

RESOURCE MANAGEMENT ACT COMPLIANCE AND ENFORCEMENT SECTION

Compliance Monitoring and Enforcement Guidelines 2010

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1. Introduction

With ever-increasing pressure on resource use, Environment Canterbury's regulatory functions are subject to greater interest from resource users, territorial local authorities and the broader community. This policy is intended to provide the community with a clear understanding of Environment Canterbury's management of compliance monitoring and enforcement of the Resource Management Act. In effect it sets out how we "do business".

The policy provides outcome guidelines for Environment Canterbury staff to work with on the delivery of compliance monitoring and enforcement functions.

It is not a rule book or step-by-step guide, but it does set out the purpose and principles by which officers monitor, promote and enforce compliance with the Resource Management Act. It also provides an overview of the tools available to promote compliance and outlines how they will be used.

It is intended that the policy will encourage a regional culture of proactive compliance, accountability, consultation and co-operation in governing resource use in Canterbury.

2. Desired Outcomes

- To monitor, promote and enforce compliance with the Resource Management Act 1991 (RMA) to:
- Modify the behaviour of actual and potential offenders by:
 - educating resource users.
 - promoting compliance with the RMA, consents and plans.
 - using enforcement tools to obtain necessary action, and
 - providing deterrence through appropriate penalties.
- Avoid, remedy or mitigate adverse environmental effects where they occur while meeting statutory obligations under the RMA.

Goals:

- **To achieve desired environmental outcomes in a professional, timely and efficient manner.**
- **To treat people with respect and for our staff to be respected.**

3. Purpose

The purpose of this policy is to:

- Provide a guide for the RMA Compliance and Enforcement Section of Environment Canterbury in meeting requirements under the Resource Management Act 1991 (RMA) to monitor and enforce compliance;
- Provide a broad understanding of how the Compliance and Enforcement Section of Environment Canterbury gives effect to the purpose and principles of the RMA, including the exercise of its enforcement discretion;
- Provide guidance on the range of compliance promotion and enforcement tools available to Environment Canterbury;
- Encourage a regional culture of proactive compliance, accountability, consultation and co-operation with Environment Canterbury;
- Ensure consistent, integrated and co-ordinated compliance promotion and enforcement action within the Compliance and Enforcement Section of Environment Canterbury; and
- Provide transparency about the compliance monitoring and enforcement functions undertaken by Environment Canterbury to:
 - Ensure that all users of resources managed under the RMA by Environment Canterbury, including territorial authorities, have a clear understanding of what to expect in the event of contraventions of the RMA with regard to the initiation of enforcement action.
 - Ensure that the Canterbury community has confidence in the fairness, consistency and impartiality of Environment Canterbury's implementation of its compliance and enforcement functions.

4. Application

This policy is intended as a guide to assist officers in the performance of their functions. It is not a substitute for the professional judgement and common sense of those officers.

This policy will apply to all RMA Compliance and Enforcement staff employed by Environment Canterbury when dealing with:

- Industry and commercial enterprises;
- Environmental consultants;
- Legal representatives;
- Resource consent holders;
- Territorial Local Authorities; and
- The Court.

5. Review

To ensure that this policy remains effective and consistently delivers the outcomes sought, its content, use and application will be reviewed by Environment Canterbury annually.

An additional three-yearly external review will be carried out to ensure consistent implementation of the policy between districts, activities and resource users.

6. Legal Status

This policy:

- Is not legally binding on Environment Canterbury, any other organisations, or any individual;
- Is general in nature and does not exhaustively address all statutory limitations and considerations that may be relevant under the RMA;
- Does not confine, restrain or limit the discretion of Environment Canterbury to take any action; and
- Is not a substitute for legal advice or legal processes.

It is not the intention of this policy that any act or omission of any officer of Environment Canterbury shall be called into question or held to be invalid on the grounds of a failure to comply with this policy.

