



## STAFF REPORT

**TO:** Environment & Planning Committee

**FROM:** Kat Bunting, Compliance Officer

**REFERENCE:** C653

**SUBJECT:** **INTERIM DAIRY COMPLIANCE REPORT - REPORT REP10-08-09**  
- Report prepared for meeting of 12 August 2010

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### EXECUTIVE SUMMARY

This report constitutes a transitional report covering a discrete monitoring programme while council prepares for a full farm dairy survey of the farms operating in the Tasman district in 2010/2011. The results of that will be presented at the end of next season and will be in line with amendments to regional reporting requirements.

A survey of 37 farms was undertaken during the 2009/2010 dairy season comprising farms that all had matters of interest to Compliance or were due for specific follow up inspections.

At these inspections each farm was assessed against Resource Consent conditions for the discharge of treated dairy effluent to water, or the discharge of dairy effluent to land as a Permitted Activity under the Tasman Resource Management Plan (TRMP). The final compliance results of the 37 selected farms were

- 73% - Compliant
- 19% - Non-Compliance
- 8% - Significant Non-Compliance

Due to the limited nature of this survey it is not intended to compare this year's performance against that of previous years. It is however intended to report performance on the sector in the next reporting period.

## 1. INTRODUCTION

### 1.1 Purpose

The purpose of this report is to present the results of 37 farms that were undertaken during the 2009/2010 dairy season with respect those farm dairies that hold Resource Consent to discharge treated dairy effluent to water, or operate under the Permitted Activity Rule 36.1.3 of the Tasman Resource Management Plan (TRMP) - Discharge of Dairy Effluent to Land.

No sampling of waterways or soils was undertaken as part of this study, only the point of discharge from the pond systems (as required by the conditions of consent) was sampled, and this report does not assess effects of water quality, amenity, or aquatic ecology.

## 2. THE FARM DAIRY SURVEY

### 2.1 The Survey Process

The farms subject to inspection this year comprised those that had issues of non-compliance last season, were overdue or had requested an inspection. A number of farms were also inspected as part of an update on the inventory of stream crossings.

## 3. COMPLIANCE

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 36.1.3 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 used by all regional councils when reporting on dairy compliance and will be referred to throughout the remainder of this report.

### 3.1 2009/2010 Survey Results and Enforcement

#### Survey Results

While the survey this year was limited to a restricted number of farms the reporting of individual performance against consents or permitted activity rules is presented below. As stated earlier, due to the limited survey sample no comparison is made with previous season’s results.

Of the 37 farms inspected during 2009/2010 season, 27 (73%) farms were graded “Compliant”.

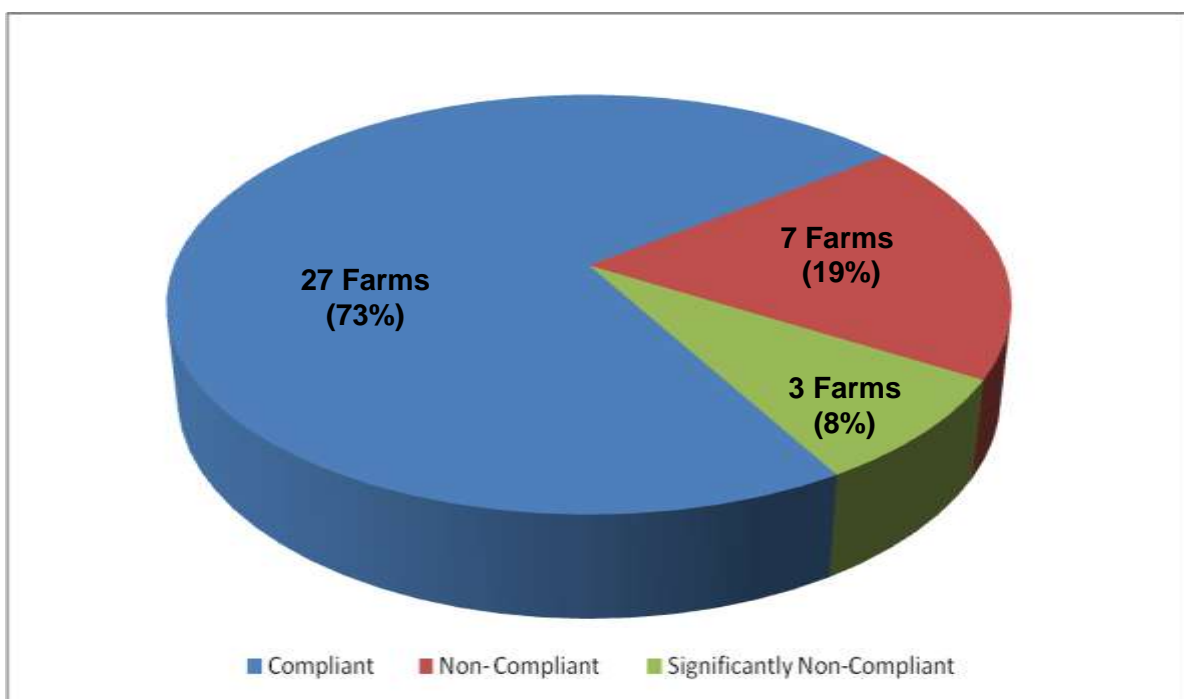
Seven (19%) farms had issues that were graded as “Non-compliant”. Such non-compliance included:

