluded from them.
- 100% of estuaries and lakes have stock excluded from them.
- 96% of regular crossings have bridges or culverts
- 100% of farms have a nutrient budget.
- 94% of Fonterra farms fully comply with their consent conditions and/or regional rules.

Heading into the 2012/2013 dairy season Tasman District farmers have for the most part continued to show very good rate of compliance with respect to farm dairy effluent management, and meet all of the set Accord targets with respect to nutrient management, Stock exclusion to water, and estuaries. Unlike last season when ponding was the primary area of non-compliance, particularly in the Murchison area, there was no one issue of non-compliance that stood out this season as being common issue of concern.

RECOMMENDATION/S

That the report be received.

DRAFT RESOLUTION

THAT the Environment & Planning Committee receives the 2011-2012 Farm Dairy Effluent Compliance Report REP12-09-01.

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1. Purpose

1.1 The purpose of this report is twofold. Firstly it is to present the results of compliance for the 2011/2012 dairy season with respect those farm dairies that hold Resource Consent to discharge treated dairy effluent to water. Also compliance with respect to those farms that operate under the Permitted Activity Rule 36.1.2.3 of the Tasman Resource Management Plan (TRMP) - Discharge of Animal Effluent to Land.

Secondly this report serves to up-date where Tasman District lies with respect to the five national targets as set out in the Clean Streams Accord (the Accord).

Presently Tasman District has 143 dairy farms. The results presented in this report come from a comprehensive survey of all farms with resource consents and all permitted activities in Tasman District that operated during the reporting period (2011/2012 dairy season). The survey specifically looked at the collection, containment, and disposal of effluent from the farm dairy and general farm management practices.

No sampling of waterways or soils was undertaken as part of this study. This report does not assess effects of water quality, amenity, or aquatic ecology.

2. Background

2.1 The survey process

The survey process was identical to that of previous surveys. It is not intended to detail that survey method in this report and the reader is referred to staff report EP06/05/18 for the methodology including the geographical location of the three "sub-regions" (Golden Bay, Central, and Murchison) specified in the reports.

3. Compliance - Present Situation

As with all dairy farm inspections undertaken by Council, farms once assessed were placed into one of three categories that described their level of compliance. The criteria for assigning these categories are:

- **Compliant:** No non-compliance with any Resource Consent conditions or any sections of Rule 36.1.2.3 of the TRMP were found at the time of inspection.
- **Non-compliant:** All issues that did not fit into either “compliant” or “significantly non-compliant” e.g. technical non compliance with no adverse effect.
- **Significantly Non-compliant:** refer to Appendix 1 for a full list of criteria

These compliance terms are use by all Regional Councils (supported by the Regional Managers Group) when reporting on dairy compliance and will be referred to throughout the remainder of this report.

3.1 2011/2012 Survey Results and Enforcement

Survey results

Compliance with respect to an individual’s consent conditions, Rule 36.1.2.3 of the TRMP and Section 15(1)(b) of the RMA 1991 as assessed from the farm inspections are presented in Figure 1.

Of the 143 inspections made during 2011/2012 season, 135 (94.4%) of all inspections were graded “Compliant”.

Six (4.2%) inspections found issues that were graded as “Non-compliant”. Such non-compliance included:

- Minor ponding present after more than one hour had passed since effluent disposal (two farms). In all cases this was less than 10m² and just deep enough to splash.
- Storage facilities not sealed to prevent seepage to water (two farms). In one case this involved having a stormwater diversion valve from a sump open while sump was in use. No effluent was found to have actually escaped from the system. The other was a storage pond that have been modified but not relined. This pond was found to be empty as no effluent had been directed to this pond since its modification.
- Failing to adhere to setback rules regarding property boundaries and neighbouring dwellings (one farm).
- The final treated effluent exceeding the quality parameters (BOD₅ and TSS) by less than 10% of the respective consent limit, but no measurable impact on the receiving environment (one farm).

Two (1.4%) inspections found issues that were graded as “Significantly Non-compliant”. Some inspections found more than one issue that was graded as being significantly non-compliant. Such non-compliance included:

- Severe ponding of effluent on the ground surface.

- The breach of an Abatement Notice.
- The breach of an Enforcement Order.