7. Principles of Compliance and Enforcement

The following principles will apply when carrying out compliance promotion, monitoring and enforcement action under the RMA:

1. Environment Canterbury will ensure that it meets its duties under the RMA to enforce the provisions of the RMA in a manner that is consistent with the principles of the RMA.
2. Education and negotiation will be used proactively to promote compliance and minimise adverse environmental effects.
3. The appropriate enforcement tool will be used taking account of matters including:
 - a. The seriousness, imminence and/or reversibility of adverse environmental effects, e.g.,
 - Magnitude of actual adverse effect
 - Nature of the receiving environment
 - Irreversibility and/or duration of effects
 - Potential effects;
 - b. Past and present conduct of the resource user, e.g.,
 - Deliberateness of offence
 - History of situation/alleged offender
 - Was the incident avoidable?
 - Commitment to ensure compliance
 - Documented warnings/requests
 - Remediation/mitigation
 - Remorse demonstrated;
 - c. The significance to the community, e.g.,
 - Prevalence of offence
 - Need for deterrence
 - Upholding integrity of the Law
 - Public expectation of prosecution
 - Sense of injury or upset (“victim impact”)
 - External complaints
 - Considerations of fairness and balance;
 - d. Legal availability of particular enforcement tools;
 - e. Failure or ineffectiveness of compliance promotion measures;
 - f. Implications for the application of the RMA; and
 - g. The cost-effectiveness of the approach.

Before determining whether to take enforcement action, an assessment will be made about whether an alleged offender has a statutory defence. (See section on Defences Under the RMA for details.)

4. Prosecution is an enforcement tool to be employed where the RMA and case law identify prosecution as the appropriate response to particular offending. It is not limited to an enforcement response of last resort.

5. Environment Canterbury cannot authorise the continuation of an offence. However, non-enforcement may be appropriate if the adverse effects are insignificant and all practicable measures are being taken to comply with the RMA.
6. Decisions on enforcement action will be taken in a timely manner and without undue delay, but flexibility will be retained in order to respond to additional information or changes in circumstances.
7. Compliance advocacy and enforcement will be applied consistently, impartially, and fairly across all sectors of the community.
8. All compliance advocacy and enforcement action will be followed through to resolution.

8. Discretion

Environment Canterbury has discretion in considering appropriate compliance advocacy and/or enforcement action with respect to:

- The appropriate defendant to pursue;
- The appropriate enforcement tools to use in the circumstances; and
- Withdrawal of an enforcement action that has been commenced.

Environment Canterbury is required by law to exercise this discretion in a way that is reasonable and consistent with the principles of the RMA and the requirements of natural justice.

9. Communication

As part of any response to a non-compliance or unauthorised activity, appropriate communications will occur with all relevant parties to ensure that there is full understanding of Environment Canterbury's responsibilities and potential responses; and to assist all parties to understand their responsibilities and what constitutes non-compliance or a breach.

Enforcement Communication Procedure

- Where possible, Environment Canterbury will provide interim advice about an investigation in response to a breach of the Resource Management Act.
- Environment Canterbury will advise an alleged offender in writing of the outcome of an investigation as soon as a decision has been made (via a standard letter).
- All regional councillors will also be advised of the decision (via a standard letter).

10. Implementation of Compliance Advocacy, Monitoring and Enforcement Action

Compliance advocacy, monitoring and enforcement programmes will focus on four groups of activities:

- Resource consents
- Certificates of compliance and other RMA authorisations
- Permitted activity rules in the applicable plans
- Direct compliance with RMA provisions.

a. Resource Consents, Certificates of Compliance, Permitted Activities, and other RMA authorisations

- Monitoring frequency will be based on the scale of the activity, the sensitivity of the receiving environment, the overall environmental risks of non-compliance, compliance history, public interest, and receipt of complaints.
- All compliance grading will be made in accordance with the grading system set out in Appendix 1. The compliance grade will dictate the level of response, for example, grades 1-4 listed here are the most frequently assigned :

Grade 1 - No action required.

Grade 2 - Non-compliance considered so minor that, while the non-compliance should be addressed, the time frame for compliance is not generally considered urgent.

Grade 3 - The consent holder will be requested to respond within a given timeframe (period dependent upon actual or potential environmental effect), confirm action to be taken to address the non-compliance and a date by which the action should be taken.

Grade 4 - Consent holder will be requested to address the non-compliance urgently within a specified timeframe.

b. Direct contraventions of the RMA and complaints-driven enforcement action

Contraventions of the RMA will potentially require a dual assessment; firstly what action is required to deal with the environmental effects, and secondly whether formal enforcement action will be taken. The nature and effectiveness of action taken by an alleged offender to address environmental effects, and the costs incurred, can, in some cases, avoid enforcement action.

Assessment of the effects and need for action

On receiving any report of a contravention, an immediate assessment will be undertaken of the seriousness of the adverse effects and any need for urgency in addressing these effects. Where there are significant adverse effects, a priority would be given to avoiding, remedying or mitigating those effects. In cases of imminent, serious and/or irreversible environmental harm, it may be necessary to resort to immediate enforcement tools such as an interim enforcement order or an abatement notice before the steps below are taken.

