

Regulatory Committee 11 March 2020

Meeting is held in the Council Chamber, Level 2, Philip Laing House
144 Rattray Street, Dunedin



Cr Gretchen Robertson, Co-Chair	Cr Carmen Hope
Cr Kate Wilson, Co-Chair	Cr Gary Kelliher
Cr Hilary Calvert	Cr Michael Laws
Cr Michael Deaker	Cr Kevin Malcolm
Cr Alexa Forbes	Cr Andrew Noone
Hon Marian Hobbs	Cr Bryan Scott

Senior Officer: Sarah Gardner, Chief Executive

Meeting Support: Liz Spector, Committee Secretary

11 March 2020 09:30 AM

Agenda Topic	Page
1. APOLOGIES No apologies were received prior to publication of the agenda.	
2. ATTENDANCE Staff present will be identified.	
3. CONFIRMATION OF AGENDA Note: Any additions must be approved by resolution with an explanation as to why they cannot be delayed until a future meeting.	
4. CONFLICT OF INTEREST Members are reminded of the need to stand aside from decision-making when a conflict arises between their role as an elected representative and any private or other external interest they might have.	
5. PUBLIC FORUM Members of the public may request to speak to the Council.	
6. CONFIRMATION OF MINUTES	3
6.1 Minutes of the 11 December 2019 Regulatory Committee Meeting The Committee will consider minutes of the 11 Dec 2019 Regulatory Committee meeting as a true and accurate record, with or without changes.	3
7. ACTIONS (STATUS OF COMMITTEE RESOLUTIONS) The Committee will be updated on its outstanding Actions.	7
8. MATTERS FOR NOTING	8

8.1	QUARTERLY REGULATORY ACTIVITY REPORT	8
	To update the Committee on activities of the Regulatory Group for the period 1 July 2019 to 31 December 2020.	
8.1.1	Attachment 1: Regulatory Data July 2019 to December 2019	14
8.2	STRATEGIC COMPLIANCE FRAMEWORK	23
	To introduce the committee members to the Strategic Compliance Framework 2019 - 2024.	
8.2.1	Attachment 1: CESIG Regional Sector Strategic Compliance Framework Document 2019-2024	26
8.3	TERRITORIAL LOCAL AUTHORITY WASTEWATER TREATMENT PLANT COMPLIANCE REPORT	50
	To provide the committee members with an update on the current state of TLA Wastewater Treatment Plant compliance.	
9.	CLOSURE	



Minutes of a meeting of the
Regulatory Committee held in the Council Chamber on
Wednesday 11 December 2019 at 9:00 am

Membership

Cr Kate Wilson (Co-Chair)
Cr Gretchen Robertson (Co-Chair)
Cr Hilary Calvert
Cr Michael Deaker
Cr Alexa Forbes
Hon Marian Hobbs
Cr Carmen Hope
Cr Gary Kelliher
Cr Michael Laws
Cr Kevin Malcolm
Cr Andrew Noone
Cr Gretchen Robertson
Cr Bryan Scott
Cr Kate Wilson

Welcome

Chairperson Robertson welcomed Councillors, members of the public and staff to the meeting at 09:00 am.

For our future

70 Stafford St, Private Bag 1954, Dunedin 9054 | ph (03) 474 0827 or 0800 474 082 | www.orc.govt.nz

1. APOLOGIES

Resolution

That the apologies for Cr Deaker, Cr Laws be accepted.

Moved: Cr Robertson

Seconded: Cr Hope

CARRIED

2. LEAVE OF ABSENCE

No leave of absence was requested.

3. ATTENDANCE

Sarah Gardner (Chief Executive)
 Nick Donnelly (General Manager Corporate Services and CFO)
 Gavin Palmer (General Manager Operations)
 Sally Giddens (General Manager People, Culture and Communications)
 Richard Saunders (General Manager Regulatory)
 Gwyneth Elsum (General Manager Strategy, Policy and Science)
 Amanda Vercoe (Executive Advisor)
 Liz Spector (Committee Secretary)
 Eleanor Ross (Manager Communications Channels)
 Ryan Tippet (Media Communications Lead)

4. CONFIRMATION OF AGENDA

The agenda was confirmed as circulated.

5. CONFLICT OF INTEREST

No conflicts of interest were advised.

6. PUBLIC FORUM

No public forum was held.

7. PRESENTATIONS

No presentations were made.

8. ACTIONS

Status report on the resolutions of the Regulatory Committee

11.3 Managing the use of coal for domestic heating in Otago and New Zealand (Technical Committee)	31/1/2018	That the matter of the ability to enforce the current Regional Air Plan AirZone 1 provisions be considered by the Regulatory Committee	IN PROCESS
Wallaby Control	28/11/18	Cr Scott requested that the action item for a Memorandum of Understanding	IN PROGRESS – Dr Palmer

		(MOU) with Environment Canterbury for wallaby control be reinstated to the action list and provide an update on the success of the wallaby control programme.	updated Committee on progress on 31/7/19
--	--	--	--

9. MATTERS FOR COMMITTEE DECISION

9.1. Consideration of Draft Terms of Reference

Cr Robertson reviewed the Draft Terms of Reference agenda item. GM Regulatory Richard Saunders was present to answer questions about the report. After a general discussion, Cr Kelliher moved the recommendations.

Resolution

That the Council:

- 1) **Receives** this report.
- 2) **Refers** the proposed terms of reference for the Regulatory Committee to Council for adoption on 11 December 2019.

Moved: Cr Kelliher

Seconded: Cr Hope

CARRIED

9.2. Delegations

Cr Robertson introduced the Delegations paper. GM Regulatory Richard Saunders was present to answer questions. He noted changes to the existing delegations were recommended to reflect changes to the decision-making structure approved by the Council on 13 November 2019. Cr Robertson said delegations will be given to co-chairs to discuss panels and make appointments to hearings panels for RMA objections and commissioner appointments, but not for plan changes or other major issues. After Council consideration, Cr Calvert made a motion.

Resolution

That the Council:

- 1) **Approves** the change to the delegations for objections and appointments under the Resource Management Act 1991 to reflect the new decision-making structure and to ensure efficiencies in decision making and authorise the Chief Executive to update the Delegations to reflect the changes.

Moved: Cr Calvert

Seconded: Cr Hobbs

CARRIED

10. MATTERS FOR NOTING

There were no matters for noting.

11. CLOSURE

There was no further business and Cr Robertson declared the meeting closed at 09:08 am.

Chairperson

Date

DRAFT

Status report on the resolutions of the Regulatory Committee

Wallaby Control	28 November 2018	Cr Scott requested that the action item for a Memorandum of Understanding (MOU) with Environment Canterbury for wallaby control be reinstated to the action list and provide an update on the success of the wallaby control programme.	PROGRESS – Dr Palmer updated Committee on progress on 31/7/19	Reporting will take place through the quarterly activity reporting.
Delegation of Harbourmaster Duties	25 September 2019	Conduct a review and amendment of the ORC Navigational Safety Bylaw 2019, noting date of relinquishment of transfer agmt will be the same as the effective date of the amended bylaw.	IN PROGRESS - Regulatory	Council approval on 26 February 2020 - to consult on changes to the bylaw.

8.1. Regulatory Group - Quarterly Activity Report

Prepared for: Regulatory Committee
Report No. GOV1910
Activity: Regulatory: Consents and Compliance
Author: Richard Saunders, General Manager Regulatory
Endorsed by: Richard Saunders, General Manager Regulatory
Date: 2nd March 2020

PURPOSE

- [1] To update the Committee on activities of the Regulatory Group for the period 1 July 2019 to 31 December 2019.

EXECUTIVE SUMMARY

- [2] This report summarises the activity of the Regulatory Group which includes Consents, Compliance, Consents Systems and Administration and Harbourmaster teams.

RECOMMENDATION

That the Council:

- 1) **Receives** this report.
- 2) **Notes** the quarterly update report from the Regulatory Group for the period 1 July 2019 to 31 December 2019.

DISCUSSION

- [3] The following report provides a summary of the activity of each team within the Regulatory Group.
- [4] Attachment 1 contains statistics for the Regulatory Group for the period 1 July 2019 to 31 December 2019.

HARBOURMASTER

- [5] The harbourmaster vessel was fully available and operational throughout this reporting period. The vessel has been placed into various locations and is running and operating well.
- [6] A Deputy Harbourmaster joined the team from the start of this period. Pete Dryden joined ORC from Maritime New Zealand and brings significant previous experience to the role. Having two experienced staff members adds value to the function and enables ORC to provide a greater level of service to the Community.
- [7] ORC have undertaken 5 days of the national no excuses campaign this year and all have been carried out alongside the local maritime New Zealand officers. This has been a

great interaction with users and provides an excellent opportunity to educate water users.

- [8] Several improvements have been made to navigational aids throughout Otago. These have included;
 - a. navigational aids across the channel at Quarantine Island
 - b. 5 knot marker buoys have been laid at a number of locations including Otago Harbour, Taieri Mouth and Owaka to help improve safety around shoreside facilities.
 - c. We have supplied and assisted in installing buoys and moorings to the Lake Waihola group.
- [9] Visitor moorings have been laid at Carey's Bay and Deborah Bay. These allow people to stay short term on a safe mooring for any number of reasons. The take up has been very good and we continue to socialise this as an option for visiting vessels.
- [10] Both Harbourmaster and Deputy Harbourmaster have been warranted to cover Lake Dunstan under the CODC bylaws whilst the transfer of maritime delegation is processed. This has included undertaking on water activities at Lake Dunstan associated with the national no excuses campaign.
- [11] The Harbourmaster team continue to attend national and South Island meetings to promote best practice amongst harbourmaster functions nationally. Achieving consistency in approaches and sharing best practice remains an important part of the role.
- [12] The Harbourmaster team is now located at 14 Halsey Street in Dunedin. This provides a location for storage of the vessel and all ORC oil pollution equipment, which has been officially handed to the harbourmaster department to manage.
- [13] The priority in the coming months is to complete the amendment to the Navigational and Safety Bylaw to incorporate Lake Dunstan. This may require hearings in late April / early May. Ongoing relationship management with regular Otago Harbour users is also a priority as on-water activities continue to increase.

CONSENTS

Consent Processing

- [14] In the reporting period decisions were made on 182 consents. Only one consent decision was not made within Resource Management Act timeframes. The exception exceeded the timeframes by one working day. 34% of the decisions made during the reporting period utilised a timeframe extension; in most cases this was to enable the applicant to review the proposed conditions.
- [15] At the end of the reporting period there were 252 applications in the system. With this number of consents in the system staff workloads remain high, but statutory timeframes are being met.

[16] The number of applications lodged during this reporting period was 255. The highest number of applications lodged in the reporting period was 49 in the month of July.

[17] A summary of consents statistics is set out in Figures 1 and 2.

Deemed Permit Replacements

[18] There are currently 340 deemed permits that are current. This figure includes:

- a. deemed permits that are likely to be replaced;
- b. deemed permits that are not likely to be replaced; and
- c. deemed permits that have obtained a replacement consent but have not yet surrendered their deemed permit.

If the deemed permit is not expired, it will remain current until 1 October 2021.

[19] During the reporting period five replacement applications for deemed permits were received. Overall, sixteen deemed permits are currently being processed for replacement consents.

Public Enquiries

[20] Responding to public enquiries is a significant part of the workload of the Consents Team. 883 enquiries were received during this reporting period.

[21] In order to provide an improved level of service and deliver process efficiencies for staff a new position has been created and is currently being recruited for. The 'Consents Officer – Public Enquiries' role will be responsible for managing all of the customer enquiries currently handled by a range of consent processing staff. This will provide improved consistency of service for customers and increased efficiencies for other processing staff. One outcome of this new role is expected to be an increase to chargeable time achieved by consent processing staff.

[22] A summary of the total number, type and location of customer enquiries is included in Figure 5.

Building Consent Authority (BCA) Administration

[23] In the 19/20 year to date very little activity has occurred in the building consent area. The Building Consent Authority has cleared all outstanding non-compliances from their special IANZ audit and is now preparing for their routine IANZ audit in April. This will take up staff time and there is a cost to Council for this audit.

[24] The summary of BCA statistics is set out in Figures 3 and 4.

[25] Staff are meeting with other South Island Regional Council's in March to discuss the BCA accreditation process with a view to providing a more efficient service across the South Island. A report will be presented to Council on this matter at a future meeting.

Flood Protection Management Bylaw 2012

[26] The Consents Team is responsible for co-ordinating the approval of applications under the Flood Protection Management Bylaw 2012.