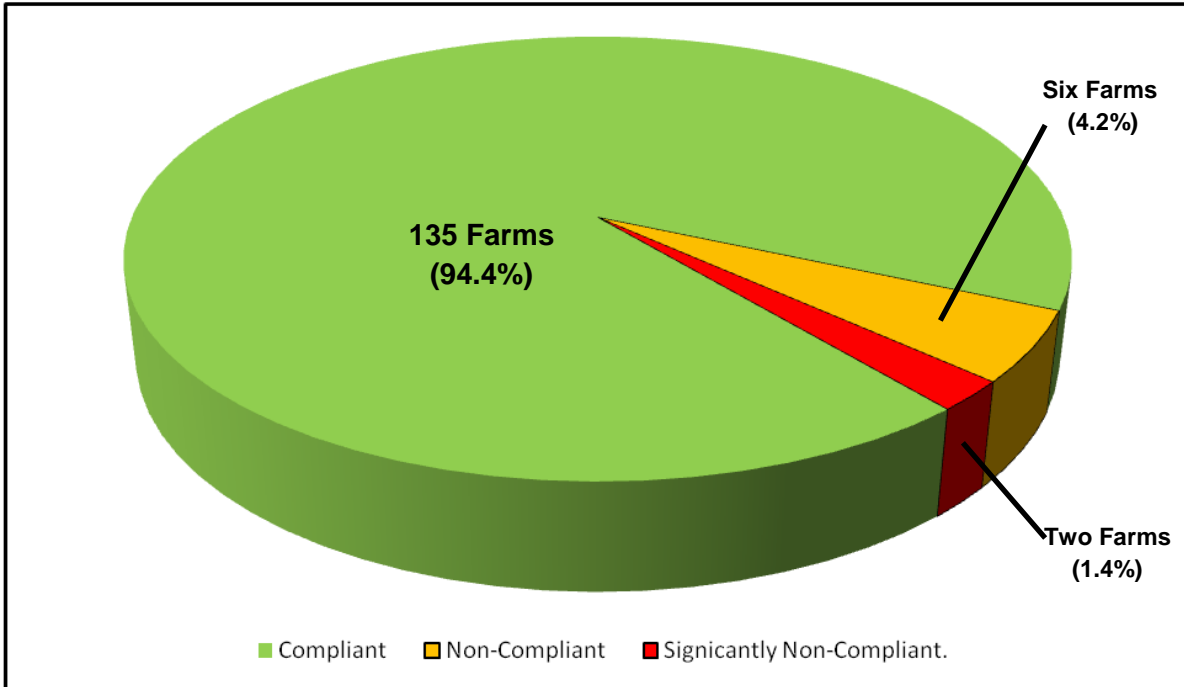


Figure 1 Compliance with respect to Rule 36.1.2.3 of the TRMP, Resource Consent conditions, and Section 15(1) of the RMA 1991 following the inspection of all farms in Tasman District.

It is worth noting that one of the two farms graded “Significantly Non-compliant” during recent years is a repeat offender. This farm has continued to be non-compliant with their Enforcement Order, placed on them during a previous season. In response to this unwillingness to comply Council is again left with no option but to consider taken consequential enforcement action that again may involve further action before the courts. Any such actions will be determined once Council staff have completed a full and thorough investigation of the circumstances surrounding the non-compliance found. The other farm showing significant non-compliance was a first time offender. All parties involved received an Abatement Notice however this notice was subsequently breached. Council staff are presently investigating this case to determine whether further enforcement action is warranted. All enforcement action undertaken during the 2011/2012 season is detailed below in section 3.2 of this report.

Unlike last season when ponding was the primary area of non-compliance there is no one issue of non-compliance that stood out this season as being the common issue of concern. This could be due to a drier season, but also to the considerable amount of work the dairy industry (Westland Milk, Fonterra, and Dairy NZ) has done by working one-on-one with farmers with respect to system and wet weather contingencies. This is particularly so in the Murchison area, where inspections made last season identified that non-compliance associated with ponding was far more prevalent here than any other area of the District.