Response to the alleged offence requested

It is normal practice to conduct investigations with an alleged offender by way of interview protocols. Following this Environment Canterbury will sometimes request or invite a written response to an alleged offence with a specified timeframe. The request will usually set out reasons why a breach is considered to have occurred, measures taken/or to be taken to address any adverse effects, a timeframe within which the offence will be addressed and a warning that enforcement action may be taken.

All correspondence from Environment Canterbury will be addressed to the most senior management position within the organisation involved and copied to the most senior person at the site.

11. Cost Recovery

Where monitoring costs are incurred in relation to a specific consent, those costs will be recovered from the relevant consent holder in accordance with Environment Canterbury's RMA charging policy.

Environment Canterbury will also seek to recover costs incurred in avoiding, remedying or mitigating adverse effects caused by or on behalf of any person, or in relation to land owned by such person.

12. Choice of Appropriate Enforcement Response

Enforcement responses under the RMA can be broadly categorised as being concerned with three interrelated outcomes. These are:

- Avoidance, mitigation or remedying of adverse effects;
- Achieving compliance; and
- Deterrence and compensation/penalty.

More than one of these outcomes will be involved, meaning that complementary enforcement tools may be required to achieve, for example, the first outcome, and another to achieve the last.

To identify the appropriate compliance action and/or enforcement tool(s) to apply in a particular circumstance, Environment Canterbury will consider the criteria set out in principle 3 in the "Principles of compliance and enforcement" section of this policy.

13. Enforcement Options

There is a range of enforcement approaches available to Environment Canterbury including informal and formal legal processes. Detailed explanations of the formal legal processes are outlined in Appendix 2.

Any person against whom an enforcement tool is used has the right to challenge or appeal the use of that tool.

a. Compliance Monitoring Reports

A compliance monitoring report provides detailed documentation and grading compliance with each individual condition set out in a resource consent, in the opinion of the issuing officer. A compliance monitoring report can be viewed as a written notice requesting certain actions be taken to achieve compliance with RMA legislation or to protect the environment. Failure to act in accordance with a compliance monitoring report may result in an escalation of the enforcement response.

b. Written Warning/Notice of Alleged Offence

A written warning is a notice to an alleged offender alleging an offence has been committed. A written warning may be given when:

- An administrative, minor or technical breach has occurred;
- The environmental damage or other relevant impact, or potential damage or impact, is minimal;
- The matter is one which can quickly and simply be put right;

- A written warning and cost recovery (subject to clause 10 of this policy) would be appropriate in the circumstances; and
- There appears to be no risk of ongoing or repeat non-compliance.

c. Active Intervention

Active action may be taken to remedy a breach or to clean up pollution. If this occurs, the occupier or polluter may be pursued for the cost of the clean up action. This may also involve Environment Canterbury instructing a third party to take specific action.

d. Request for Written Undertaking

Where a minor contravention persists, a written undertaking may be requested from the person responsible to cease an activity or undertake an action by a specified date. If the written request is not complied with, a formal enforcement tool can be employed.

e. Abatement Notice

An abatement notice is a formal written notice that the RMA specifies can be issued only by a warranted enforcement officer, requiring certain actions to be taken or to cease within a specified time where that enforcement officer believes on reasonable grounds (on the balance of probabilities) that there is or is likely to be a contravention of the RMA and/or an adverse effect on the environment.

f. Enforcement Order

An Enforcement Order is an order made by the Environment Court that may require, in the opinion of the Court, certain actions to be taken or ceased, or money to be paid, within a specified time. An application can be made by any person to the Environment Court to issue an Enforcement Order and it is that Court which identifies the matters of which must be satisfied before issuing the notice.

g. Interim Enforcement Order

An interim Enforcement Order is similar to an Enforcement Order and is used in circumstances where the need for the order is urgent.

h. Infringement Notice

An Infringement Notice is a written notice of an alleged infringement offence under the Resource Management Act 1991, which is issued in accordance with the Summary Proceedings Act. An Infringement Notice requires the payment of a fee of an amount fixed by regulations, or a request to have the matter heard in Court. Payment of the fine does not lead to the recording of a criminal conviction.

i. Prosecution

The Chief Executive of Environment Canterbury has the delegated authority to make prosecution decisions. Charges may be amended by the Chief Executive or Director of Regulation.