- [27] The summary of how many Bylaw applications were received and approved is set out in Figures 3 and 4.

COMPLIANCE

Consent Audits

- [28] In the six months to 31 December 2019 the focus of the compliance monitoring team has been on dairy inspections and Territorial Local Authority Wastewater Treatment Plants (WWTP). A total of 239 consent audits and 98 dairy inspections have been undertaken. A separate report has been prepared for the Committee on the WWTP compliance audits.
- [29] A summary of consent audits is set out in Figures 8 and 9.

Performance Monitoring

- [30] In the six months to 31 December 2019 the Consent Systems and Administration and Compliance teams have graded 2,114 Performance Monitoring returns. The focus has been on data processing to support the audit of Territorial Local Authority WWTP and on processing water take returns in preparation for Deemed Permit Renewals.
- [31] A summary of performance monitoring data is set out in Figures 6 and 7.

Dairy Inspections

- [32] To 31 December compliance staff had completed 98 dairy inspections. Overall the farms inspected showed high levels of compliance with existing ORC rules. This demonstrates a good understanding of the current rules, and a willingness from farmers to improve infrastructure to reduce the risk of environmental effects.
- [33] Overall the North Otago area has shown a significant improvement in infrastructure which will result in better environmental outcomes. This includes amongst other actions the replacement of border dykes and installation of new irrigation systems.
- [34] Recent weather events created challenges in South Otago and Clutha. A pragmatic approach was taken encouraging farmers to use best practice in the circumstances. Communications were sent out through key industry groups and staff made themselves available to meet with any farmers who had questions about the best way to manage effluent during periods of flooding.
- [35] Two significant non-compliances have been identified this season. One was for a hole in effluent pond which was repaired within 4 days. The second was due to a change of farm management resulting in a lack of maintenance in key areas. Receivers who took over the farm undertook action to remedy issues.

- [36] Inspections will continue until approximately mid-May. The focus continues to be on effluent storage and means of disposal. A report on dairy inspections will be presented to the Regulatory Committee at the July meeting.
- [37] A summary of dairy inspection data is set out in Figures 10 and 11.

Forestry

- [38] 15 forestry inspections have been carried out in the year to date. Of these 12 have been fully compliant and 3 graded as low risk non-compliant. The non-compliances were due to a lack of process rather than on-site activities. Generally, forestry activities have been conducted to a high standard. Risks such as slash near waterways or uncompacted spoil that are identified on site are dealt with promptly.

Contaminated Sites

- [39] ORC launched a new online service for people wanting to access information about contaminated sites. Previously customers had to contact staff directly to request information. Through online maps customers can now search for information themselves creating significant efficiencies in the process and freeing up staff time for other activities.

Investigations and Enforcement

- [40] 715 service requests were received on the pollution response line for the year to 31 December. The most common reason for requests was water pollution (166), outdoor burning (153), odour (116) and air discharge/spray drift/dust (76). Further details on service requests can be found in Figures 13 and 14.
- [41] A dedicated resource for pollution response in both Dunedin and Central Otago is providing an improved level of service. Where the volume of calls is too high for the dedicated pollution response staff, compliance staff are tasked with attending incidents. Further thought will need to be given in the future to the level of service offered for pollution response and any potential impact this has on other functions.
- [42] In the year to 31 December ORC has issued 15 infringement notices and 13 abatement notices. The most common reason for infringement notices was water pollution (6) and outdoor burning (4). Abatement notices were issued for water pollution (6) and odour (3). Further details on enforcement action can be found in Figures 15 and 16.

OPTIONS

- [43] As this is a report for noting there are no options.

CONSIDERATIONS

Policy Considerations

- [44] There are no policy considerations.

Financial Considerations

[45] There are no financial considerations.

Significance and Engagement

[46] As this is a report for noting consideration of the Significance and Engagement Policy is not required.

Legislative Considerations

[47] A number of legislative requirements govern the activities of the Regulatory Group.

Risk Considerations

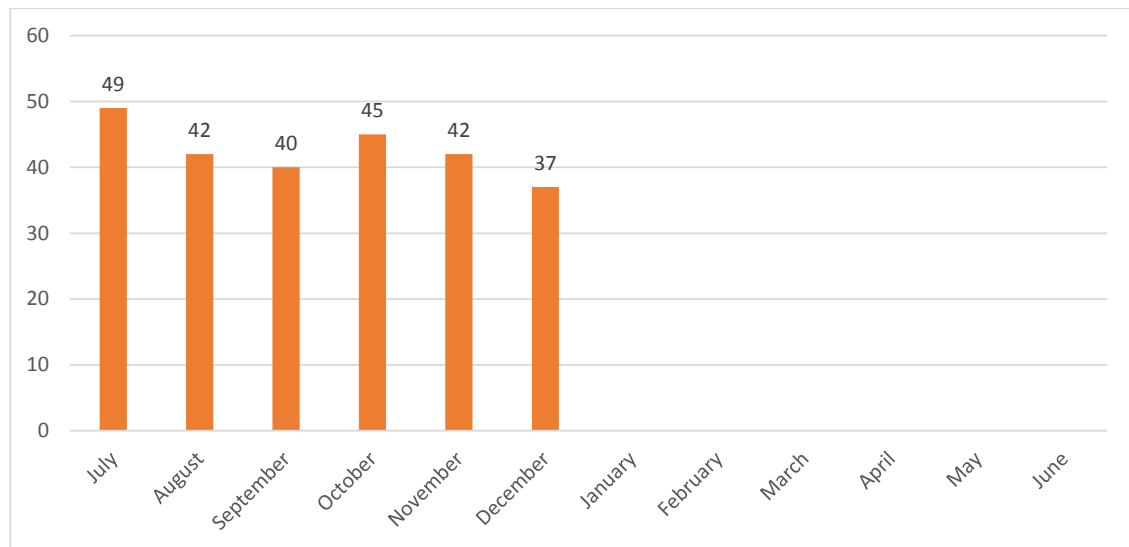
[48] There are no risk considerations.

NEXT STEPS

[49] Regulatory activity will continue and will be reported to the Committee on a quarterly basis.

ATTACHMENTS

1. Regulatory Data July to December 2019 [**8.1.1** - 9 pages]

APPENDIX 1: REGULATORY REPORTING FOR THE PERIOD 1 JULY 2019 TO 31 DECEMBER 2019**Consents****Figure 1: Resource Consent Applications Received****Figure 2: Resource Consents Issued**

Activity	July	August	September	October	November	December	Total
Air		1			3	1	5
Bore	9	10	7	9	10	7	52
CMA Use	1			6	2		9
Compliance Certificate					1	1	2
Dam		1	1			3	5
Discharge		1		1			2
Divert		2			2	2	6
General	3	6	2	4	6	10	31
Gravel					1		1
Groundwater Take	5	3	7	1	1	7	24
Land	4	1	1	3	3	3	15
Surface Take	2	1	1	8	4	4	20
Water	1	2	1	4	1	1	10
Grand Total	25	28	20	36	34	39	182

Figure 3: Other Applications Received

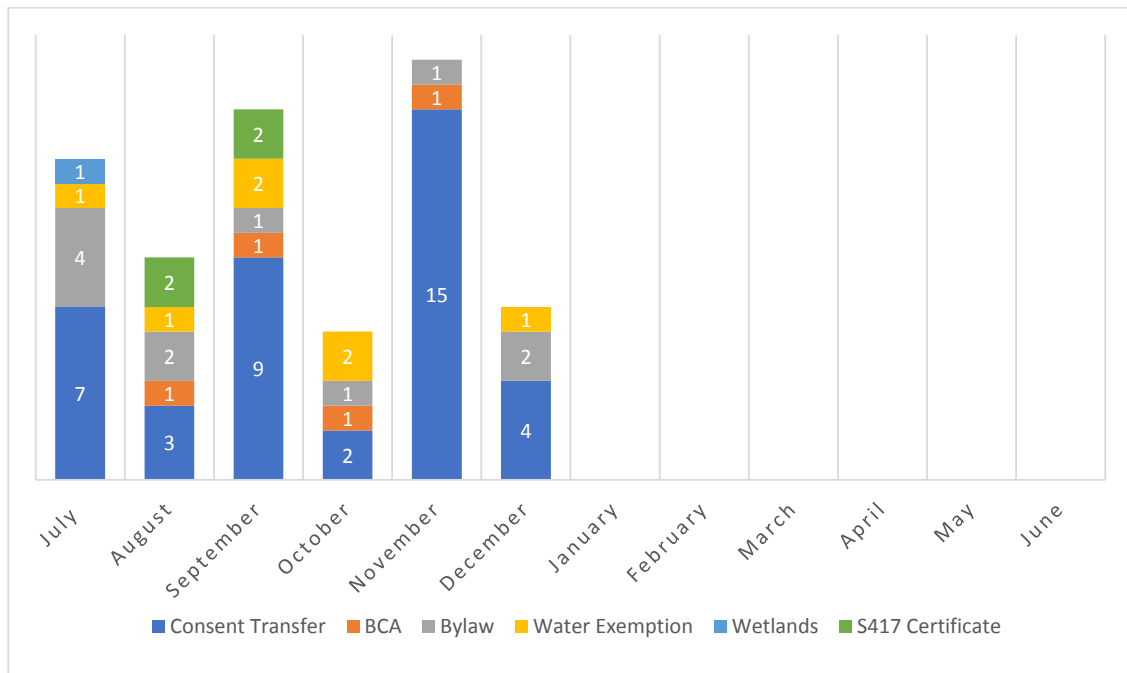


Figure 4: Other Applications Processed

	July	August	September	October	November	December	Total
Transfers	5	5	6	4	16	3	39
BCA	0	0	1	0	0	1	2
Bylaw	1	0	0	0	0	1	2
S417 Certificate	0	0	0	0	0	0	0
Water Exemption	0	0	1	0	0	0	1
Total	6	5	8	4	16	5	44

Figure 5: Consent Public Enquiries

Enquiries 1 July 2019 to 31 December 2019

Type of Enquiry	No.	% of Total
Current Consents	311	35
Other	88	10
Permitted Activity	207	23
Pre-application	130	15
Property Enquiries	113	13
Mining Privileges	13	1
Transfers	16	2
TLA	5	1

Method of Enquiry	No.	% of Total
Counter	32	4
E-mail	569	63
Internet	15	2
Letter	1	1
Telephone	266	30

Enquiry Location	No.	% of Total
Central Otago DC	289	33
Clutha DC	71	8
Dunedin CC	155	18
Queenstown Lakes DC	180	20
Throughout Otago	47	5
Unspecified	64	7
Waitaki DC	77	9