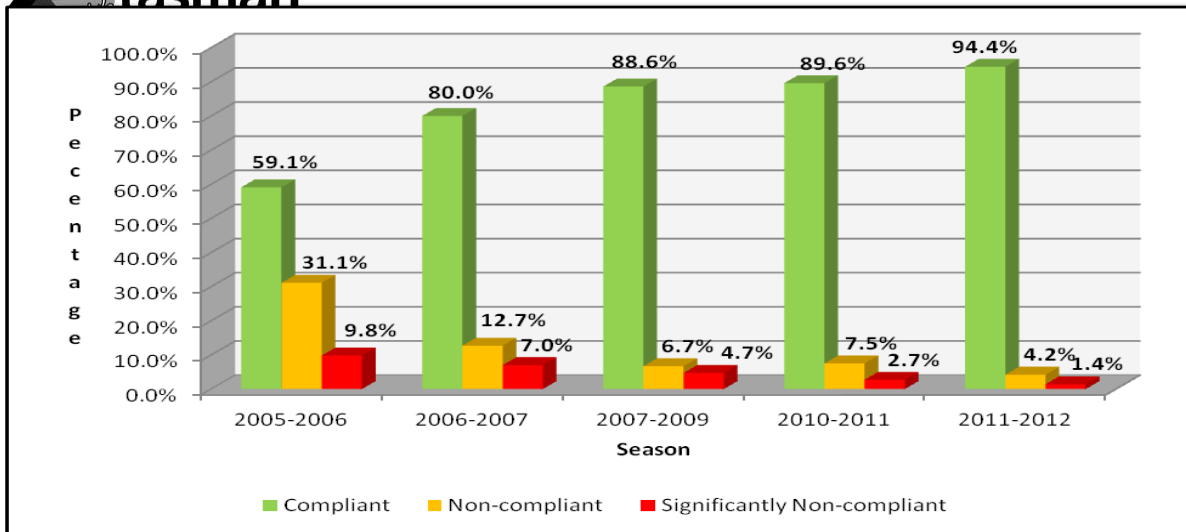


Figure 2 Comparison of Compliance with respect to Rule 36.1.2.3 of the TRMP, Resource Consent conditions, and Section 15(1) of the RMA 1991 from previous dairy seasons

In response to this finding both supply companies visited each of their respective farms where an audit of the effluent collection and disposal system was completed and recommendations made as to how to improve them. Many farmers are presently in the process of either designing improved systems or actively constructing them to be ready for the 2012/2013 season. In addition to this, Council and Industry are actively promoting to farmers the benefits of engaging professionals who have gained accreditation through the Farm Dairy Effluent Accreditation Scheme. Regardless of whether the farmer chooses to engage such a person, they are required to demonstrate that any new system or modification to any existing system meets Dairy NZ’s Farm Dairy Effluent Design Code of Practice and Standards. These standards include among other things, adequate sizing and the sealing of effluent storage systems.

Figure 2 shows a comparison of the compliance rates from the 2005/6, 2006/7, 2007/8-2008/9, and 2010-2011 surveys with this survey. Due to the limited nature of the 2009/2010 survey (just 37 farms surveyed) those statistics are not included in Figure 2.

From Figure 2 it can be seen that full compliance has continued to improve from season to season with this reporting period being no exception. The percentage of farm inspections graded as “Compliant” has improved each year since the initial survey in 2005/6. Correspondingly, those inspections graded either non-compliant or significantly non-compliant have continued to fall. This continual improvement can be directly attributed to the commitment of most farm owners and their staff to employ best farm practices with respect to the disposal of farm dairy effluent.

3.2 Enforcement Action

As in previous years five modes of enforcement action were employed to address the non-compliance that arose from these farm inspections. These being: warning letters, Abatement Notices, Infringement Fines, Prosecutions, and Enforcement Orders. Eight inspections resulted in Council taking enforcement action during the 2011/2012 season.

The type of enforcement action taken is largely determined on the resulting adverse environmental effect arising from that non-compliance.

Formal Warning Letter

A formal warning letter acts as a formalised staff direction and is retained on file. This is not a court process although further non-compliance that receives enforcement action will take into account that the operator had previously received formal direction. All six inspections that were graded non-compliant received a formal written warning. This line of enforcement action was taken as each circumstance of non-compliance did not result in any actual adverse environmental effect and each farm concerned had a previous good compliance history. In each case the farm owner/worker was made well aware that continued, un-announced inspections would be made for the remainder of the season. It was also made clear the further formal enforcement action could result if non-compliance was found again.