- Failure to ensure a copy of the resource consent conditions were displayed in a prominent position on the wall of the milking shed (Consent Condition).
- The final treated effluent exceeding the quality parameters (BOD<sub>5</sub> and TSS) by less than 10% of the respective consent limit, but no measurable impact on the receiving environment.

- The discharge of effluent from a travelling irrigator within 10 metres of a property boundary, that boundary being a public road.

Three (13%) farms had issues that were graded as “Significantly Non-compliant”. Some farms presented more than one issue that was graded as being significantly non-compliant. Such non-compliance included:

- The discharge of raw effluent onto land where it subsequently entered water.
- The discharge of effluent directly into water.
- Severe ponding of effluent on the ground surface.
- The breach of an Enforcement Order

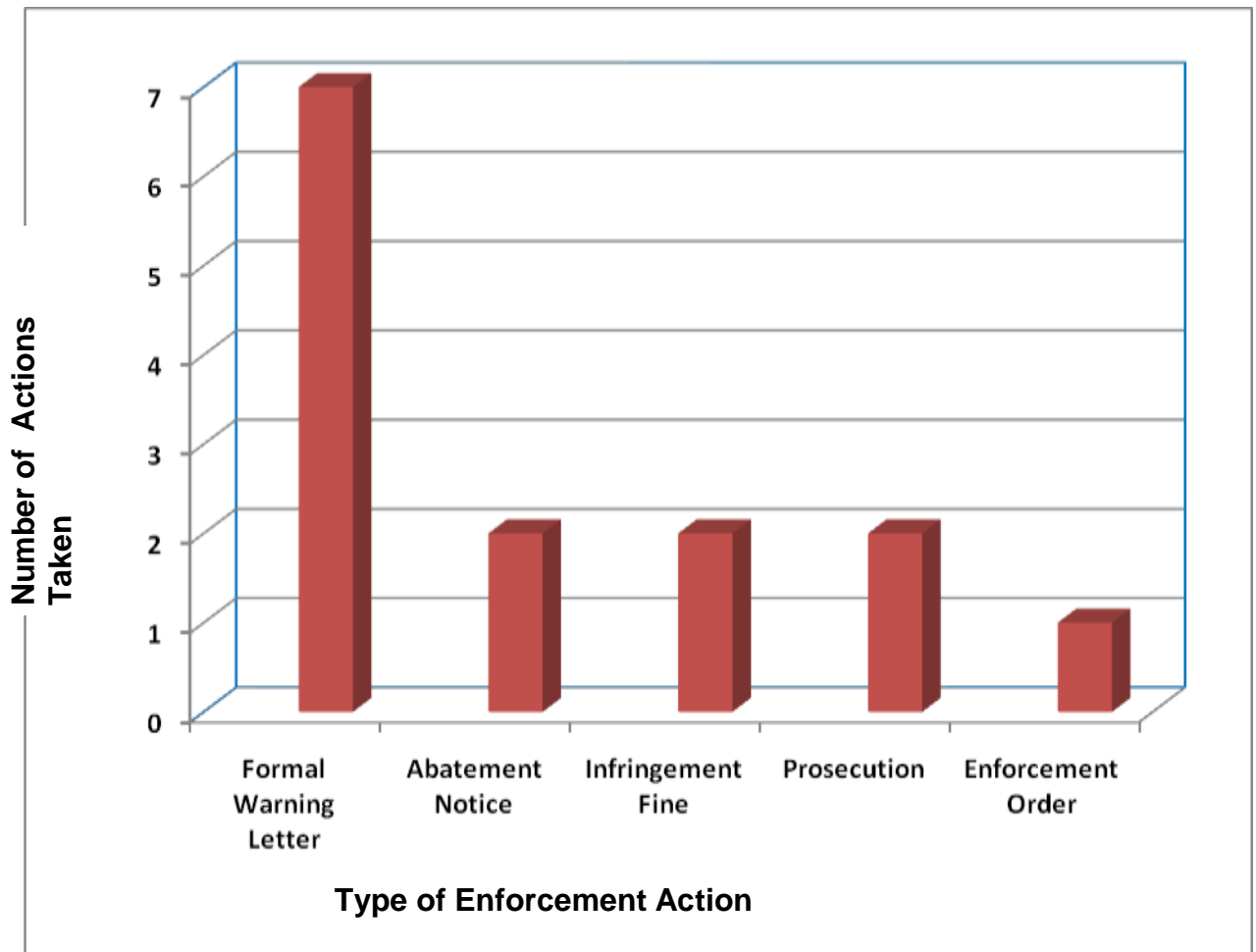


**Figure 1:** Compliance with respect to Rule 36.1.3 of the TRMP, Resource Consent conditions, and Section 15(1) of the RMA 1991 following the inspection of 37 farms.

It is worth noting that two of the three farms graded “Significantly Non-compliant” during the 2009/2010 season survey were repeat offenders. They have elected not to comply with enforcement orders that have been placed on them by the courts during a previous season. In response to this unwillingness to comply Council was left with no option but to undertake consequential enforcement action that again included action before the courts. The other farm was a first time offender and the farm owner and a farmhand both received an Abatement Notice and Infringement Fine. Enforcement Action undertaken for the 2009/2010 season is detailed below.

### 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. Twelve inspections resulted in Council taking enforcement action during the 2009/2010 season. In some circumstances more than one form of action was taken against a given farm/landowner/farm worker. The type of enforcement action taken is largely determined on the resulting adverse environmental effect arising from that non-compliance. Enforcement Action taken by Council during the 2009/2010 season is presented in Figure 2.



**Figure 2:** Enforcement Action taken against Non-Compliance with respect to Rule 36.1.3 of the TRMP, Resource Consent conditions, and Section 15(1) of the RMA 1991

#### Formal Warning Letter

All seven 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 enforcement action could result is 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.

Two Abatement Notices were issued during this reporting period. Both notices required that an actual or potential unauthorised direct or indirect discharge to water be ceased immediately. These notices also required immediate improvements to effluent systems to avoid remedy or mitigate further discharges occurring. These two recipients of an abatement notice also received an Infringement Fine.

### **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. Two Infringement Fines were issued during the 2009/2010 season, and relate to the offences discussed above.

### **Prosecutions**

Two prosecutions before the Environment Court were initiated during the 2009/2010 season. These cases have not been finalised at the time of the writing of this report. Both cases concerned the breach of existing enforcement orders that were placed on particular farms during earlier enforcement action and in one case for additional offences.

