

9.3 2015-2016 FARM DAIRY EFFLUENT COMPLIANCE SURVEY**Information Only - No Decision Required**

Report To:	Environment and Planning Committee
Meeting Date:	28 July 2016
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Report Number:	REP16-07-05

1 Summary

- 1.1 This report presents the compliance results from the 2015/2016 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).
- 1.2 In the 2015/2016 season a total of 146 dairy sheds had active discharges in the Tasman District. Of those 140 farm dairies operated as Permitted Activities and the remaining six held Resource Consents to discharge treated effluent to water.
- 1.3 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 146 farms were:
 - 94% - Fully Compliant
 - 4% - Non- Compliant
 - 2% - Significantly Non-Compliant

2 Draft Resolution

That the Environment and Planning Committee receives the 2015-2016 Farm Dairy Effluent Compliance Survey report REP16-06-05

2015-2016 FARM DAIRY EFFLUENT COMPLIANCE SURVEY**3 Purpose of the Report**

- 3.1 The purpose of this report is to present the results of compliance for the 2015/2016 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.
- 3.2 The survey specifically looked at the collection, containment, and disposal of effluent from the farm dairy and general farm management practices associated with effluent. No routine sampling of waterways or soils is undertaken as part of this monitoring programme; it is only undertaken during investigation phases where offences are suspected. Therefore, the monitoring programme and report do not attempt to assess wider effects of water quality, amenity, or aquatic ecology in these catchments which are covered by other reports to Council.

4 Background**The Survey Process**

- 4.1 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.
- 4.2 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 Attachment 1 for a full list of criteria
- 4.3 These compliance classes are used by all regional councils to ensure national consistency when reporting on dairy compliance and will be referred to throughout the remainder of this report.

2015-2016 FARM DAIRY EFFLUENT COMPLIANCE SURVEY**5 Compliance - Present Situation****2015/2016 Survey Results**

- 5.1 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.
- 5.2 Of the 146 inspections made during 2015/2016 season, 137 (94%) of all inspections were graded "Compliant".
- 5.3 Six (4%) 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 had been applied to land (two farms). In both cases the ponding was intermittent over an area less than 10m² and was just deep enough to splash.
 - Failing to adhere to setback rules for effluent application near waterways (one farm). In this case no effluent directly or indirectly entered water.
 - Failing to adhere to setback rules for effluent application near property boundaries (one farm). In this case effluent was applied directly onto a State Highway.
 - Failing to ensure effluent storage facilities are sealed (one farm). This case involved stockpiling a small volume of solids from a weeping wall system onto unsealed ground prior to them being loading into a muck-spreader and applied to area-worked paddock later in the day.
 - Failing to take and also submit sampling results by the due date specified by a condition of consent (one farm).
- 5.4 Three (2%) inspections found an issue that was graded as "Significantly Non-compliant". Such non-compliance included:
- Major ponding present after more than one hour had passed since effluent had been applied to land (one farm). This case involved a travelling irrigator that had been allowed to come to the end of its run. This meant it was stationary in one position for a considerable length of time and continued to discharge effluent. The result was the over application of effluent in one location causing ponding over an of approximately 10m² and was at least 5-10cm in depth. This ponding flowed over land and also and entered surface water. This being a secondary offence.
 - A serious lack of contingency storage or back-up plan to avoid discharge to water (one Farm). In this case the new storage pond was lapping at the brim and a heavy rain warning was in place. Should this pond have over-topped the flow would have entered a waterway.

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- Sample results being more the 200% greater than that authorised by the respective consent conditions.