Decision to prosecute

Through the RMA, Parliament has determined that certain contraventions are so serious that they should become criminal offences for which significant monetary and imprisonment penalties can be imposed.

A prosecution action can be initiated by Environment Canterbury where prima facie evidence shows that a person or body corporate has committed an offence that is sufficiently serious to attract a penalty beyond an infringement fine. The Court proceedings follow once informations have been sworn and filed with the District Court.

The fundamental objectives of a criminal prosecution are:

- To punish those who deserve punishment for their offences; and
- To protect the community and provide justice for victims of offending.
- In pursuit of these objectives it is necessary to consider:
 - The rights of the alleged offender; and
 - The impact on the environment and the interests of the community.

Four essential conditions are to be met before commencing the prosecution action. First, there is sufficient evidence to establish a prima facie case; second, it is judged to be in the public interest; third, the environmental effect of the breach warrants court action; and fourth, the culpability of the offender. Prosecution Assessment Criteria are set out in Appendix 4.

Defences under the RMA

When considering whether or not a prosecution is justified, it is not necessary to prove that a person intended to commit the offence (Section 341), or that the person in question did the physical act or omission personally (Section 340). Sections 340 and 341 respectively clarify that a person is criminally liable for the act or omission of their employee/agent (vicarious liability) and that no intent is required (strict liability).

Both sections contain defences that set out the exceptions to vicarious and strict liability. While it is for the defendant to establish on balance of probabilities that the defences apply, the defences still provide useful guidance as to the circumstances where a conviction may not be appropriate.

Sections 340 and 341 basically codify the “no fault” defences. A person who shows that they did not know, or could not reasonably have been expected to know that an offence was to be committed, who did everything they could reasonably have done to avoid the offence, and who avoided, remedied or mitigated the associated adverse effects, will have a defence.

Where the offence relates to an action that was reasonably done to avoid, remedy or mitigate adverse effects, save

property/life, could not reasonably have been foreseen and the effects were avoided, remedied or mitigated, a person will not be convicted, even if another provision of the Act was contravened.

j. Alternative environmental resolution

Environment Canterbury will make itself available to meet with defendants to discuss prospects to remedy and mitigate effects of offending and to consider alternatives to prosecution in line with council policy.

Once charges are laid, an alleged offender is able to approach Environment Canterbury with info that may establish a defence or to negotiate a withdrawal of charges for guilty pleas on a without prejudice basis.

There is also potential to consider restorative justice. Environment Canterbury will further develop guidelines around these steps.

14. Glossary of Terms

Abatement notice	A written warning to the recipient that he/she is contravening a provision of the RMA either requiring the cessation of an activity, or that a particular activity be carried out, to ensure compliance. Section 322 RMA.
Compliance Monitoring	The monitoring of the exercise of resource consents issued under the RMA and activities permitted by a regional plan, to assess compliance with conditions.
Contaminant	Includes any substance that either by itself or in combination with other substances, changes the physical, chemical, or biological condition of the receiving environment when the substance is discharged.
Enforcement Officer	A person authorised as an Enforcement Officer under Section 38 of the RMA.
Enforcement order	An order made by the Environment Court that may require cessation of an activity which contravenes a provision of the RMA or which has adverse effects on the environment.
Notice of alleged offence	A notice written at the site of an incident advising someone that they are being investigated for an alleged offence and that some immediate action is required.
Infringement notice	A notice issued under the Summary Proceedings Act 1957 for some of the offences specified in the RMA. Infringement notices require payment of a fine.
Permitted activity	An activity that is allowed by a plan without resource consent if the activity complies in all respects with any conditions specified in the plan.
Prosecution	The act of taking court proceedings in the criminal jurisdiction for the commission of an offence created by statute.
Resource Consent	Consent for an activity that would otherwise contravene the Resource Management Act 1991, including land use consent, coastal permit, water permit and discharge permit.
RMA	Resource Management Act 1991

Appendix 1

Compliance Monitoring Grade Definitions

The following table describes the compliance grades environmental impacts and repeated or persistent

non-compliance. This may be an “administrative” requirement, for example, supply of a management plan, which is crucial to the exercise of the consent.