### **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. One enforcement order was initiated during the 2009/2010 season. This order concerns continuing inadequacies in farm infrastructure and poor management practices resulting in unnecessary risk to the environment.

As in previous years Council continued to take assertive action against the small percentage of farmers who have shown disregard or simply elected not to comply with the effluent rules despite been given the same opportunities as others. All cases that went before the Court involved farms that have had previous convictions.

## **4. 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 council has determined that we do not have a robust method to rely on although other regional Councils are exploring charging for such monitoring. Therefore programme costs for permitted activity monitoring are presently covered by the general rate.

The costs associated with consent monitoring are recovered by way of a Section 36 (RMA) charge.

## 5. CONCLUSION

It will be recalled that the purpose of this report was to present the results of compliance with respect those farm dairies that were inspected over the season.

In summary during the 2009/2010 dairy season 37 farms were selected for inspection. Of those:

- 73% - Compliant.
- 19% - Non-Compliant
- 8% - Significantly Non-Compliant

## 6. WHERE TO FROM HERE?

The 2010/2011 season commences in September and inspections begin in earnest with a view to completing a full assessment of every farm in regards to both dairy effluent disposal and clean Streams Accord performance. At present this equates to 145 farms across the district.


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.

However, there continues to be a selected few who continue to choose not to comply with the effluent disposal rules. Unfortunately, much of Compliance staff time was spent in dealing with these continuing offenders through the courts. A considerable amount of time and effort was spent conducting thorough investigations and preparing and submitting the facts of each case to the courts. The farmers involved all have a long history of non-compliance, and their continued disregard of the effluent rules and the environmental consequences has left Council no option but to proceed to the Courts.

The 2010/11 dairy season will see all farms inspected and those farmers with a poor compliance history will again receive extra focused attention.

## 7. RECOMMENDATIONS

It is recommended that the Committee receives Report REP10-08-09.



Kat Bunting  
**Compliance Officer**

## APPENDIX 1

Criteria for assigning a grade of significant non compliance, and examples of situations that would meet the criteria.

Criteria	Examples
Unauthorised discharges that have entered water (Ground or surface water)	<ul style="list-style-type: none"> <li>• Overflowing ponds or sumps into surface water</li> <li>• Overland flow /runoff into surface water</li> <li>• Irrigating over surface water</li> <li>• Race/feedpad/standoff pad runoff into surface water</li> <li>• Discharges in breach of consent or plan rule conditions, and where adverse effects are visible/measurable/likely: e.g.               <ul style="list-style-type: none"> <li>▪ S107 considerations e.g. change in colour or clarity after mixing</li> <li>▪ Exceeding ammonia limits</li> <li>▪ Exceeding NTU/SS limits</li> <li>▪ Exceeding BOD limits</li> <li>▪ Exceeding faecal limits</li> <li>▪ Exceeding ground water nitrogen concentration limits</li> </ul> </li> </ul>
Unauthorised Discharges that may enter water (Ground or surface water)	<ul style="list-style-type: none"> <li>• Significant surface ponding</li> <li>• Irrigating when soil conditions are too wet</li> <li>• Discharge without using an irrigator (e.g. pipe end discharge)</li> <li>• Sludge dumping in close proximity of any water</li> <li>• Discharges in breach of consent or plan rule conditions, and where adverse effects are visible and/or measurable and/or likely: e.g.               <ul style="list-style-type: none"> <li>▪ Exceeding nutrient application rates</li> <li>▪ Exceeding effluent application depths/rates</li> </ul> </li> </ul>
Breach of abatement notice	<ul style="list-style-type: none"> <li>• Any breach of an abatement notice</li> </ul>
Objectionable effects of odour	<ul style="list-style-type: none"> <li>• Serious adverse effects of odour have occurred</li> </ul>
System shortcomings (where required by a rule in a plan or a resource consent)	<ul style="list-style-type: none"> <li>• Serious lack of contingency storage or backup plan.</li> </ul>
Multiple non compliances on site with cumulative effects	<ul style="list-style-type: none"> <li>• Multiple minor discharges into a sensitive environment</li> </ul>