Compliance

Figure 6: Performance Monitoring Returns Graded

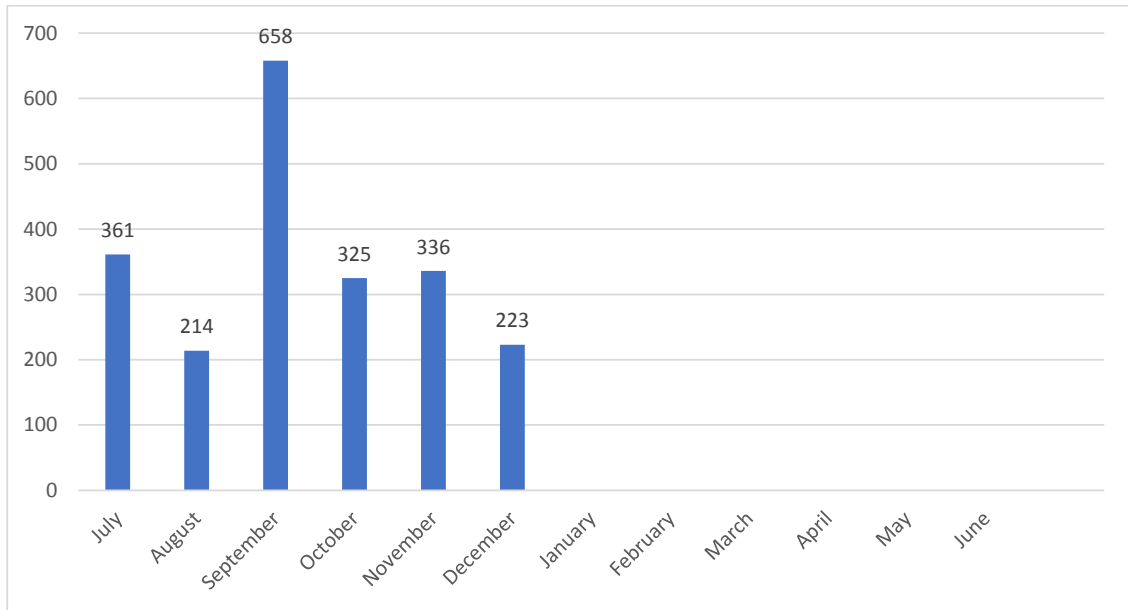


Figure 7: Performance Monitoring Grades Year to Date

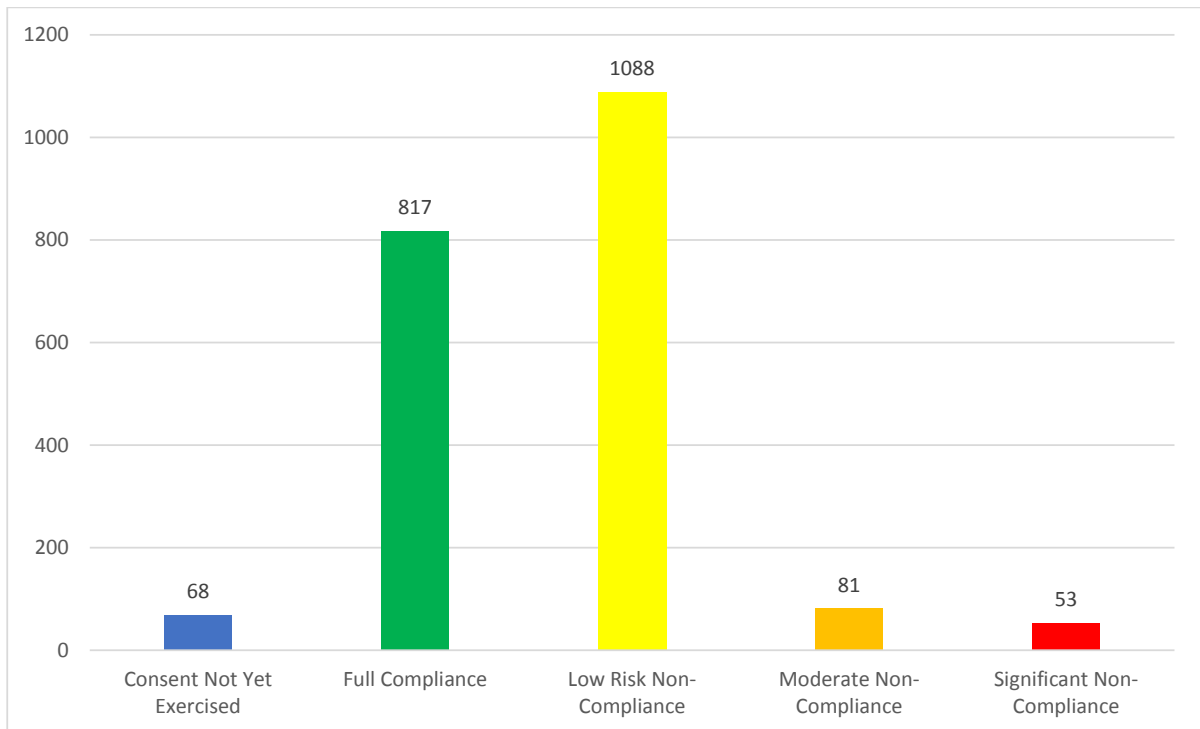


Figure 8: RMA Consent Audits

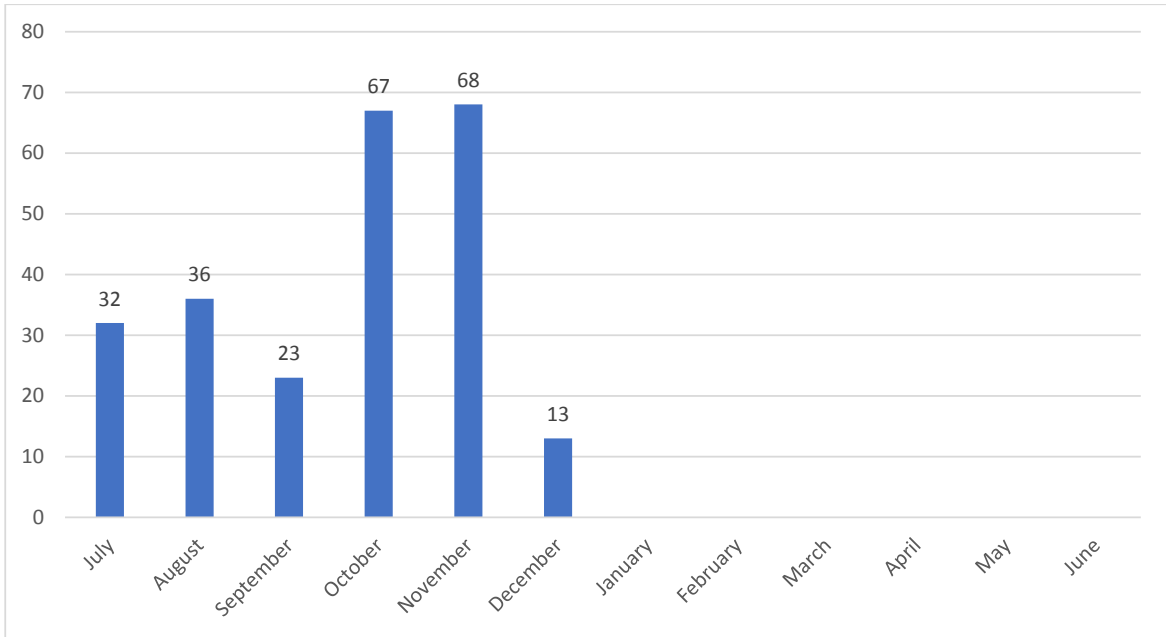


Figure 9: Audit Grades Year to Date

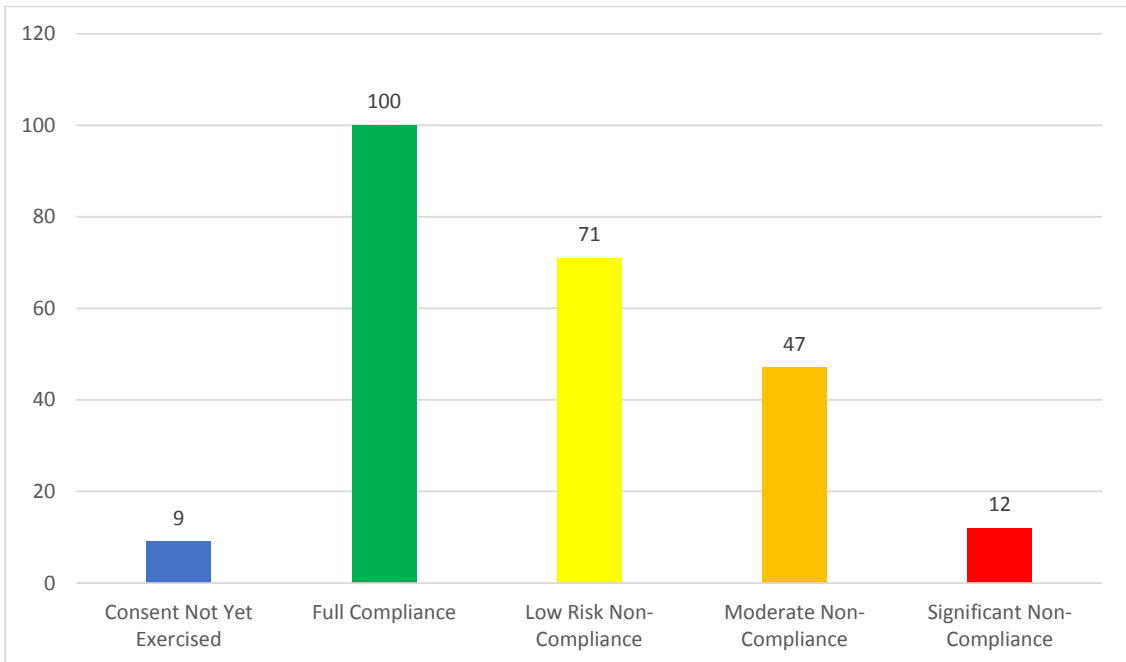


Figure 10: Dairy Inspections

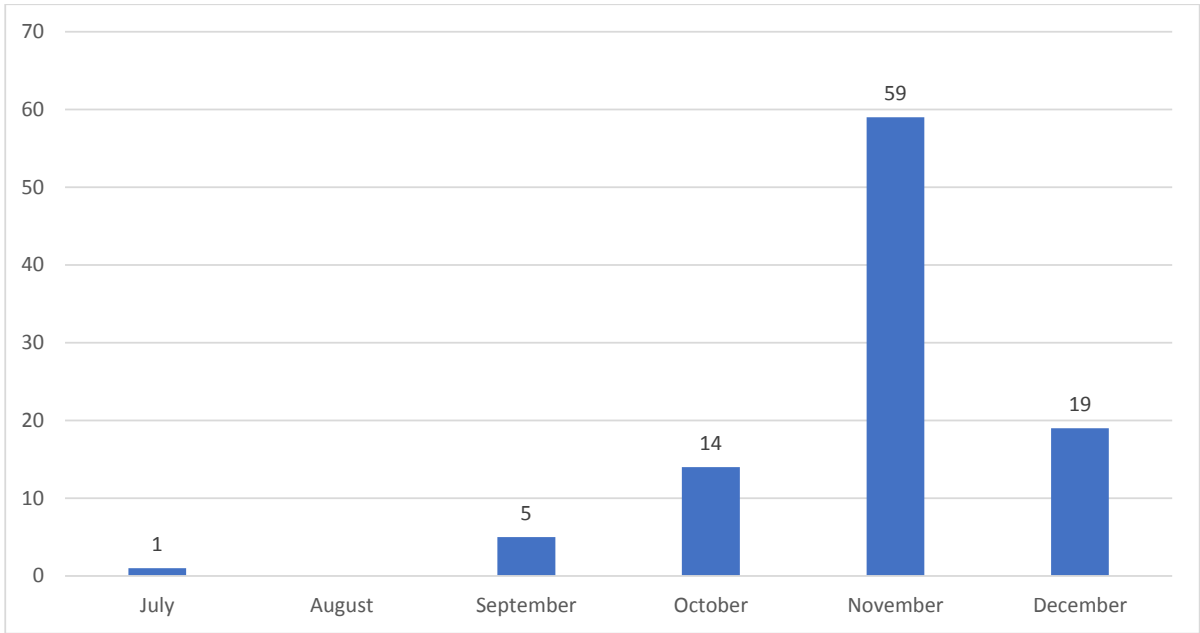


Figure 11: Dairy Inspection Grades

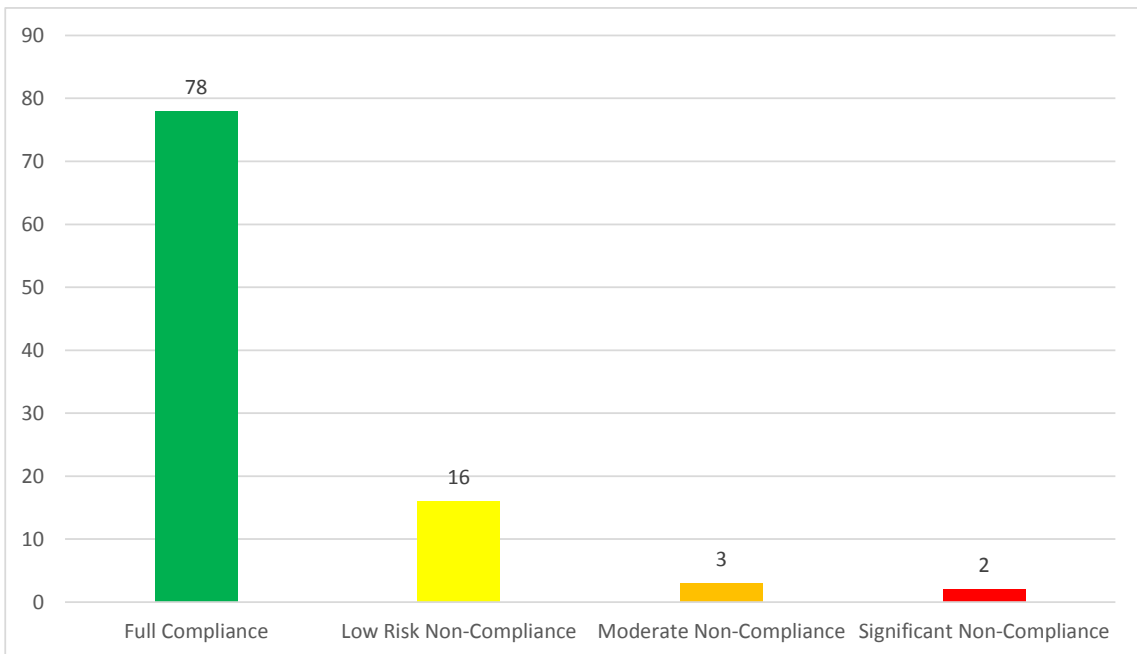


Figure 12: Types of Significant Non-Compliance

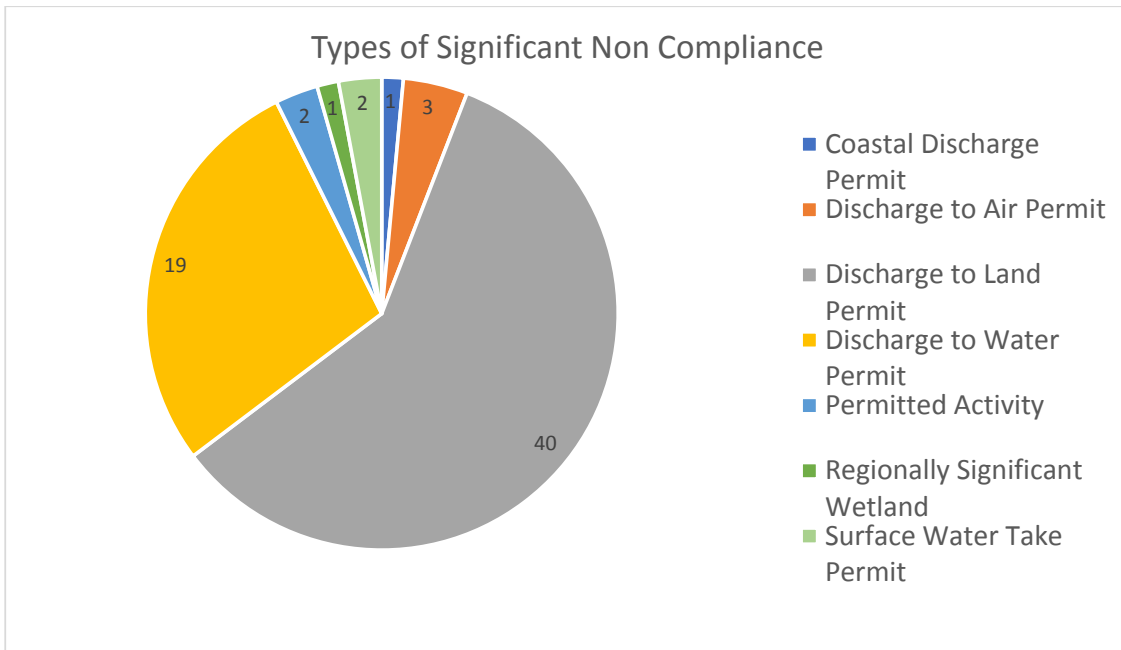


Figure 13: Service Requests