Grade	Description	Action	Examples
1	Full compliance	None	
2	Minor non-compliance (no or minor short-term adverse environmental effects)	Action by the consent holder with a routine follow-up by Environment Canterbury staff.	Failure to supply information and to keep adequate records. Failure to have adequate maintenance carried out. First time breach of consent condition where there has been no adverse impact. Minor water wastage. Minor ponding of effluent. Occasionally minor exceedence of discharge quantities. Non-installation of water meter/data logger.
3	Significant non-compliance, or repeated minor non-compliance. (Adverse environmental effects – actual or potential – moderate).	Requires immediate action by the consent holder with a non-routine follow-up by Environment Canterbury staff.	Repeated grade 2 breach of same condition and failure to respond to requests for compliance. Breach of quality limit of discharge. Exceeding maximum rate of take. Significant ponding of agricultural effluent. Continued failure to provide information such as a management plan.
4	Major and/or persistent non-compliance. (Adverse environmental effects – actual or potential – serious or persistent).	Requires immediate action by the consent holder and non-routine follow-up, with legal action if no improvement.	Persistent grade 3 breach of same condition and failure to respond to requests for compliance. Un-consented discharge from a consented site where adverse impact is significant. Discharging agricultural effluent direct to a watercourse. Persistent long-term failure to provide information returns. The discharge results in actual or potential immediate risk to the environment and/or human health.
5	Not monitored	None – may require consent holder to confirm compliance.	Condition may require that maintenance be carried out at specified intervals. This may have been unable to be monitored while the Environmental Protection Officer was on site and so records may be requested to confirm compliance.
6	Not operational	None – may require consent holder to confirm compliance.	A permit authorising the discharge of contaminants to air may allow two or more discharges, for example from a spray booth and diesel boiler. At the time of the CMO’s visit the spray booth may not be operating so all conditions relating to the discharge from the non-operating booth will be graded non-operational.
7	Not given effect to	Reminder given to consent holder of lapsing period for resource consent.	When activity consented has not commenced.
8	Not being exercised	None – consent can be cancelled after consent has not been exercised for a period of 5 years or more.	When a consent is consistently not exercised, this enables a CMO to track the time period and effect cancellation if appropriate. Where the resource consent has previously been exercised but has not been used recently.
9	Enforcement action recommended	None	Graded when enforcement action has been recommended to management for approval.
10	Enforcement action taken	Action to be undertaken as directed by type of enforcement pursued: Abatement Notice, Enforcement Order, Interim Enforcement Order, Prosecution.	Enforcement action is not taken lightly but will be pursued for high culpability, high adverse environmental effect, or repeated non-compliance. This grading applies when recommended enforcement action (Grade 9) has been approved by management.

Appendix 2

Enforcement tools

Abatement Notices

Abatement notices can be served by any enforcement officer (as defined under Section 38 of the Act) but can only be served where the enforcement officer has reasonable grounds for believing that any of the circumstances specified in Section 322(1) and (2) exist. Section 322 gives the discretion as to whether the circumstances for an abatement notice exist, to the enforcement officer and not the consent authority.

This direct delegation places a heavy onus on the enforcement officer to apply this discretion responsibly, but also appears to imply an inference in the RMA that it is a tool that should generally be directly available to an enforcement officer.

An abatement notice will be used where the enforcement officer has reasonable grounds to believe that a verbal or written request is unlikely to achieve the type of response required, but the threat of adverse effects is not serious or urgent enough to justify taking immediate remedial or preventative action, i.e. emergency works.

This will typically occur where a written (and in some circumstances verbal) requirement to address the contravention of the RMA and/or adverse effects has not been complied with, or other matters such as urgency and environmental risk require a response more robust than a letter or request.

Abatement notices can be divided into three categories:

1. An unlawful activity, i.e. something that contravenes the RMA itself, a resource consent condition, plan rule or regulation, shall not be undertaken (a “cease or do not commence” notice);
2. A lawful activity that is noxious, dangerous, offensive or objectionable to the extent that it has an adverse effect on the environment shall not be undertaken (a “section 17” notice);
3. Positive action needs to be undertaken, that is necessary both to comply with an applicable plan rule, resource consent condition, regulation or the RMA and to avoid, remedy or mitigate adverse effects on the environment (a “positive action” notice).

The form and content of the abatement notice is required to comply with the relevant RMA regulations. Those regulations include a form which, if followed, ensures that the notice is clear as to whom the recipient is, what the notice requires, by what date, to what property it applies and what the legal basis for the notice is. It also requires the notice to specify the ways that the recipient can challenge the notice.

The ways to challenge a notice consist of either a request to Environment Canterbury to cancel the notice, or a notice of appeal to the Environment Court. In all notices (except a section 17 notice, lodging an appeal will not act as a stay of the notice. Once an appeal has been lodged with the Environment Court, the recipient can also seek a stay, which is an order that the effect of the notice will be suspended for a set period or subject to certain conditions.