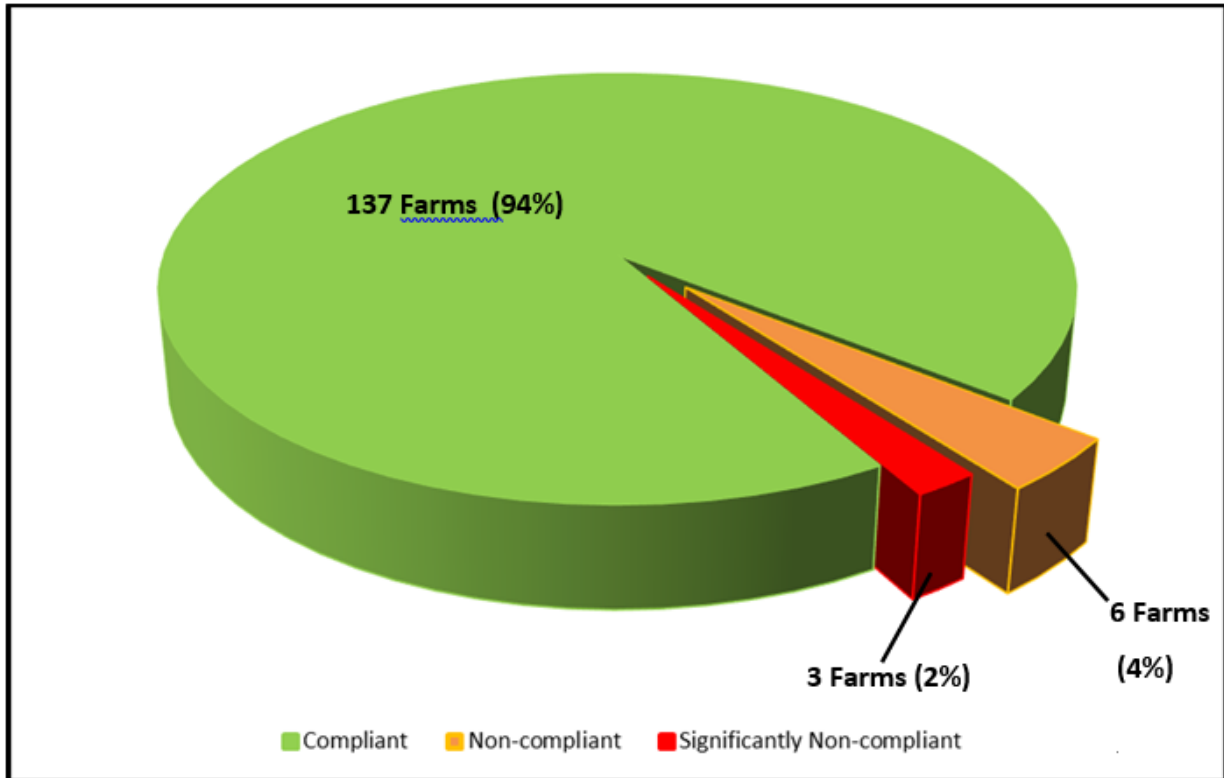


Figure 1 Compliance with respect to Rule 36.1.2.3 of the TRMP, Resource Consent conditions, and Section 15(1) of the RMA 1991 following the inspection of all farms in Tasman District.

One farm that has in the past continually presented issues of “Significant Non-compliance” and has been the subject of numerous court orders, prosecutions and fines in past seasons made vast improvements last season and this work continued through the 2015/2016 season. This farm is now managed independently from the owners and has seen the complete redevelopment of the infrastructure surrounding the farm dairy including the effluent system. This work was completed in April 2015. Council’s Compliance Department has built a solid open working relationship with this management team and will continue to work very closely with them heading into the 2016/2017 season.