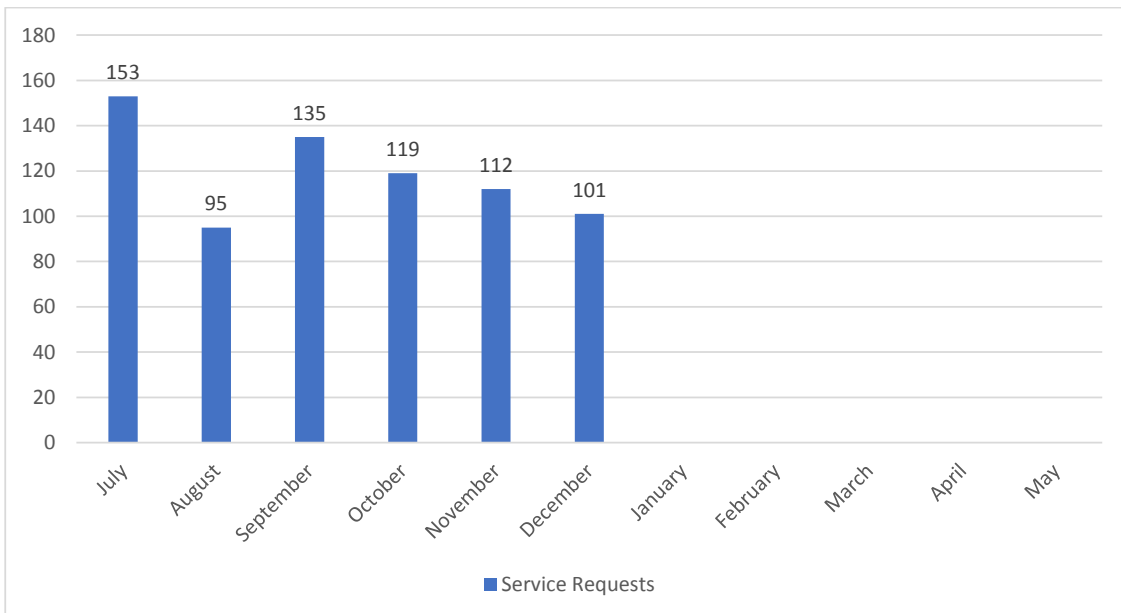


Figure 14: Service Requests by Type

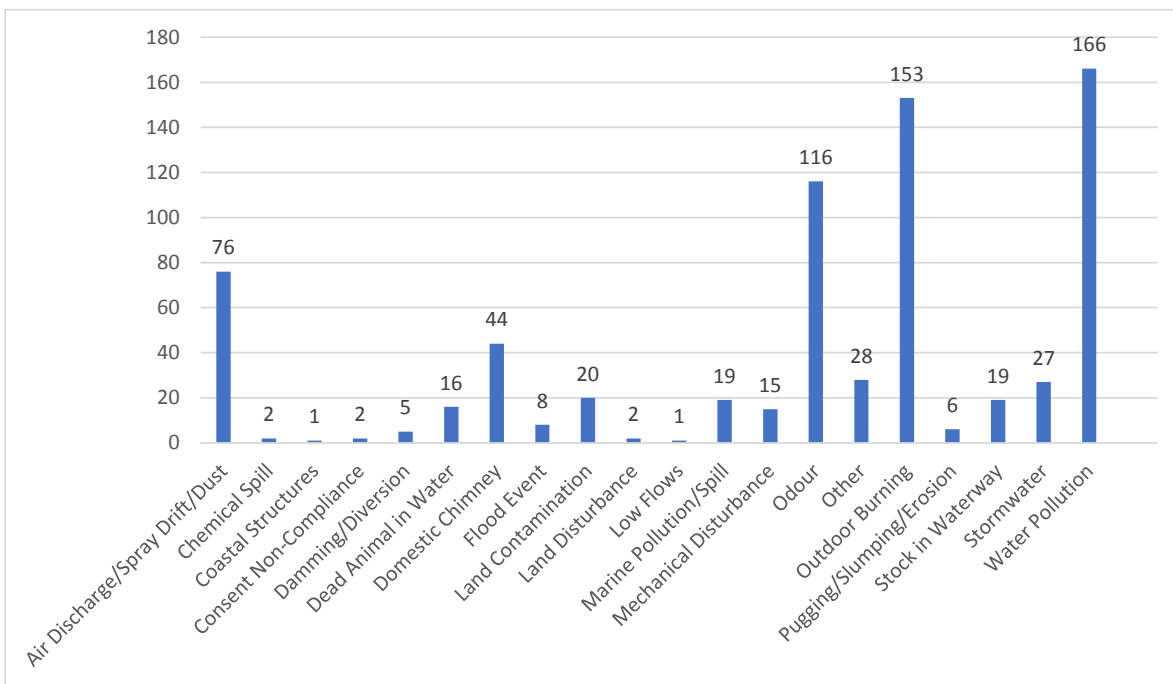


Figure 15: Enforcement Action

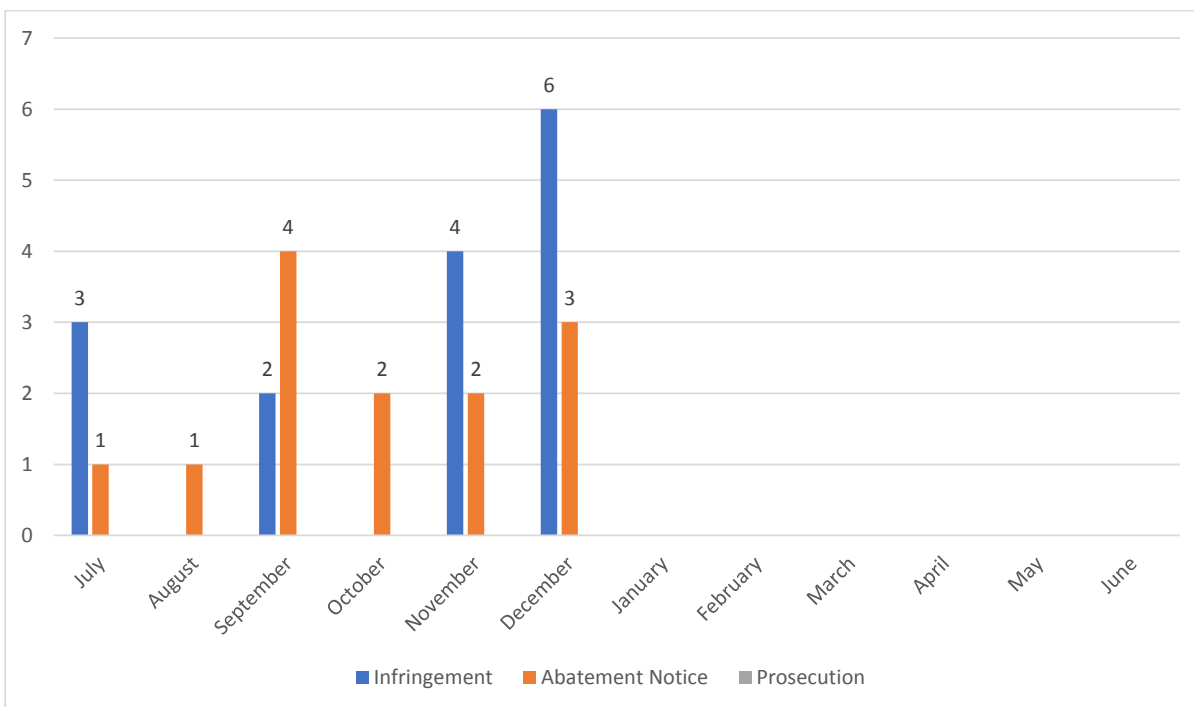
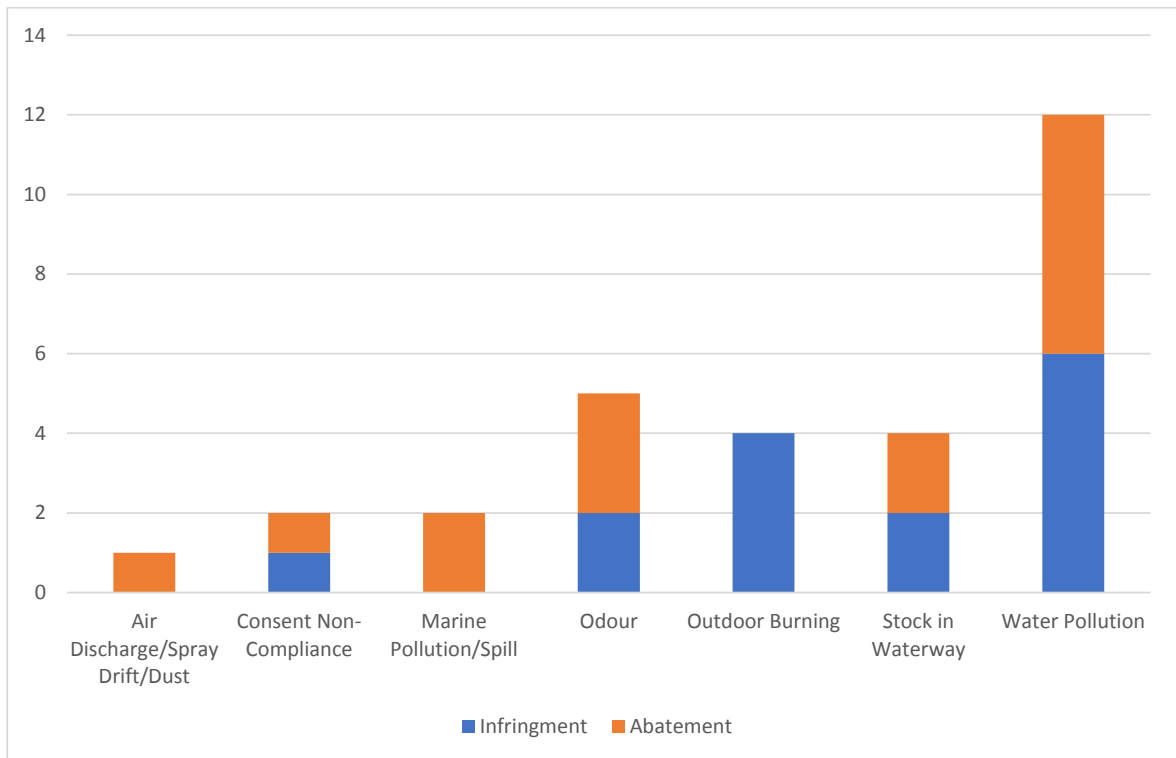


Figure 16: Enforcement Causes



8.2. Strategic Compliance Framework

Prepared for:	Regulatory Committee
Report No.	GOV1911
Activity:	Regulatory: Consents and Compliance
Author:	Martin King, Principal Compliance Specialist
Endorsed by:	Richard Saunders, General Manager Regulatory
Date:	11 March 2020

PURPOSE

- [1] The purpose of this report is to introduce Council to the Strategic Compliance Framework 2019 – 2024.