Abatement Notices

An abatement notice prescribed under Section 322 of the Resource Management Act is a formal and legal directive from Council to cease an activity and/or undertake an action(s) in order to avoid, remedy or mitigate an actual or potential adverse effect on the environment. An abatement notice is used by Council to immediately deal with an illegal activity and to instigate corrective action. Further enforcement action can follow the issuing of an abatement notice.

One Abatement Notice was issued during this reporting period. This notice required that an actual or potential unauthorised direct or indirect discharge to water be ceased immediately. This notice also required immediate improvements to the effluent system to avoid remedy or mitigate further discharges occurring.

Infringement Fines

An infringement fine prescribed under Section 343C of the Resource Management Act is an instant fine issued by Council to a person(s)/company who has committed an offence against the Act.

No infringement fines have been issued in response to farm inspections during the 2011/2012 season

Prosecutions and Enforcement Orders

An enforcement order prescribed under Section 319 of the Resource Management Act is a directive from the Court to a person(s)/company to cease an activity and/or undertake an action(s) in order to avoid, remedy or mitigate an actual or potential adverse effect on the environment from their activity.

At the time of the writing of this report no Enforcement Orders or Prosecutions have been initiated for offences found during the 2011/2012 season. Staff continue to investigate the circumstances surrounding each case of Serious Non-Compliance, following which a decision as to what enforcement action(s) will be taken will be made.

It is encouraging to report that for the second year running two of the three farms that have current Enforcement Orders against them demonstrated full compliance with the requirements of these orders, and the permitted activity rules. However, one farm, whom Council has taken assertive action against in past seasons, (including Abatement Notices, Infringement Fines, Prosecution, and Enforcement Orders) continues to show disregard or simply elects not to comply with the effluent rules despite been given the same opportunities as others. This farm is again under investigation for Significant Non-Compliance.

4. Clean Streams Accord National Targets

There are five separate targets to the Accord. In broad terms these are:

- that dairy cattle be excluded from larger streams;
- that regular dairy crossings be bridged or culverted;
- that all dairy farmers comply with resource consent or permitted activity standards;
- that all dairy farmers carry out nutrient budgeting;
- and that all regionally significant wetlands on dairy farms be fenced out.

Tasman District's performance in relation to each of the five targets is discussed in detail below. The statistics presented relate only to the 133 farm dairies in Tasman that supply Fonterra Ltd. The remaining ten farms supply Westland Milk Products Ltd and are not subject to the Accord. During the 2011/2012 season all of the 133 Fonterra supply farms were inspected.

4.1 Preventing Stock Access to Waterways

Accord Target:

Dairy cattle are excluded from 50% of streams and rivers by 2007, 90% by 2012.

Dairy cattle are excluded from 100% of estuaries and lakes by 2007.

In most cases, fencing is the only practical method of excluding stock access to waterbodies. However, there may be circumstances where fencing is not required due to natural barriers, such as dense vegetation and steep river and stream banks.

At the end of last season all "sub-regions" in Tasman had met the 2012 Accord target of 90% of waterways, as defined by the Accord, having stock exclusion. However, a small handful of farms when considered in isolation had made little progress. It is very pleasing to report that since then half of the farms concerned have made a considerable effort in the last twelve months to recertify this situation and now meet this target. Those farms where little of no progress has been made have been made aware that Part IV of the TRMP is now operative and contains new rules relating to activities around rivers and lakes including rules which now restrict stock entering or passing over beds to certain occasions.

The purpose of these rules is obviously to minimise the impact of stock on water quality and to recognise and support industry initiatives such as Fonterra's Clean Streams Accord.

In summary at least 95% of all streams in Tasman that are subject to the Accord have some form of stock exclusion.

All estuaries and lakes have 100% stock exclusion and meet the 2007 target.

4.2 Stock Crossings

A "regular stock crossing" is defined under the Accord as a stream that is "deeper than a "Red Band" (300mm) and "wider than a stride" (1m), and permanently flowing" ... "where stock regularly (more than twice a week) cross a watercourse".

Accord Target:

50% of regular crossing points have bridges or culverts by 2007, 90% by 2012.