For section 17 notices, since they do not relate to unlawful action, lodging an appeal does act as a stay and the notice will then only be binding if the appeal is upheld. All appeals to abatement notices must be filed with the Environment Court no more than 15 working days from receipt of the notice. An abatement notice has to be served in accordance with the requirements for service set out in Section 352 of the RMA. Although that section sets out a number of service options, there is a strong preference that service in person on the recipient should be employed, unless this is impractical, in which case service by fax with a record of the fax confirmation sheet is the second preferred option.

Environment Canterbury has a template for abatement notices, which has been designed to ensure that all the requirements of the RMA and the applicable regulations are met in relation to the form and content of abatement notices. This template will generally be followed, but the provisions of the RMA and its regulations will always remain the final guidelines, which are to be followed. Since the template has been designed with the simpler situations, which occur often, in mind, it may be necessary to deviate in some ways from the exact template in more complex situations. In those situations, the abatement notices will be checked by a solicitor to ensure compliance with the requirements of the RMA and the applicable regulations.

Appendix 2 continued

Enforcement Orders

This is an order by the Environment Court ordering a person either to do or not to do something. It is generally appropriate where a request or abatement notice is likely to be ineffective, for example where an abatement notice is already being contravened, or the action, non-compliance or adverse effects are so serious that they merit direct Court action. The order is sought from the Environment Court and remains in the non-criminal administrative jurisdiction of that Court.

While contravening an enforcement order is an offence under the RMA, a separate successful prosecution before the criminal jurisdiction of the District Court is required before a person can be convicted of this offence. An enforcement order can be sought by any person, but this policy relates to it being sought by Environment Canterbury. The types of orders available are wider than just enforcement circumstances. Those applicable to enforcement of the RMA generally provide for orders that a person:

Cease or not undertake an activity that:

- contravenes the RMA, a regulation, a resource consent condition, or a plan rule, i.e. is unlawful; or
- is not unlawful, but noxious, dangerous, offensive or objectionable to the extent that it has an adverse effect;

Do something that is necessary to:

- comply with a regulation, a resource consent condition, or a plan rule, or an abatement notice;
- avoid, remedy or mitigate an adverse effect on the environment caused by or on behalf of that person; or avoid, remedy or mitigate an adverse effect on the environment in relation to land owned or occupied by that person.
- reimburse a person (Environment Canterbury) for costs incurred in avoiding, remedying adverse effects on the environment caused by a contravention of duties under the RMA, an enforcement order, abatement notice, plan rule, or resource consent condition (from the person against whom the order is sought).

To obtain an enforcement order, Environment Canterbury makes an application to the Environment Court on a prescribed form. Environment Canterbury's legal counsel would normally file, on behalf of Environment Canterbury, any application for an enforcement order with the Court.

An application will always be accompanied by an affidavit (usually by the relevant monitoring/enforcement officer) setting out the factual background that establishes the grounds for the notice, while the application itself will be prepared by Environment Canterbury's solicitor in accordance with the requirements of the relevant RMA regulations. It will state clearly the type of order being sought and the legal grounds on which the order is being sought, referring to the affidavit to demonstrate that the factual background for an order exists.

Even if the grounds for making an order are established, the Court will not automatically grant the order, but retains the discretion whether or not to grant the order sought. When the matter goes to a hearing, it will be for Environment Canterbury's solicitor to convince the Court that circumstances exist justifying the exercise of the discretion to grant the notice. The factual background provided by the affidavit is important. It will not only have to demonstrate that the factual grounds allowing the Court to grant the order exist, but that without the order, contraventions of the Act or unacceptable adverse effects, will (or are likely to) continue.

A typical situation where this will be easy to establish is where the enforcement officer has a well-documented sequence of communications, commencing with a verbal request to comply, followed by a written requirement to comply by a set date, followed by an abatement notice, yet compliance has not been achieved. Other situations will include a serious risk of irreversible environmental harm if the action required does not occur, to a level that the risk of non-compliance must be reduced as much as possible, thus justifying a Court order.

Appendix 2 continued

Interim Enforcement Order

Environment Canterbury may also apply to either an Environment Judge or a District Court Judge to make an interim enforcement order in circumstances warranted by the urgency of the situation, typically based on the magnitude, imminence and irreversibility of adverse effects that will occur if no order is made. If the Environment Judge or the District Court Judge is satisfied that the urgency of the situation outweighs the need to serve notice on other parties in accordance with Section 317 of the RMA and to hold a hearing, then an interim order will be available.