EXECUTIVE SUMMARY

- [2] The Strategic Compliance Framework 2019 – 2024 has been developed by the Regional Sector Compliance and Enforcement Special Interest Group to promote best practice and consistency across the sector.
- [3] To ensure Otago Regional Council achieves best practice in the compliance and enforcement field the development of future strategies and work plans will achieve consistency with the principles of the Strategic Compliance Framework.

RECOMMENDATION

That the Council:

- 1) **Receives** this report.
- 2) **Notes** that an ORC Compliance Monitoring Plan consistent with the principles of the Strategic Compliance Framework 2019 – 2024 will be presented to the Regulatory Committee at the September 2020 meeting.

BACKGROUND

- [4] Compliance Monitoring and Enforcement is a mandatory function for Otago Regional Council (ORC) under Section 35 of the Resource Management Act 1991 (RMA). ORC's Regulatory function is responsible for the monitoring of activities in the region to ensure compliance with resource consents, regional council plans or National Environmental Standards (NES).
- [5] The Regional Sector Compliance and Enforcement Special Interest Group (CESiG) is tasked with promoting continuous improvement towards best practice compliance and enforcement across the regional sector. The group is made up of senior compliance and enforcement staff from across the regional sector.

- [6] CESiG published the first Strategic Compliance Framework in 2016. Last year this was updated and re-published. A copy of the Strategic Compliance Framework 2019 – 2024 (The Framework) is included as Attachment A.

DISCUSSION

- [7] The Framework identifies eight principles to guide the development of a compliance strategy. These principles are;
- a. Transparent
 - b. Consistency of process
 - c. Fair, reasonable and proportional approach
 - d. Evidence-based, informed
 - e. Collaborative
 - f. Lawful, ethical and accountable
 - g. Targeted
 - h. Responsive and effective
- [8] In order to be most effective in the compliance monitoring and enforcement space, ORC will need to develop a compliance monitoring plan consistent with the principles above. This plan will respond to the needs of the region by taking a risk-based approach to the allocation of resources. As well as pro-active monitoring the plan will also address reactive response to reports of environmental incidents.
- [9] Taking a risk-based approach when developing a compliance monitoring plan ensures that ORC will have resources targeted to areas that pose the greatest risk. Additionally, it will allow the early identification of opportunities to engage with the consent holders and the wider community in a pro-active manner to encourage greater compliance. Page 10 of The Framework shows a generic environmental risk matrix.
- [10] In addition to the risk-based planning the Framework sets out the best practice model for influencing behaviour change. This model builds on the '4E's' concept (enable, engage, educate and enforce) to develop the idea of graduated responses relative to the seriousness of the breach.
- [11] Without a compliance plan ORC remains largely reactive in the compliance monitoring space. With further thought and proper allocation of resources more time and effort could be spent in the 'enable', 'engage' and 'educate' spaces to encourage compliance in a pro-active manner. Feedback from landowners and stakeholder groups is that more time spent by staff engaging and educating would be gratefully received by the community.
- [12] Where serious non-compliance does occur, the Framework provides guidance when considering the most appropriate enforcement tool to use. Ensuring that a consistent model is adopted for this decision making is critical. Pages 18 and 19 of the Framework give a summary of the options available and matters for consideration.
- [13] Reviewing and reporting of compliance activities is also identified in the Framework as an important component of the process. Currently ORC does very little in the way of reviewing and reporting to either assess the effectiveness of compliance activities or to inform future policy and planning decisions. The collection of data and the publishing of an annual compliance monitoring report would go some way to addressing these gaps.

Additionally, better use of the large amount of environmental data collected as part of the consent monitoring process should be explored.

OPTIONS

[14] As this is a report for noting there are no options to consider.

CONSIDERATIONS

Financial Considerations

[15] There are no financial considerations.

Significance and Engagement

[16] Significant and Engagement considerations are not relevant for this paper.

Legislative Considerations

[17] Compliance monitoring is a mandatory function under the RMA.

Risk Considerations

[18] There are environmental, legal, social and reputational considerations associated with compliance monitoring activities. These must be considered in the development of a compliance monitoring plan.

NEXT STEPS

[19] Staff will develop a compliance monitoring plan consistent with the Strategic Compliance Framework which responds to the changes in the regulatory environment brought about through Central Government priorities such as Essential Freshwater and ORC plan changes. This plan will be presented to the Regulatory Committee at the September meeting.

ATTACHMENTS

Nil

Regional Sector

Strategic Compliance Framework

Pou Tarāwaho Tūtohu
a Te Rāngai a-Rohe



An un-authorized discharge of sediment into river

2019-2024



Strategic Compliance Framework Working Group

Patrick Lynch

Heather McKay

Greg Bevin

Steve Pearce

James Snowdon

Waikato Regional Council

West Coast Regional Council

Horizons Regional Council

Auckland Council

Greater Wellington Regional Council

CESIG membership

Northland Regional Council

Auckland Council

Waikato Regional Council

Bay of Plenty Regional Council

Gisborne District Council

Manawatu-Wanganui Regional Council

Taranaki Regional Council

Hawkes Bay Regional Council

Greater Wellington Regional Council

Nelson City Council

Marlborough District Council

Tasman District Council

West Coast Regional Council

Canterbury Regional Council

Otago Regional Council

Southland Regional Council

Contents

Foreword.	1
Introduction.	2
Purpose and overview	3
Why do we need a strategic approach to compliance, monitoring and enforcement?	4
Principles to guide compliance operations	5
Developing a strategic compliance monitoring programme	6
Compliance monitoring methods	9
Prioritising monitoring resources	10
Influencing behaviour change	11
Dealing with non-compliance	13
Enforcement options	14
Decision making – factors to consider	15
Reporting and reviewing.	16
Appendix 1.	18

Foreword

This is a dynamic and challenging time to be involved in environmental regulation.

More and more we are being regarded collectively as a sector rather than individual regional and unitary authorities. The Regional Sector¹ is driving a cycle of continuous improvement at a time when the capability and competency of local government, in respect of compliance, monitoring and enforcement (CME) with the Resource Management Act (RMA), is also the subject of significant external scrutiny. This scrutiny has arisen from central government as well as through various reports, from non-government organisations such as Forest and Bird² and the Environmental Defence Society³.

Both the sector and the scrutineers have identified positive aspects of local government's CME work. However, it is also fair to say that as a collective we can, and should, do better. For example, there are clearly opportunities to strengthen the presence of mātauranga Māori within CME work, and address the inconsistencies and limitations of CME databases that cause frustration for many.

The initial Regional Sector Strategic Compliance Framework 2016-2018 (the Framework) has been a helpful aide in working towards a more consistent approach to best practice across the Sector. Other support 'tools' have followed. For example, the Regional Sector advised Ministry for the Environment in their development of the CME Best Practice Guidelines⁴. The sector, through its Compliance and Enforcement Special Interest Group (CESIG) has continued its series of peer reviews of CME function. Even more recently CESIG has driven the first annual independent analysis of Regional Sector CME metrics⁵. We continue to learn.

This refreshed framework document reflects the learning of the Regional Sector and its commitment to continuous improvement is designed to provide further guidance for the Sector over the next several years. Concerted effort by all will ensure the Sector continues to improve the effectiveness of its CME function and, importantly, can clearly demonstrate that effectiveness to the community.

Signed

Patrick Lynch

(Lead, SCF working group, CESIG)

¹ Regional Sector includes regional councils and unitary authorities in New Zealand

² Cleaning Up – Fixing compliance, monitoring and enforcement in the dairy sector – Forest & Bird August 2018

³ Last Line of Defence – Compliance, monitoring and enforcement of New Zealand's environmental law – Marie A Brown

⁴ <http://www.mfe.govt.nz/publications/rma/best-practice-guidelines-compliance-monitoring-and-enforcement-under-resource>

⁵ Independent Analysis of 2017/2018 Compliance monitoring and Enforcement Metrics for the regional Sector – Dr Marie Brown

Introduction

Local government in New Zealand is responsible for implementing, and ensuring compliance with, a variety of laws and regulations that are aimed at achieving positive community and environmental outcomes. The Regional Sector has very clear obligations specifically in respect of the RMA.

A key role in ensuring **compliance** is carrying out **monitoring** and responding to notifications of potential breaches or incidents. This role triggers a range of associated interventions including **enforcement** to ensure that individuals and organisations adhere to these environmental rules and regulations for the 'public good'.

The overarching purpose of the Act is to promote sustainable management of our natural and physical resources. This purpose guides so much of what the Regional Sector does day-to-day. However, though the RMA has been in place for nearly three decades, it is fair to say that expectations around compliance, monitoring and

enforcement to achieve that purpose are more intense than ever.

CESIG is tasked with driving continuous improvement in the CME field with the support of the Resource Managers Group and Regional Chief Executives. As part of CESIG's ongoing work programme, it is timely to refresh the Strategic Compliance Framework for the next five years taking into account the current context.

CESIG continues to acknowledge and respect that each council has the autonomy to develop its own approach to achieving or ensuring compliance. It is appropriate that individual councils tailor their strategies to meet their own needs and resources. However, CESIG also strongly advocate that individual compliance strategies of councils should not only be consistent with, and linked to, this framework, but also be mindful of growing expectations of achieving the purpose of the Act.



A discharge of detergent product to an open water course

Purpose and overview

It is important to remember that the purpose⁶ of the Resource Management Act (RMA) is to 'promote the sustainable management of natural and physical resources'. To assist in meeting that purpose the RMA places restrictions on the use of natural and physical resources:

- Section 9: Restrictions on use of land
- Section 12: Restrictions on use of the coastal marine area
- Section 13: Restrictions on certain uses of beds of lakes and rivers
- Section 14: Restrictions relating to water
- Section 15: Restrictions relating to discharges of contaminants into the environment

The RMA imposes a duty on regional and unitary authorities, the Regional Sector, to achieve positive environmental outcomes. The Sector manages resource use in its region, primarily through regional plans, resource consents and a range of other national regulatory instruments.

Core functions for the Sector include monitoring, assessing compliance with the standards that have been set and subsequently responding to the levels of compliance that have been identified.

The purpose of this document is to provide the Regional Sector with an overarching framework within which to carry out its respective compliance, monitoring and enforcement functions under the RMA.

The CESIG promotes a Strategic Compliance Framework – the SCF – as a means to achieving consistency across the Regional Sector, while safeguarding the ability for each region to tailor its CME functions to the particular needs of its region.

There are four major components to the SCF:

1. **Monitoring** – this includes developing risk based monitoring programmes and responding to notifications of environmental incidents and breaches.
2. **Encouraging compliance** – ensuring that a full spectrum approach is being taken to achieve the highest possible levels of compliance.
3. **Non-compliance** – the appropriate use of enforcement tools to deal with non-compliance.
4. **Reporting and review** – this includes regular self review, establishing a feedback loop to the policy writers as well as meaningful and transparent reporting to the public.