During the 2005/2006 farm survey a total of 244 stock crossings, were identified as being subject to the Accord definition in Tasman District. By the end of the 2008/2009 dairy season 93% (227) of the regular crossings had been improved such that cattle do not access the waterway. This accomplishment meant that Tasman District, as a whole had already met the 2012 Accord target. Although this accord target has been met, it is encouraging to report that dedicated farmers are continuing to bridge the last remaining crossings in the District. Five regular crossings were eliminated last season and a further four (three being on one farm) were eliminated this season. From this survey, 96% (236) of the regular crossings on Fonterra Supply farms have been improved such that cattle do not access the waterway. This means Tasman District as a whole meets the 2012 target of regular 90% of crossings points having bridges. However, there are still a handful of significant crossings in terms of size and potential environmental impacts that remain in the district, three of these being addressed at the time of the writing of this report. All farms that have crossing remaining have been made aware of the rules contained in Part IV that relate to stock access to water.

4.4 Management of Farm Dairy Effluent

Accord Target:

100% of farm dairy effluent discharges to comply with resource consents and regional plans immediately.

Compliance with respect to Resource Consents and the TRMP is discussed in full in Section 3 of this report. Presented below in Figure 3 is the number of fully compliant Fonterra supply farms (both Permitted Activities and those with Discharge Permits).

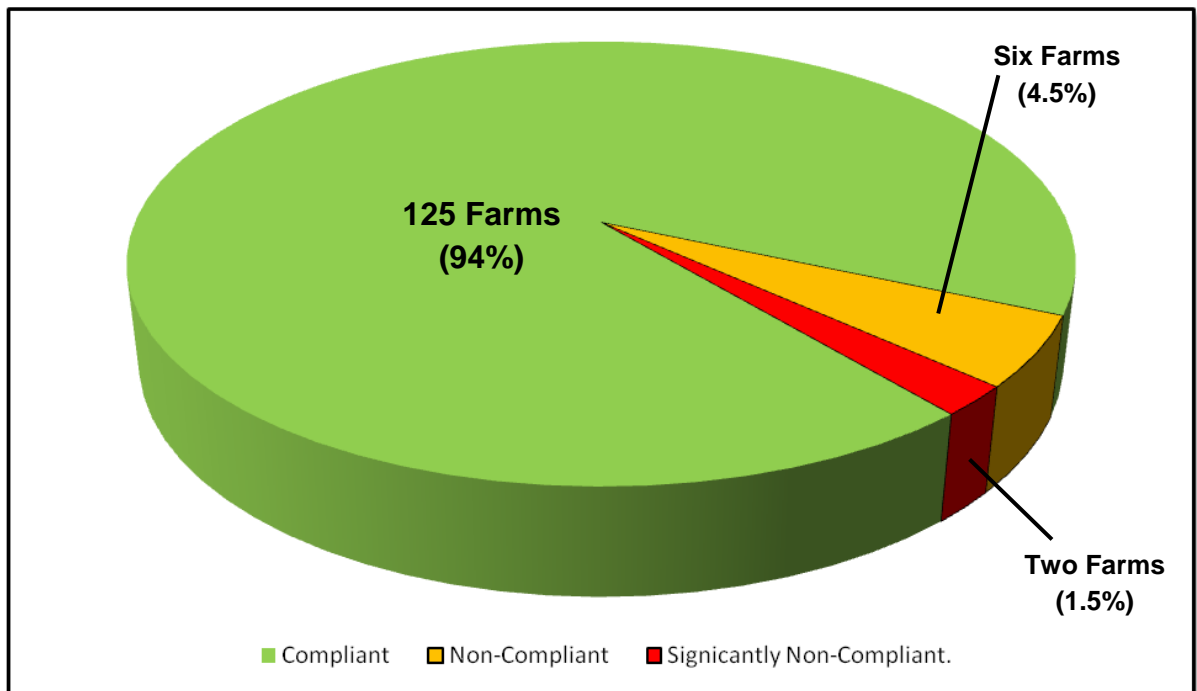


Figure 3 Compliance with respect to Rule 36.1.2.3 of the TRMP, Resource Consent conditions, and Section 15(1) of the RMA 1991 following inspections of all 133 Fonterra supply farms.

Figure 3 shows that of the 133 Fonterra Supply Farms in Tasman, 125 inspections (94%) fully complied with Section 15(1)(b) of the RMA 1991, all sections Rule 36.1.2.3 of the TRMP or consent conditions during the 2011/2012 season.