The application will be prepared and filed with the Court by Environment Canterbury's solicitor and will, just as with the enforcement order, be accompanied by an affidavit (usually by an enforcement/monitoring officer), which needs to set out the factual situation justifying the interim order.

The affidavit is important, as it will not only have to show that the normal grounds for granting an enforcement order are present, but it will also need to contain the factual evidence that will convince the Judge that the environmental effects that will or are likely to occur if the interim order is not granted are so serious, irreversible and imminent that dispensing with the normal notice and hearing is justified. This is a very high bar to set, because Judges are extremely reluctant to dispense with these key requirements of due process.

More often than not, an application for an enforcement order with service, but on an urgent basis with a hearing on very short notice, will be preferred by the Court, if at all possible. In that case, the application is treated as an enforcement order and is not subject to the further particular processes that apply to an interim enforcement order.

Once the interim order has been made, the Judge will instruct Environment Canterbury to serve a copy of the interim enforcement order on the person against whom the order is made. A person against whom the order has been made, and who has not been heard by the Environment Court before the order was made, can then apply, as soon as is practicable after the service of the order, to the Judge to change or cancel the order. The Environment Court can confirm, change or cancel the interim enforcement order at any time.

The interim enforcement order is a quicker method of obtaining an enforcement order. It is time saving in that a Judge should be readily available to hear such an application and make a decision without having to hear from the other side. It is a form of injunction and takes effect once it has been served. An interim enforcement order stays in force until an application for a full enforcement order is determined, or until cancelled by the Environment Judge or District Court Judge under Section 320(5), or cancelled by the Environment Court under Section 321.

Infringement Notice

An Infringement Notice is a written notice of an alleged offence under the Resource Management Act 1991. An Infringement notice requires the payment of a fine of an amount fixed by regulations. The recipient can elect to have the matter heard in Court. Payment of the fine does not lead to the recording of a criminal conviction.

An Infringement Notice will be issued in accordance with the requirements of the RMA and section 21 of the Summary Proceedings Act 1957, which authorise the issue of the Infringement Notice. An Infringement Notice may be issued when:

- The offence is one that may be dealt with by issue of an infringement notice under the legislation;
- Environment Canterbury is satisfied that an offence has been committed and there is proof of the offence beyond reasonable doubt;
- An Infringement Notice is likely to be an effective deterrent and is sufficiently severe for the offence;
- None of the applicable defences are available.

Appendix 3

Offences Under the Resource Management Act 1991

Offences under the Resource Management Act can be broadly grouped as follows:

- i. offences under the principal sections of the Act;
- ii. offences relating to contravening enforcement orders, abatement notices, or other orders or directions.
- iii. offences involving obstructing enforcement officers in the exercise of their duties.

For the purposes of enforcement the key section is Section 338, which contains the offence provisions of the Act. Section 338 creates the following offences:

- Non-compliance with any duties or restrictions contained in Sections 9, 12, 13, 14, 15, 15A, 15B and 15C;
- Non-compliance with any notices or orders or directions made under the Act;
- Obstructing enforcement officers in the execution of their duties.

Of importance in Section 338 is that any action relating to an offence must be taken within six months of the contravention, or when the contravention should have come to the notice of the Regional Council.

Breach of Principal Sections of the Act

The following sections briefly outline the restrictions imposed by the principal sections of the Act. These are for use as a guide only. For specific details refer to the Act itself.

Section 9 - Restrictions on Use of Land

Section 9(3) prohibits the use of land in a manner that contravenes a rule in a regional plan or proposed regional plan, unless authorised by a resource consent or existing use provisions (section 20). The use of land may include:

- Erection, reconstruction, placement, alteration, extension, removal, or demolition, of any structure or part of any structure in, on, over or under the land;
- Excavation, drilling, tunnelling, or other disturbance of the land;
- Any destruction of, or damage to, or disturbance of, the habitats of plants or animals in, on, or under the land;
- Any deposit of any substance in, on, or under the land.

Section 9(3) does not apply to the bed of any lake or river (Section 13), or the Coastal Marine Area (Section 12).