Sustainable management

"Sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while –

- a. sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
- b. safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
- c. avoiding, remedying, or mitigating any adverse effects of activities on the environment."

⁶ RMA Section 5 - Resource Management Act 1991

Why do we need a strategic approach to compliance, monitoring and enforcement?

All regions face significant challenges from increases in, and intensification of, industry, farming, horticulture, infrastructure and population. Specific examples of challenges facing councils include: co- management, implementation of new national rules; land use change and development; national policy on freshwater and water management; contaminated land activities and emerging contaminants.

There is no doubt there is more scrutiny on the Regional Sector and heightened expectations in respect of our ability to be effective environmental regulators.

There is also a 'natural inflation' for the Regional Sector in that every year the growing number of consented activities requires more monitoring, simply to maintain the same level of service as prior years.

These challenges, accompanied with the expectation that local government operates in a fiscally prudent manner, set the scene for the Sector to insist on itself becoming smarter and more effective with its CME activities.

It is obvious that the Regional Sector must:

- increasingly focus on 'what's important' in its compliance related activities, particularly through the use of compliance strategies
- align with council priorities and be cognisant of iwi and community needs, environmental issues and economic growth
- effectively manage council resources across a growing body of consented and

permitted activities

- look for every opportunity to work with others to increase our effectiveness, including the use of emerging technology and innovations
- utilise the full range of interventions available to ensure the highest possible levels of compliance and corresponding positive environmental outcomes
- ensure that CME functions are appropriately resourced both in respect of capacity and capability incorporating specialist staff and ongoing training.

"The regulator's resources are inevitably scarce, so effectively implementing a regulatory regime will require the regulator to prioritise its effort. How the regulator prioritises its effort will also be crucial to the success of the regime in meeting its intended outcomes."

New Zealand Productivity Commission – Regulatory institutions and practices – June 2014 page 55.

Principles to guide compliance operations

The implementation of any aspect of the Strategic Compliance Framework should adopt the following operating principles. These principles should guide how the Regional Sector develops strategic compliance programmes.

Transparent

Providing clear information and explanation to the regulated community about the standards and requirements for compliance. We will ensure the community has access to information about industry environmental performance, as well as actions taken by us to address environmental issues and non-compliance.

Consistency of process

Actions are consistent with the legislation and within our powers. As a Sector, and as individual authorities, we will strive for consistency of compliance and enforcement outcomes for similar circumstances. We will ensure our team members have the necessary skills and are appropriately trained, and that there are effective systems and policies in place to support them.

Fair, reasonable and proportional approach

Applying regulatory interventions and actions appropriate for the situation. We will use our discretion justifiably, ensure our decisions are appropriate to the circumstances and that our interventions and actions will be proportionate to the risks posed to people and the environment and the seriousness of the non-compliance.

Evidence-based, informed

Using an evidence-based approach to our decision making. Our decisions will be informed by a range of sources, including sound science, information received from other regulators, members of the community, industry and interest groups.

Collaborative

Working with and, where possible, sharing information with other regulators and stakeholders to ensure the best compliance outcomes for our regions. We will engage with the community and consider public interest, those we regulate, and government to explain and promote environmental requirements, and achieve better community and environmental outcomes.

Lawful, ethical and accountable

Conducting ourselves lawfully and impartially and in accordance with these principles and relevant policies and guidance. We will document and take responsibility for our regulatory decisions and actions. We will measure and report on our regulatory performance.

Targeted

Focusing on the most important issues and problems to achieve the best environmental or community outcomes. We will target our regulatory intervention at illegal activities and poor performers that pose the greatest risk to the environment and community. We will apply the right tool for the right problem at the right time.

Responsive and effective

Considering allegations of non-compliance to determine the necessary interventions and action to minimise impacts on the environment and the community and maximise deterrence. We will respond in an effective and timely manner in accordance with legislative and organisational obligations.

Developing a strategic compliance monitoring programme

Every local government authority, like every regulatory agency, must prioritise resources. This section of the SCF focuses on appropriate resourcing and prioritisation as it relates to the **compliance monitoring** component of the Sector's work. Monitoring in this context relates to not only the **proactive monitoring** of environmental regulation, such as permitted activity or consent conditions, but also the **reactive response** to notifications of environmental breaches and incidents.

Each authority within the Regional Sector is encouraged to develop and maintain a strategic compliance monitoring programme or regime. The purpose of such a programme is to ensure that appropriate resources are allocated and deployed to activities that matter most.

It is entirely appropriate that the monitoring programme reflects the particular, and often changing, needs of its region. Factors that should be considered when developing a programme include:

- the actual or potential risk to the environment from that activity
- likelihood and consequences of non-compliance occurring
- community and tangata whenua expectations
- council priority areas
- sensitive or endangered environments
- compliance history of industry type or individual.

Information that supports, or provides feedback on, these factors then needs to be crafted

into an actual plan that drives the compliance monitoring work. The plan within a strategic compliance monitoring programme should detail the following:

- ranking sites dependent on risk or activity groupings (e.g. dairy, water takes, etc.)
- determining the type or level of intervention according to risk profile
- determining resourcing to match combination of interventions that apply
- determining monitoring frequencies
- developing procedures, charging regime, database recording system.



Fish kill from a contaminated stream

It may be appropriate to establish an overarching compliance monitoring programme for your council and then to develop individual compliance strategies for specific industries or activities.

These sorts of strategies should be dynamic, regularly reviewed and adapted to changing circumstances.

The recently completed Regional Sector Independent Analysis of the 2017/18 Compliance Monitoring and Enforcement Metrics report⁷ identifies that, by a raw measurement of comparison with general population, there is a wide variation in the full-time equivalent resources working in the CME space for each council. It is appropriate for each council to determine the resourcing that is right for them, balanced with a desire to strive for consistency across the Sector.

'For a compliance agency, a systematic, risk-based programme of activities for assessing compliance is a means of:

- monitoring compliance in a cost-effective manner
- targeting its resources at the highest priority risks
- responding proactively to changing and emerging risks
- promoting sound practices and positive attitudes towards compliance among the regulated sector
- strengthening its relationships with the regulated sector.'

CCCP – Achieving Compliance: A Guide for Compliance Agencies in New Zealand June 2011; page 158

⁷ Independent Analysis of 2017/2018 Compliance monitoring and Enforcement Metrics for the regional Sector – Dr Marie Brown



A council officer inspecting over irrigation from an effluent irrigator



Compliance monitoring methods

Compliance monitoring can be carried out in proactive ways, including:

- **Site visits** – to assess compliance at a moment in time against consent conditions and rules.
- **Desk top audit** – based on data provided by the consent holder.
- **Pro-active campaigns** – targets particular activity types e.g. water takes during low flow conditions.

Reactive – incident response

Importantly, councils also need to have the ability to respond effectively and efficiently to information received from the community about environmental incidents or breaches.



Burning tyres – a breach of a National Environmental Standard

Prioritising monitoring resources

A widely accepted approach to setting up a compliance monitoring programme is to use a risk assessment method to determine priority areas. The Government expects that “departments...will maintain a transparent, risk-based compliance and enforcement strategy”⁸.

In the context of compliance monitoring, risk is traditionally calculated using the likelihood of a non-compliance occurring and the consequent magnitude of harm to human health and the environment (including cultural, social and economic effects). The ranking/level of risk calculated informs development of an appropriate compliance monitoring response that considers the appropriate frequency, type

and scale of monitoring.

Applying a risk based approach enables monitoring efforts to be focused on the most significant risks to the environment and target areas where businesses and people are less likely to comply. This model can be adapted for specific use. It is important to remember that a risk matrix should be used for focusing monitoring efforts and is not an enforcement decision making tool.

Within a basic risk assessment framework, individual councils can ‘weight’ certain aspects to align with the priorities of their council. For example, RMA plan priorities, science programmes, long term plan priorities.

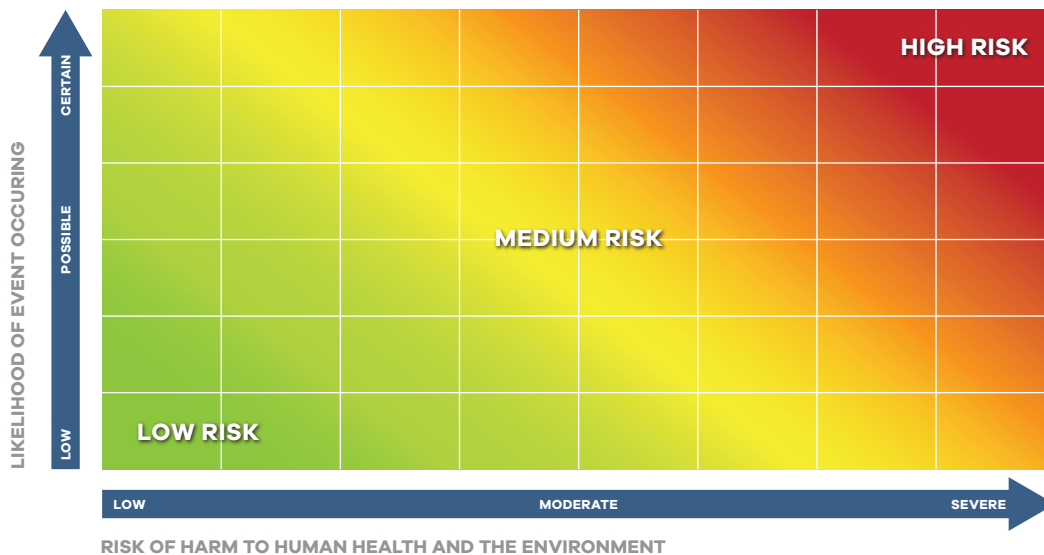


Figure 2: Generic Environmental Risk Matrix

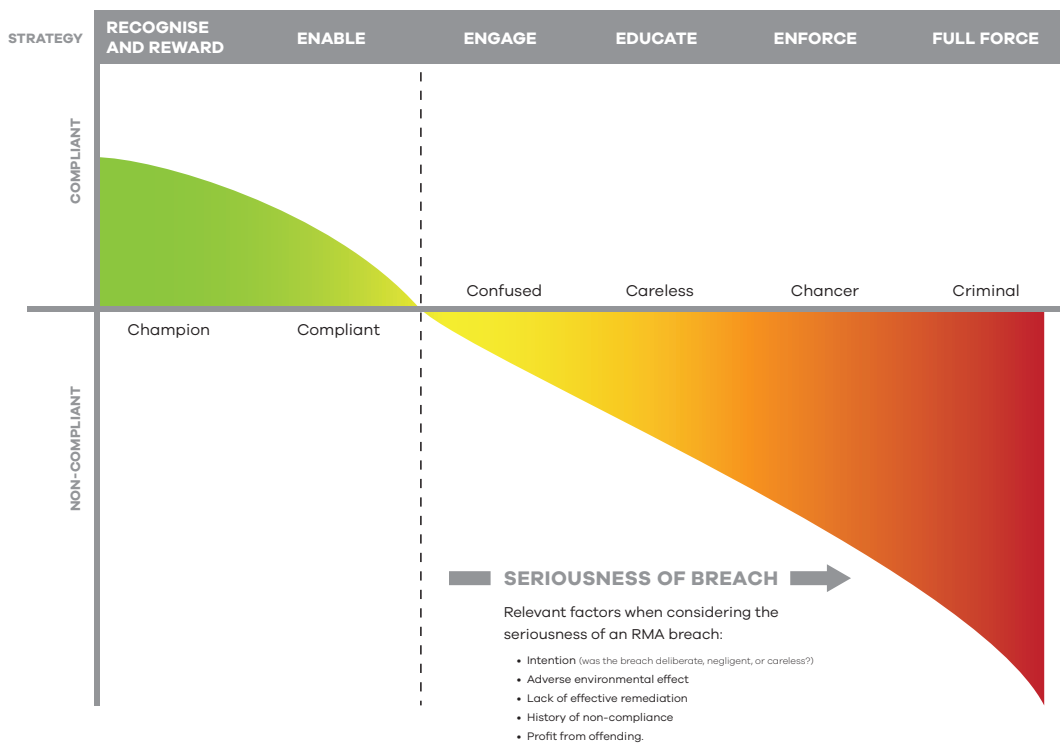
⁸ New Zealand Productivity Commission. Regulatory institutions and practices 2014

Influencing behaviour change

Environmental regulations and policies are designed to achieve positive environmental outcomes. However, that premise is based on an assumption that people will comply. To achieve the highest possible levels of compliance it is recommended that the Regional Sector takes

a comprehensive and strategic 'spectrum' or system-wide approach. This approach is designed to influence resource users by encouraging positive behaviour, while also providing graduated deterrence tools to those who choose not to comply.