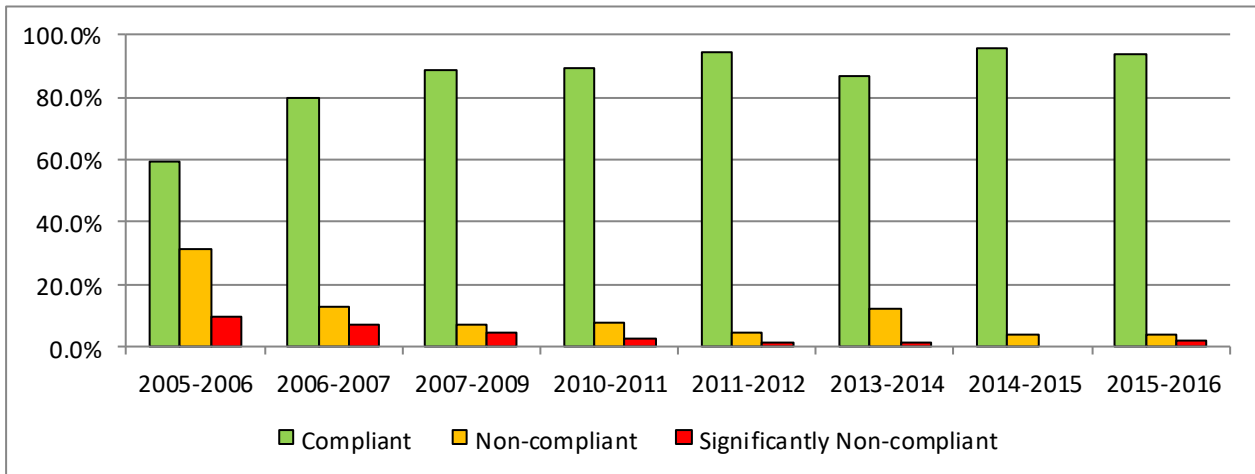
- 5.6 All enforcement action undertaken during the 2015/2016 season is detailed below in section 5.12 of this report.
- 5.7 A considerable amount of work has been done since 2012 by the dairy industry (Westland Milk, Fonterra, and Dairy NZ) by working one-on-one with farmers with respect to system and wet weather contingencies. This is particularly so in the Murchison area, where inspections made in past seasons identified that non-compliance associated with ponding was far more prevalent here than any other area of the District. Over the past two seasons, both supply companies have repeatedly audited effluent systems that were of concern and recommendations made to the respective farmers as to how to improve them. At the end of

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last season many of them were in the process of either designing improved systems or actively constructing improved containment facilities. It is pleasing to report these same farmers have now completed or are well underway to have their new system fully commissioned by the start of the 2016-2017 dairy season. However there still remain a very small minority of those who will not move forward unless pushed to do so. Such a push will have to come from industry as the Permitted Activity Rules do not provide Council the ability to easily do so and our intervention required detection of a breach.

- 5.8 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.
- 5.9 Much focus has been placed on ponding in past years as this was the most common issue of non-compliance found during the surveys. Many of the farms that presented ponding in past seasons have now installed storage that has been designed and constructed to industry standards. It was disappointing to observe one farm where non-compliance with respect to ponding and run-off was found and could have been avoided if system upgrades including storage had been implemented. In this particular case many on farm discussions have been had with the farmer and they have been repeatedly advised that it was only a matter of time that the inspection would coincide with un-favorable weather as was the case this season. On a positive note the uptake of these new systems including having adequate storage combined with correct management regimes has seen ponding decrease as an area of non-compliance in the Tasman Region.
- 5.10 Figure 2 shows a comparison of the compliance rates from the 2005/6, 2006/7, 2007/8-2008/9, 2010-2011, 2013/2014, 2014/2015 surveys with this latest survey. Due to the interrupted surveys of 2009/2010 (just 37 farms surveyed) and the more recent 2012/2013 (34 farms) those statistics are not included in Figure 2.
- 5.11 From Figure 2 it can be seen that full compliance has continued to improve from season to season up until 2013-2014 when it reached a very high standard. Since this time it is pleasing to report that Tasman farmers continue to maintain this high level of compliance and that the 2015/2016 season was no exception to this positive trend. Only nine inspections found non-compliance with six of these relating to either a technical breach or a minor breach with no adverse environmental effect. This continual high standard of compliance 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.

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2015/2016 Enforcement Action

5.12 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. Nine inspections resulted in Council taking enforcement action during the 2015/2016 season. The type of enforcement action taken is largely determined by the resulting adverse environmental effect arising from that non-compliance.

Formal Warning Letter

5.13 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. A total of six warning letters were issued this season. All inspections where that were graded non-compliant with respect to minor ponding, setback distances to water and property boundaries, and stock-piling solids on an un-sealed surface 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 that further formal enforcement action could result if non-compliance was found again. It is pleasing to report that this was not necessary as return visited to this farms found full and continued compliance.