Section 12 - Restrictions of Use of Coastal Marine Area

Sections 12(1) and 12(2) are restrictive, and no activity restricted by these sections can be carried out unless authorised by a resource consent or by a rule in a regional coastal plan and in any relevant proposed regional coastal plan. Section 12(1) covers:

- Reclamation and drainage of foreshore or seabed;
- The erection, reconstruction, placement, alteration, extension, removal or demolition of any structure in, on, under or over any foreshore or seabed;
- Disturbance of the foreshore or seabed that has, or may have, an adverse effect other than for lawfully harvesting any plant or animal;
- The deposit of any substance in, on, or under any foreshore or seabed that has, or may have, an adverse effect;
- Destroying, damaging or disturbing, any foreshore or seabed other than for lawfully harvesting any plant or animal, that has, or may have, an adverse effect on plants or animals or their habitat or on historic heritage;
- The introduction or planting of any exotic or introduced plant in, on, or under the foreshore or seabed.

Section 12(2) covers the occupation of land in the coastal marine area, and the removal of sand, shingle, shells or other natural material from the land. Section 12(3) permits activities unless they contravene a rule in a regional coastal plan or proposed regional coastal plan, unless allowed by a resource consent or by the existing use provisions in Section 20.

Section 13 - Restrictions of Certain Uses of Beds of Lakes and Rivers

Section 13(1) restricts certain activities in lake or river beds, unless allowed by a rule in a regional plan, and in any proposed regional plan, or by a resource consent. The activities restricted are:

- the use, erection, reconstruction, placement, alteration, removal, extension, or demolition of any structure or part of any structure in, on, under or over the bed;
- any excavation, drilling, tunnelling or disturbance of the bed;
- introducing any plant or part of any plant in, on, or under the bed;
- any deposit of any substances in, on, or under the bed; or
- reclaiming or draining the bed.

Under Section 13(2) no person may enter or pass across the bed of any river or lake, or disturb, remove, damage or destroy any plant or part of any plant, or the habitats of any such plants or of animals in, on, or under the bed of any lake or river in a manner that contravenes a rule in a regional plan or proposed regional plan unless authorised by a resource consent or by the existing use provisions in Section 20. Section 13 does not apply to the Coastal Marine Area.

Appendix 3 continued

Section 14 - Restrictions Relating to Water

Section 14 restricts the taking, using, damming or diverting of any water, heat or energy from water or from material surrounding any geothermal water. This restriction does not include:

- open coastal water unless restricted by a rule in a regional plan or a proposed regional plan;
- uses permitted by a resource consent, or by a regional plan and any relevant proposed regional plan.
- use for an individual's reasonable domestic needs or the reasonable needs of an individual's animals if the taking or use does not, or is not likely to have, an adverse effect on the environment;
- the taking and use of water for fire fighting purposes;
- use of geothermal water (including heat or energy) in accordance with Tikanga Maori if it does not have an adverse effect on the environment; and
- coastal water for individual's reasonable domestic or recreational needs if it does not, or is not likely to have, an adverse effect on the environment.

Section 15 - Discharge of Contaminants into Environment

Section 15(1) restricts:

- the discharge of contaminants or water into water;
- the discharge of contaminants onto or into land where contaminants may enter water;
- the discharge of contaminants to air from industrial and trade premises;
- the discharge of contaminants from industrial or trade premises onto or into land;

unless authorised by a resource consent or by a rule in a regional plan and in any relevant proposed regional plan. When considering the above the transitional provisions in Section 418 must also be considered. These provisions allow some existing discharges, which would otherwise be restricted.

Section 15(2) restricts the discharge of contaminants into air or onto or into land which contravenes a rule in a regional plan or proposed regional plan unless allowed by a resource consent, or by Section 20 (existing uses).

Section 15 is different from its predecessor under the former Water and Soil Conservation Act 1967. It is important to determine who actually discharged the contaminant. There is provision in the Act to prosecute the management of the company. Therefore it is important for the Council to determine the management structure of the company, particularly as to which officers of the company have direct control of the activities that resulted in the discharge of the contaminants into the environment.

Sections 15A, 15B and 15C

These sections relate to the dumping and incineration of waste in the Coastal Marine Area, the discharge of harmful substances from ships or offshore installations, and radioactive waste or other radioactive matter and other waste in the coastal marine area.

Breach of Notices or Orders or Directions made under the Act

If the following orders, notices or directions are not complied with, then an offence is committed:

- an enforcement order or an interim enforcement order;
- an abatement notice;
- a water shortage direction; or
- an order made by the Environment Court.

An offence is also committed if:

- a person fails to provide an enforcement officer with information under Section 22 relating to names and addresses; and
- a person wilfully obstructs, hinders, resists or deceives an enforcement officer in the execution of powers conferred on enforcement officers under the Act.