The Mark II Model – Strategic compliance with the RMA.



The Mark II model has been developed within the Sector, specifically for the Sector, to demonstrate our system-wide approach to achieving positive behaviour change. This model goes further than the well-known '4Es' (enable, engage, educate and enforce). Importantly, the

model reflects the appropriateness of tailoring responses relative to the seriousness of the breach while ensuring that true champions, who are above and beyond mere compliance, are appropriately recognised and rewarded.

It is important for the Regional Sector to recognise that different components of this model may be carried out by different parts of an organisation, or may be carried out completely externally. For example, industry led awards for exemplar environmental work reflects the 'recognising champions' end of the spectrum. The awards do not necessarily have to be owned or even coordinated by local government. What is vital is that local government supports the awards and knows that that component of the model is in place in a meaningful way.

Regardless of who has responsibility for implementing each component of the model, **it is vital** that they are coordinated and a high level of communication is maintained between all stakeholders to ensure the full effect is being achieved.

The resource and emphasis put into any one component of this model will be determined by an individual council or part of the council responsible for ensuring compliance with a particular activity. It may be that councils put more emphasis on different components over time and the use of the model is dynamic and changes, but in a coordinated and planned fashion. Each of the 'E' components of the model are explained in more detail:

Enable – provide opportunities for regulated parties to be exposed to industry best practice and regulatory requirements. Link regulated parties with appropriate industry advisors. Promote examples of best practice.

Engage – consult with regulated parties, stakeholders and community on matters that may affect them. This will require maintaining relationships and communication until final outcomes have been reached. This will facilitate greater understanding of challenges and constraints, engender support and identify opportunities to work with others.

Educate – alert regulated parties to what is required to be compliant and where the onus lies to be compliant (i.e. with them!). Education should also be utilised to inform community and stakeholders about what regulations are in place around them, so they will better understand what is compliant and what is not.

Enforce – See 'dealing with non-compliance section'.



Council officers sampling a watercourse for contamination

Dealing with non-compliance

Non-compliant activities, or regulatory breaches, will be identified by the proactive and reactive monitoring carried out by the council. When non-compliant activities have been identified there needs to be an explicit response that is proportionate to the overall circumstances of the breach(es). The response should be clear and be able to be understood by the regulated party as well as the community. A significant challenge for the Regional Sector is striving to ensure that responses are not inconsistently applied.

“Enforcement of the rule of law will always be essential to encourage broader compliance. This is true in criminal, transport, taxation or environmental law. Without robust compliance, monitoring and enforcement (CME) practice, RMA plan rules and consent conditions are too often ignored. Voluntary compliance by the majority can be undermined by the minority who do not comply.”

‘Message from the Minister’

Hon David Parker – Minister for the Environment

Best Practice Guidelines for Compliance, Monitoring and Enforcement under the Resource Management Act 1991. Page 7.

In the Regional Sector context, and with our obligations to sustainable management, it is important to consider the use of formal enforcement action to remediate adverse environmental effects or limit environmental harm. It may be also appropriate to hold parties accountable for wrongdoing.

Taking any kind of enforcement action can have a profound impact on the subject of the action and cannot be taken lightly. Decisions on enforcement action must be based on reliable and correctly obtained information⁹ so an informed decision can be made. This information will not only determine whether a breach has occurred, but also how serious the breach is.



A council officer measuring a contamination scene

⁹ It is expected the regional sector will gather information in keeping with best practice detailed in *Basic Investigative Skills for Local Government* ISBN 978-0-9876661-9-2 and reiterated in the Ministry for the Environment CME best practice guidelines located at <http://www.mfe.govt.nz/publications/rma/best-practice-guidelines-compliance-monitoring-and-enforcement-under-resource>

Enforcement options

The Resource Management Act provides the formal enforcement tools that are available to the sector¹⁰. It may be that individual agencies also develop informal tools which can be effective when used appropriately. It will be important to ensure these informal tools are consistent with the principles and purpose of the Strategic Compliance Framework.

Enforcement tools can be categorised into two main functions. **Directive actions** are about looking forward and righting the wrong. **Punitive actions** are about looking back and holding people accountable for what they have done. These actions are described in more detail in Appendix 1.

“... where a regulated entity deliberately or persistently fails to comply, it is vital that the agency take swift and firm enforcement action. Failing to do this will:

- Unfairly advantage those who are non-compliant, as against those who comply voluntarily
- Undermine incentives for voluntary compliance
- Damage the agency’s credibility with the regulatory sector and the wider public, who will perceive that the agency allows deliberate offenders to ‘get away with it’
- Undermine the agency’s own internal morale”

CCCP – Achieving Compliance; A Guide for Compliance Agencies in New Zealand June 2011; page 181



A council officer providing scale for a photograph of unlawful earthworks

¹⁰ With the exception of formal warnings that were recognised through WRC v Wallace Corp, HC AK CRI 2006-4004-26

Decision making – factors to consider

The Resource Management Act has been described as a 'blunt' piece of legislation. Being strict liability legislation it is relatively easy to breach with widespread non-compliance occurring on a daily basis. At the same time it offers a range of enforcement tools for the regulator to use, including very significant maximum penalties for those who breach, both as an individual and as a corporate entity. What is absent from the legislation is any practical guidance to the regulator or the judiciary to determine what is a serious breach of the RMA.

The courts have established their own precedent¹¹ as to what factors it is appropriate for them to consider in RMA cases when determining the seriousness of a breach. These factors have now been widely adopted by the regional sector to guide its own enforcement decision making:

- What are the actual adverse effects that have occurred from the breach?
- What are the likely or potential adverse effects arising from the breach?
- What is the value or sensitivity of the environment affected by the breach?
- Was the receiving environment of particular significance to iwi?
- Was the breach a result of deliberate, negligent or careless behaviour?
- What degree of care was taken by the culpable party and how foreseeable was the incident?
- What efforts were made by the culpable party to remedy or mitigate the effects of the breach?
- How effective was that remediation or mitigation?
- Was any profit or benefit gained from the breach by the culpable party?
- Is this incident a repeat non-compliance by the culpable party or has previous

enforcement action been taken against the party for the same or similar breach?

- Has the culpable party failed to act on prior instructions, advice or notice?
- How does the unlawful activity align with the purposes and principles of the RMA? If prosecution is being considered then additional factors should be taken into account:
- What degree of specific deterrence is required in relation to the culpable party?
- What degree of general deterrence is required for the wider industry or community?
- How does the intended prosecution align with the Solicitor General's prosecution guidelines?
- Does the council have evidential sufficiency to pursue the matter to prosecution?
- Is it in the public interest to take a prosecution in this case?

Not every factor will be relevant every time. On occasion one single factor may be so overwhelmingly aggravating, or mitigating, that it may influence the ultimate decision. It is good practice to seek independent and experienced RMA prosecution legal advice when considering prosecution.

Though it is generally accepted that it is inappropriate to take a matrix or numerical approach to weighing and balancing the factors detailed above, some councils are using a matrix approach as an early 'filtering' system to gauge what breaches they will pursue. It is vital to remember that each case is unique and the individual circumstances need to be considered to achieve a fair and reasonable outcome.

An appropriate policy covering CME is an expectation of any contemporary regulator. All councils in the Sector should have such a policy.

¹¹ *Machinery Movers Limited -v- Auckland* [1994] 1 NZLR 492 & *Selwyn Mews Ltd -v- Auckland City Council* HC Auckland CRI -2003-404-159 and reiterated in the Ministry for the Environment CME best practice guidelines located at <http://www.mfe.govt.nz/publications/rma/best-practice-guidelines-compliance-monitoring-and-enforcement-under-resource>

Reporting and reviewing

Reporting, and particularly reviewing, have been a significant part of the CESIG's programme of work since 2016. Reviews have taken place in the form of a round of peer reviews of each council's compliance monitoring and enforcement practices and also the development and implementation of an inaugural CME annual metrics report.

Despite this focus, CESIG recommends that more should be done in this area to assist in informing a continuous cycle of improvement. One of the underpinning requirements of a comprehensive reporting and reviewing regime is a database that enables the required information to be collated in a robust and reliable manner.

An interesting, but unsurprising, finding of the initial CME report is that the regional sector is not well supported by its databases for this purpose. The intelligence that is taken from reliable data sets should inform the previously referred to compliance programmes and strategies. Any efforts made by the regional sector to standardise and strengthen CME databases will be appreciated by all.

Another of the metrics explored in the recent CME metrics report is what form of public, political and iwi facing reporting is carried out by each council as it relates to CME work. This was a particular area of variation identified by the metrics report. Some councils have very comprehensive annual publications, while others favour more graphically focused eye-catching short reports. Councils that have a formal legislative relationship with iwi are required by law to report CME functions. Some councils report publicly on the outcomes of prosecutions and some do not. This is clearly an area for the regional sector to work on to achieve a higher

level of consistency and CESIG recommends that the outcome of all successful RMA prosecutions are reported to general media. This will strengthen the communities confidence in what the Regional Sector is doing while encouraging general deterrence to those who may offend.

There should be a robust form of data collection on compliance monitoring and action for reporting purposes. It is important to be able to report to council, communities and those who are regulated on the level of compliance within our regions and what interventions have been used in the moderate and significant cases. An example of this may be regular reporting to council on response to complaints from the public and what enforcement action has been taken over a certain period. Reporting should be made publicly available and easily accessible in a variety of formats, so it is open to public scrutiny.

It is equally important that such reporting confirms that the council's compliance framework provides for transparency, clearly outlines a consistent, integrated and coordinated compliance monitoring programme and enables all resource users to have a clear understanding of what to expect in the event of contraventions of the RMA and applied enforcement action.

Another evolving area of reporting is somewhat more inwardly focused. Those responsible for setting policy and regulation, both at a regional and national level, are turning more to compliance and enforcement practitioners to help inform better regulation. This should be strongly encouraged and every opportunity taken for CME experts to work with our policy colleagues.

Systems should be developed to capture sufficient data to enable comprehensive analysis on a number of levels and inform and feed into the other functions of council, for example consenting, policy and science.

Analysis of this data and reporting on it will assist in:

- identifying trends in non-compliance
- using available resources more effectively
- targeting high risk activities
- establishing the frequency of compliance visits based on performance
- assessing performance/success of the compliance programme
- reviewing and refining the compliance programme
- informing policies, plan development and programmes
- responding to media enquiries
- preparing an annual compliance report
- completing central government environment reports.

Measuring

“Best practice: A robust compliance framework should include a reporting system that allows the organisation’s compliance state to be measured against explicit objectives, and trends to be tracked.”

Improving

“Best practice: An organisation should have a compliance culture of continuous systems improvement. The compliance systems within the organisation need to be reviewed periodically in the light of compliance performance information to drive ongoing change and improvement. There should be a compliance team work programme that sets out improvement projects as well as day-to-day business.”

Rebecca Kitteridge, March 2013; Review of Compliance at the Government Communications Security Bureau



A sediment laden tributary entering a river

Appendix 1

ENFORCEMENT TOOLS

Directive actions

Action	Description of action	Potential impacts on the liable party	When might this action be appropriate?
Letter of direction	To prevent further breaches, or to remedy or mitigate the effects of non-compliance, council can give a written direction for a party to take or cease a particular action.	Such a direction is not legally enforceable.	Letter of directions should be reserved for dealing with co-operative parties, who are motivated to follow the direction, and where the breach is of a minor nature, consistent with a breach that would perhaps also receive a formal warning.
Abatement notice	An abatement notice is a formal, written directive. It is drafted and served by council instructing an individual or company to cease an activity, prohibit them from commencing an activity or requiring them to do something. The form, content and scope of an abatement notice are prescribed in statute.	A direction given through an abatement notice is legally enforceable. To breach an abatement notice is to commit an offence against the RMA and make liable parties open to punitive actions.	An abatement notice may be appropriate any time that there is a risk of further breaches of environmental regulation or remediation or mitigation is required as a result of non-compliance.
Enforcement order	Like an abatement notice an enforcement order can direct a party to take particular action. However, an application for an enforcement order must be made to the Environment Court or during the course of a RMA prosecution.	A direction given through an enforcement order is legally enforceable. To breach an enforcement order is to commit an offence against the RMA and make liable parties open to punitive actions.	An application for an enforcement order may be appropriate any time there is a risk of further breaches of environmental regulation, or remediation or mitigation is required as a result of non-compliance.