Abatement Notices

5.14 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.

5.15 Three Abatement Notices were issued during this reporting period. One related to the serious lack of contingency storage or back-up plan to avoid discharge to water. In this

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particular circumstance this was not a case of not having a storage facility, but rather the poor management of it and the potential adverse environmental effects that this poor management could have had. The newly commissioned storage pond had been allowed to fill to such a level that no contingency remained. This situation presented an unacceptable risk given the heavy rainfall event that was forecast to occur later that same day. Should this pond have over-topped effluent would have entered a waterway. In this case the Abatement notice served to address the management of the system in its entirety both short and long-term. The other two Abatement Notices were served for the same offence, but two different parties, one the farm owner and the other to the sharemilker. These notices served to address the incidence where ponding of effluent had ultimately entered water. Court action was not taken in this circumstance as the water samples taken did not show significant levels of contaminants or establish an adverse effect at a sufficient level to warrant a prosecution. Instead both parties were placed on notice and made well aware and any breach of the Notices or any further non-compliance may result in such action being taken. All three Abatement Notices are still remaining active heading into the new season and will remain so until Council is satisfied that the parties concerned can demonstrate full and continued compliance.

Infringement Fines

- 5.16 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.
- 5.17 Two infringement fines were issued in response to farm inspections during the 2015/2016 season. These fines accompanied the Abatement Notice issued to the farm owner and sharemilker in the circumstance described above.

Prosecutions and Enforcement Orders

- 5.18 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.
- 5.19 No new orders were sought in this period
- 5.20 No prosecutions were initiated for offences found during the 2015/2016 season.
- 5.21 It is encouraging to report that the three farms in the District that have current Enforcement Orders against them demonstrated full compliance with the requirements of these orders, and the permitted activity rules.

6 Strategy and Risks

- 6.1 Although risks are not significant under the current Council monitoring strategy, there is always high public interest in dairy effluent disposal due to the known risk to the environment and the frequency of issues appearing in the national media. For that reason, there is potential for strong public comment if the programme does not maintain high levels of compliance and provide adequate performance reporting. Likewise, as part of the collective agreement of all regional councils to adhere to the "every farm, every year" monitoring

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strategy including audit, a failure to maintain the programme will not only put us out of sync with the rest of the country, but limit our ability to meet national reporting requirements.

7 Consideration of Financial or Budgetary Implications

- 7.1 Presently there is no robust legal means open to Council to recover the costs incurred in the monitoring of farm dairies with respect to the Permitted Activity Rules. As the majority of farms within the district operate as permitted activity the Council cannot charge for routine inspections. When non-compliance is detected the cost of enforcement processes generally falls to the Council as it does in any area of activity however penalties such as infringements and court fines do provide some monetary return if and when these mechanisms are used. However, as the majority of farms are achieving full compliance it is fair to say that greater part of the program costs for permitted activity monitoring in dairy are presently borne by Council via general rates.
- 7.2 For the six consented activities the costs associated with monitoring are recovered by way of annual charges.

8 Significance and Engagement

- 8.1 This is not relevant to this monitoring programme except that we will report these results publicly and continue to work with farmers and the Tasman dairy industry.

9 Conclusion

- 9.1 A total of 146 dairy sheds had active discharges in the Tasman District during the 2015/2016 season. Of these, 140 farm dairies operated as Permitted Activities and the remaining six held Resource Consents authorising discharge treated effluent to water.
- 9.2 All farms were inspected this season. The results of this survey were:
- 94% - Compliant.
 - 4% - Non-Compliant
 - 2% - Significantly Non-Compliant
- 9.3 Heading into the new dairy season Tasman District continues to present a good rate of compliance with respect to farm dairy effluent management; however, improvement can always be made.

10 Next Steps / Timeline

- 10.1 Farm Surveys for the 2016/2017 season commence in September 2016 and inspections will begin in earnest with a view to once again completing a full assessment of every farm in regards to dairy effluent disposal.
- 10.2 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.

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- 10.3 Next season Council staff 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 practice, 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.

11 Attachments

Nil