

Inadequate Dairy Effluent Management System May Result in De-stocking or Cancellation of Resource Consent

Dairy farmers should note a recent enforcement decision of the Environment Court in response to inadequate effluent management¹. The Court has issued an enforcement order which prohibits re-stocking of a farm for the 2014-15 milking season until an approved effluent management system with capacity to manage the farm's effluent is installed. The Court has indicated that in future it may require the farm to be de-stocked if the effluent system is not installed as directed, or it may even cancel the farm company's resource consent.

Marlborough District Council obtained the enforcement order under the Resource Management Act 1991 against Awarua Farm Marlborough Ltd and its director Mr Philip Woolley, for breaching terms of the farm company's resource consent at a farm on the low-lying river flats of the Wairau River at Tuamarina. The farm had consent to milk 700 cows but the farm's effluent sump proved inadequate to deal with wash-down volumes. Further, an irrigator had stalled and caused ponding on several occasions, and it had also been subject to breakdown and nozzle splitting. The Court was not satisfied that the farm could operate so as to avoid ponding of effluent or prevent effluent reaching natural water without further electronic monitoring and controls (such as fail-safe devices to ensure the irrigator did not stall) over the effluent irrigator.

This was the same case where, in an unprecedented move in 2013, a director of Fonterra was summonsed to appear and give evidence as to Fonterra's involvement with Mr Woolley in terms of its supply agreement with Awarua Farms and the 'Sustainable Dairying: Water Accord'². The Environment Court indicated that if this type of case was to be avoided in future Fonterra would need to consider stepping up its involvement in enforcement efforts.

The Court had previously issued two interim decisions in this case including an interim enforcement order, which set several minimum requirements in order for the existing effluent system to continue to be utilised³. The interim order required Mr Woolley to obtain expert certification of the effluent management system to provide for: 700 cows (or such other number specified); wash-down from 3 days of effluent; exclusion of stormwater; the sump to be cleared to enable 10m³ to be available at the commencement of each milking; the sump not overflowing or ponding; capacity at all times to provide 3 days reserve storage; and effluent irrigators that operate at all times within the parameter of their application rates. The Court also required weekly (subsequently monthly) reports by the Council to establish a baseline regarding the extent of the issues on the farm and improvements that could be made. Mr Woolley and the farm company were directed to pay the Council's inspection costs.

In the latest decision the Environment Court concluded that "Mr Woolley and the various farming identities with which he operates are having considerable problems meeting modern environmental standards". The Court repeated that it was not satisfied that the conditions of consent and the requirements of the RMA could be met with the existing effluent storage system. The Court stated it was essential to make a permanent enforcement order that there be no re-stocking of the farm for the 2014-15 milking season until a new effluent system (with parameters prescribed by the order) was approved and installed. The Court directed that in the event that: no effluent system was approved by 30 May 2014; the approved system was not installed by 30 July 2014; the farm was restocked in breach of the order; and/or the certification reports required indicated on-going problems with the operation; then the Council could either seek further enforcement orders, or commence further action for change or cancellation of the resource consent or other orders as it saw fit. In particular, such further orders might include seeking to de-stock the farm, or seeking to cancel the resource consent.

This response from the Environment Court reinforces that Courts have extensive powers to enforce breaches of the RMA, and to tailor enforcement solutions to suit individual cases. In this case the contemplated solution appears to rely on the Council being prepared to apply for the necessary orders. Further developments are

¹ *Marlborough District Council v Awarua Farm Marlborough Ltd* [2014] NZEnvC 089

² National good management practice benchmarks aimed at lifting environmental performance on dairy farms, agreed between DairyNZ and dairy companies, including Fonterra, with the support and input from a wide range of industry stakeholders. Effective from 1 August 2013.

³ *Marlborough District Council v Awarua Farm Marlborough Ltd* [2013] NZEnvC 206; *Marlborough District Council v Awarua Farm Marlborough Ltd* [2013] NZEnvC 235

awaited with interest. Meanwhile, Mr Woolley has a mammoth task ahead to achieve compliance with the Enforcement Order. Until a new effluent system is installed, and in order to avoid further prosecutions for breach, he will need to implement an extremely high level of site management and potentially remove excess effluent from the farm in extreme weather conditions. It is possible that significantly reducing stock numbers on the farm, or even ceasing operation of the farm and surrendering resource consent may yet prove to be more viable options.

For further information on this enforcement decision or if you require assistance please contact one of our specialist [resource management team](#).