Punitive actions

Action	Description of action	Potential impacts on the liable party	When might this action be appropriate?
Formal warning	A formal warning is documented by way of a letter to a culpable party informing them that an offence against the RMA has been committed, and that they are liable.	No further action will be taken in respect of that breach. However, the warning forms part of a history of non-compliance and will be considered if there are future incidents of non-compliance.	A formal warning may be given when: <ul style="list-style-type: none"> • an administrative, minor or technical breach has occurred; and • the environmental effect, or potential effect, is minor or trivial in nature; and • the subject does not have a history of non-compliance; and • the matter is one which can be quickly and simply put right; or • a written warning would be appropriate in the circumstances.
Infringement notice	An infringement notice is a written notice which requires the payment of a fine. The amount of the fine is set in law. Depending on the breach the fine will be between \$300 and \$1000.	No further action will be taken in respect of that breach. However, the infringement notice forms part of the history of non-compliance and will be considered if there are future incidents of non-compliance.	An infringement notice may be issued when: <ul style="list-style-type: none"> • there is prima facie (on the face of it) evidence of a legislative breach; and • a one-off or isolated legislative breach has occurred which is of minor impact and which can be remedied easily; and • where an infringement notice is considered to be a sufficient deterrent.
Prosecution	A prosecution is a process taken through the criminal courts to establish guilt or innocence and, if appropriate, the court will impose sanctions. RMA matters are heard by a District Court Judge who is also an Environment Judge. All criminal evidential rules and standards must be met in a RMA prosecution. Most RMA offences carry a penalty of up to two years imprisonment, or \$300,000 fine for a 'natural person' or fine up to \$600,000 for other than a 'natural person' such as a company.	A successful prosecution will generally result in a conviction and a penalty imposed. A prosecution forms part of the history of non-compliance and will be considered if there are future incidents of non-compliance.	A prosecution may be considered appropriate when the factors listed in this policy indicate that the matter is sufficiently serious to warrant the intervention of the criminal law.



CESIG

Compliance and Enforcement
Special Interest Group

*Tūtohu me te Ūruhitanga
Te Rōpu Aro Motuhake*

8.3. Territorial Local Authority Wastewater Treatment Plant Compliance Report

Prepared for:	Regulatory Committee
Report No.	EMO1872
Activity:	Regulatory: Consents and Compliance
Author:	Richard Saunders, General Manager Regulatory
Endorsed by:	Richard Saunders, General Manager Regulatory
Date:	2 nd March 2020

PURPOSE

- [1] The purpose of this report is to update Council on the current state of Territorial Local Authority Wastewater Treatment Plant compliance.

EXECUTIVE SUMMARY

- [2] Following a complaint from a member of the public in late 2019 ORC staff completed compliance audits on five wastewater treatment plants in the Clutha District. At the conclusion of these audits it was decided to undertake compliance audits of all wastewater treatment plants operated by territorial local authorities in the Otago region.
- [3] This report provides a summary of the results of the audits carried out and sets out the next steps for ensuring improved compliance with the consents issued for these activities.

RECOMMENDATION

That the Council:

- 1) **Receives** this report.
- 2) **Notes** that the investigation into significant non-compliances identified at the Clutha District Council wastewater treatment plants is continuing.
- 3) **Notes** that the compliance team will complete an annual report for the Regulatory Committee on the compliance status of wastewater treatment plants in the Otago region.

BACKGROUND

- [4] ORC monitors compliance on 30 Wastewater Treatment Plants (WWTP) operated by Territorial Local Authorities (TLA) within the region. Table 1 shows the number of plants operated by each TLA and the total number of consents held for those plants.

Territorial Local Authority	WWTP Operated	Consents Held
Central Otago District Council (CODC)	7	12
Clutha District Council (CDC)	11	12
Dunedin City Council (DCC)	5	9

Queenstown Lakes District Council (QLDC)	4	4
Waitaki District Council (WDC)	3	6
Total	30	43

Table 1: Number of Wastewater Treatment Plants operated by Territorial Local Authorities in the Otago region.

- [5] The age and expiry dates for the various resource consents issued for WWTP varies across the region. There is also a variation in the conditions that are placed on the resource consents. In general, WWTP have the following types of consents for on-site activities;
- Discharge to air – odour
 - Discharge to water
 - Discharge to Land
- [6] Following a number of compliance issues identified at CDC WWTP in late 2019 a decision was made to complete a full audit on all WWTP consents early in 2020. This was to ensure ORC had a good understanding of the current compliance status of all WWTP, and to identify any significant environmental risks that exist.
- [7] Audits including site inspections were carried out on any WWTP that had not been subject to a full audit in the preceding 6 months. TLA staff were advised of the upcoming audits and have been accommodating of ORC staff on short notice.

DISCUSSION

- [8] Following the completion of an audit, each consent is given a grade ranging from full compliance to significant non-compliance. Grades are calculated using a number of factors including but not limited to water quality readings, submission of required operations manuals, reporting of non-compliances and submission of annual reports. Table 2 identifies the results of the recent audit inspections of WWTP.

TLA	Full Compliance	Low risk Non-Compliance	Moderate Non-Compliance	Significant Non-Compliance
CDC				12
CODC	1	1	4	6
DCC	2	3	4	
QLDC	1 (TBC)		1	2
WDC	2	1	3	

Table 2: Status of consent compliance at Wastewater Treatment Plants

- [9] When assessing a consent there are two types of non-compliance that can occur. The first are process related where the consent holder is not complying with the requirements to submit reports or report on specific activities. The second type are physical non-compliances where the plant is not operating in accordance with the

consent and subsequent discharges do not comply with limits set in the consent conditions.

- [10] While process related breaches may not have immediate environmental impacts, they create a risk as ORC is not able to assess the operation of the plant (rather than the physical plant) for compliance. For this reason, ongoing process breaches may be classified as significant non-compliances.
- [11] The following is a guide used by officers when determining the compliance grade.
- a. **FULL COMPLIANCE** – At the time of the audit/inspection there was full compliance with all relevant consent conditions, plan rules, regulations and national environmental standards.
 - b. **LOW RISK NON-COMPLIANCE**. Compliance was achieved with most of the relevant consent conditions, plan rules, regulations and national environmental standards. Non-compliance carries a low risk of adverse environmental effects or is technical in nature (eg failure to submit a monitoring report).
 - c. **MODERATE NON-COMPLIANCE**. At the time of the audit/inspection there was Non-compliance with some of the relevant consent conditions, plan rules, regulations and national environmental standards, where there are some environmental consequences and/or there is a moderate risk of adverse environmental effects.
 - d. **SIGNIFICANT NON-COMPLIANCE**. At the time of the audit/inspection there was non-compliance with many of the relevant consent conditions, plan rules, regulations and national environmental standards, where there are significant environmental consequences and/or a high risk of adverse environmental effects.
 - e. **CONSENT NOT YET EXERCISED**. Consent is current, but consent holder is yet to exercise the consent, or has not yet taken sufficient action to give effect to the consent.
- [12] Each audit report provided to a TLA at the end of the audit process will have a range of corrective actions requiring attention. The timeframes to complete these actions will vary from immediate to a number of months depending on the potential environmental impacts of the issues and the time required to complete work required to achieve compliance.
- [13] ORC staff now work with TLA staff to regularly inspect plants and provide audit reports highlighting corrective actions. All TLAs have engaged with this process in recent months which has been positive.

Clutha District Council

- [14] CDC operate 11 WWTP with a total of 12 consents. Following a complaint from a member of the public, investigations were undertaken on five WWTP in late 2019.
- [15] As a result of the onsite inspections of five WWTP, a formal investigation has commenced. This investigation centres on the operations of treatment plants at Lawrence, Tapanui, Kaka Point, Owaka and Sterling. Staff identified significant non-

compliances at each of these sites. Following the site visits, CDC have begun a programme of work to achieve compliance at these treatment plants. This work is ongoing. In addition to physical works, CDC is reviewing its internal operations to ensure appropriate processes are in place to maintain compliance.

- [16] After completion of the audits on the five WWTP that were initially the subject of the public complaint, ORC has completed inspections on the remaining six treatment plants operated by CDC. Each of these treatment plants has also been graded 'significant non-compliance' due to issues ranging from an absence of reporting required by consents to a lack of basic maintenance and operational oversight at the sites resulting in environmental impacts.
- [17] Overall, the 11 CDC treatment plants are described as poorly maintained. This has resulted in several breaches of existing resource consents and a subsequent increase in environmental impacts. ORC staff have commenced work with CDC staff to ensure that the appropriate actions are taken to achieve compliance. This will involve regular meetings to monitor progress. The investigation into the initial five non-compliant sites is continuing.

Central Otago District Council

- [18] CODC operate 7 WWTP sites holding a total of 12 resource consents. Each of the 7 sites was subject to an audit and inspection in early 2020. Overall, the assessment of the plants was that they were in functional condition although issues were identified at each of the sites.
- [19] The significant non-compliances noted on CODC WWTP were largely due to a lack of adequate processes to ensure reporting is carried out in accordance with resource consent requirements. This reporting is an important part of the consent monitoring process as it will help with the early identification of issues that may result in environmental impacts.
- [20] A number of actions have been set out in the audit reports and staff will continue to meet with CODC to ensure compliance is achieved. At this stage no formal enforcement action has been taken.

Dunedin City Council

- [21] DCC operate five WWPT holding a total of nine resource consents. No significant non-compliances were noted during recent audits however there were moderate or low-risk issues identified at most sites.
- [22] Reporting provided as part of resource consent conditions has noted minor exceedances of consented limits at some sites. Monitoring of the three smaller WWTP sites at Middlemarch, Seacliff and Warrington will continue to ensure they are maintained adequately and continue to achieve compliance with resource consent conditions.

Queenstown Lakes District Council

- [23] QLDC operates four WWTP holding four resource consents. Two of the WWTP, Shotover and Wanaka are assessed to be operating in accordance with their consents. Moderate non-compliance was recorded at Wanaka but follow up actions have already been completed by QLDC. The final audit result for Shotover is still to be determined but at the time of writing staff believe that this site will achieve full compliance.
- [24] Hawea treatment plan was subject to audit and investigation in June 2019. A transitional plan was agreed to by the Acting General Manager Regulatory and ongoing monitoring of this plan continues. Water sampling of the Hawea river upstream and downstream of the WWTP continues and to date does not indicate an influence from the plant. Areas of concern at this plant continue to be nitrogen discharge and the use of the trench application field in accordance with the resource consent.
- [25] Cardrona WWTP is subject to an abatement notice issued early in 2020. This is due to ongoing non-compliance with effluent discharge limits set in the consent. QLDC has confirmed a programme of work is underway to address this non-compliance. These actions involved significant capital investment and are being undertaken in the first half of 2020. QLDC is also investigating a new WWTP for Cardrona to replace the existing infrastructure.

Waitaki District Council

- [26] WDC operates three WWTP with a total of six resource consents. Overall, WDC treatment plants are being adequately managed and maintained with no significant non-compliances noted, however, corrective actions have been identified.
- [27] Oamaru WWTP was assessed as having moderate non-compliance due to process issues relating to reporting to ORC and a number of minor maintenance issues such as ponding in disposal fields.
- [28] Palmerston WWTP was also assessed as having moderate non-compliance due to minor exceedances of consented levels and failure to report as required by the resource consent.
- [29] Moeraki WWTP has recently commissioned a new discharge to land facility which has resulted in full compliance for this plant.

OPTIONS

- [30] As this is a noting report there are no options.

CONSIDERATIONS

Policy Considerations

- [31] There are no policy considerations.

Financial Considerations

- [32] There are no financial considerations.

Significance and Engagement

[33] As there is no decision this criterion does not apply.

Legislative Considerations

[34] Compliance Monitoring is a mandatory function under the Resource Management Act.

Risk Considerations

[35] There are environmental, legal, social and reputational risks associated with compliance monitoring activities. Wastewater treatment plants present a high environmental risk where they are not compliant with the conditions of consent. For this reason, regular monitoring to confirm compliance should occur.

NEXT STEPS

[36] ORC staff will continue to work with TLA staff to ensure compliance with conditions of the appropriate resource consents is achieved. Each non-compliance identified will be assessed to determine the appropriate enforcement response.

[37] The Regulatory Committee will receive an annual report on WWTP compliance as either a standalone report or as part of an annual compliance monitoring report.

ATTACHMENTS

Nil