Six (4.5%) of inspections were graded “non-compliant” and two inspections (1.5%) were graded “significantly non-compliant”. The circumstances of the non-compliance and subsequent enforcement action are detailed in full in Sections 3.1 and 3.2 of this report.

4.5 Wetlands

Accord Target:

50% of regionally significant wetlands to be fenced to prevent stock access by 2009, 90% by 2012.

The Accord acknowledges that over 90% of lowland wetlands in Tasman District have been drained and that natural water regimes of wetlands need to be protected.

The Council is in the process of further developing the inventory of wetlands from which staff will determine the level of significance (at a regional level) of the wetlands on or adjacent to dairy farms. Until this work is completed the level of compliance with respect to each of the Accord targets cannot be accessed.

It is also noted that the Tasman District Council is also involved in the Natural Habitats Tasman project where landowners and Council are actively working together to identify significant habitats on private land and working with the individual landowners to ensure appropriate management and protection of these habitats.

5. Costs

Presently there is uncertainty as to the legal means open to Council in order for it to recover the costs incurred in the monitoring of farm dairies with respect to the Permitted Activity Rules. At present this Council does not charge for inspections where the farms are fully compliant however is utilising the re-inspection fee contained in the Schedule of Charges when non compliance is detected and requires revisits. This fee does not apply to the time associated with undertaking the enforcement process. As the majority of farms are achieving full compliance it is fair to say that programme costs for permitted activity monitoring are presently borne by Council.

For the seven remaining consented activities the costs associated with monitoring are recovered by way of annual charges.

6. Conclusion

It will be recalled that the purpose of this report was twofold. Firstly it is to present the final results of compliance of the 2011/2012 dairy season with respect those farm dairies that hold Resource Consent to discharge treated dairy effluent to water, and also compliance with respect to those farms that operate under the Permitted Activity Rule 36.1.2.3 of the TRMP - Discharge of Animal Effluent to Land. Secondly this report presents an up-date of where Tasman District lies with respect to the five national targets as set out in the Clean Streams Accord.

Summarised below are the major findings of this report.

A total of 143 dairy sheds had active discharges in the Tasman District during the 2011/2012 season. Of these, 136 farm dairies operated as Permitted Activities and the remaining seven held Resource Consents to discharge treated effluent to water.

All farms were inspected this season. The results of this survey were:

- 94.4% - Compliant.
- 4.2% - Non-Compliant
- 1.4% - Significantly Non-Compliant

Tasman District currently has 133 farms that supply Fonterra and are therefore subject to the national targets of the Clean Streams Accord. The 2011/2012 reporting period saw further positive steps forward by most farms towards meeting the Accord targets. At the end of the season, Tasman Accord statistics were:

- 95% of streams have stock excluded from them.
- 100% of estuaries and lakes have stock excluded from them.
- 96% of regular crossings have bridges or culverts.
- 100% of farms have a nutrient budget.
- 94% of farms complied with their consent conditions or regional rules on the day of inspection.

Heading into the new dairy season Tasman District continues to present a good rate of compliance with respect to farm dairy effluent management. These results show that Tasman District continues to meet the Accord targets relating to stock exclusion to water ways and estuaries, bridging, and nutrient management.

7. Where to From Here?

Outside of the enforcement processes currently under consideration for the two offending farms identified above, the 2012/2013 season commences in September 2012 and inspections will begin in earnest with a view to once again completing a full assessment of every farm in regards to both dairy effluent disposal and clean Streams Accord performance.

As always there is a risk that some non-compliance will surface however it is expected that the ongoing commitment for best farm practices will be reflected in a continuing high standard of compliance in Tasman.

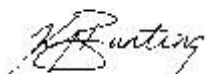
Next season Council will continue to work closely with the industry in order to build upon the positive work achieved during the past year. Such work includes the on-going promotion of on-farm best practise, particularly with respect to wet weather contingencies and also the promotion of Dairy NZ's Farm Dairy Effluent Design Code of Practice and Standards, and the new Farm Dairy Effluent Design Accreditation Scheme.

12. Recommendation

It is recommended that the Committee receives this report.

13. Draft Resolution

THAT the Environment & Planning Committee receives the 2011-2012 Farm Dairy Effluent Compliance Report REP12-09-01.



Kat Bunting
Compliance and Investigations Officer