

Compliance Monitoring, Incident Response and Enforcement Guidelines



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Introduction

Environment Canterbury has a key role in facilitating sustainable development in the Canterbury region. One of the ways the regional council does this, as required by the Resource Management Act 1991 (RMA), is through managing water, air, and land resource use through plans, resource consents and a range of other statutory instruments. Complying with these regulations and requirements is everybody's responsibility. Environment Canterbury's approach is to work with individuals, industry and the community to achieve voluntary compliance wherever possible and to take enforcement action when required.

In Canterbury, the delivery of RMA compliance monitoring and enforcement activities is done within a wider strategic context set out through the Long-Term Plan and the Council's other plans and strategies, such as the *Canterbury Water Management Strategy (CWMS)*, *Zone Implementation Programmes*, and the annual *Compliance Monitoring and Enforcement Priorities*.

This document provides high level guidance to staff, and the wider community, on the Council's approach to RMA compliance monitoring, incident response and enforcement. It is also consistent with the *Regional Sector Strategic Compliance Framework 2016-18* (which focuses on environmental risk).

Purpose

The purpose of this guideline document is to outline the Council's strategic approach to RMA compliance monitoring, incident response and enforcement. This guideline is supplemented, where necessary, by other documents, which set out in greater detail the specific procedures and standards for carrying out compliance monitoring, incident response and enforcement activities.

Strategic compliance approach

Compliance monitoring and enforcement are key tools to assist in achieving the sustainable management of water, air and land resources. The figure below illustrates that the Council may target the use of these tools at three levels: Individual, strategic, or to inform the guideline and planning cycle.

Activities to be monitored, investigated and/or responded to are done so based on a prioritised and risk-based framework informed by factors such as environmental risk, activity, sector, and compliance history.



Over the last few years:

1. The number of resource consents has increased to around 24,000 region-wide;
2. The nature and profile of consent monitoring is changing, with increasing levels of industry and on-farm audited self-management;
3. The Council has implemented a Zone Delivery approach in response to community desire for local ownership of issues and solutions, including the monitoring of compliance with environmental compliance monitoring regulation and regional plans;
4. There is a need to more effectively target compliance activities to deliver on national, regional, and local priorities, as per the Compliance, Monitoring and Enforcement Priorities.

Environment Canterbury Strategic Compliance Framework

This document sits within a series of guideline (framework) documents as set out below. This guideline and related documents apply to all officers who undertake compliance monitoring, incident response or enforcement.

Principles

Environment Canterbury will carry out compliance monitoring and enforcement in a manner that is consistent with the requirements of the RMA. The following principles underpin our compliance approach:

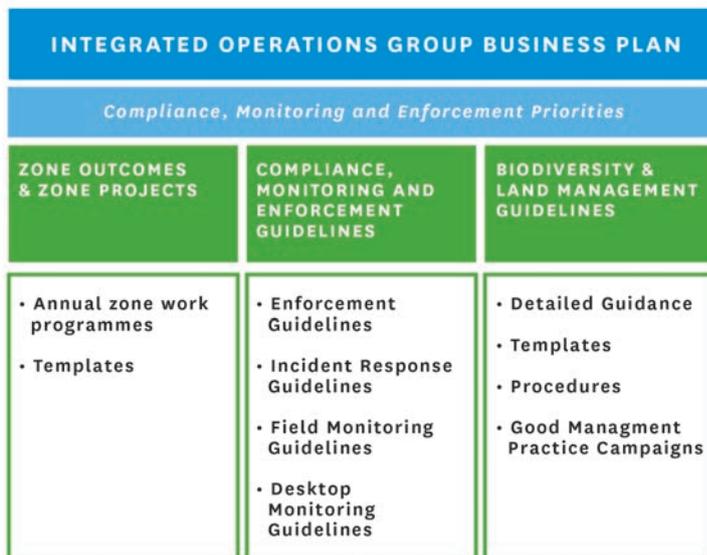


Figure 1 Zone Delivery Strategy

- **Safety, health and wellbeing** – This is the first consideration in everything we do. We do this by providing an environment that all our employees, contractors and visitors can feel safe and at ease in. ‘Zero Harm’ is our core value; this encompasses harm both physical and mental.
- **Risk based and prioritised** – We will focus on the most important issues and problems, to achieve the best environmental and community outcomes. We will target our regulatory interventions at poor performers and illegal activities that pose the greatest risk to the environment.
- **Fair, reasonable and proportional approach** – We will apply a range of regulatory interventions and actions appropriate to the situation. This could range from educating users, promoting and encouraging compliance, using enforcement tools to obtain necessary action or providing deterrence through appropriate penalties. We will apply the right intervention for the right problem at the right time.
- **Consistency of process** – Our actions will be consistent with the legislation. We will ensure that our staff have the necessary skills and are appropriately trained, and that there are effective systems and policies in place to support them.
- **Transparent** – We will provide clear information and explanation to the community on the standards and requirements for compliance. We will ensure that the community has access to information, about environmental performance and the actions taken by us to address environmental issues and non-compliance.
- **Evidence-based, informed** – We will use an evidence-based approach to our decision-making.
- **Lawful, ethical and accountable** – We will conduct ourselves lawfully and impartially and in accordance with these principles and relevant policies and guidance.
- **Responsive and effective** – We will use a range of statutory and non-statutory interventions and action to achieve outcomes.
- **Integrated work programmes** – We will integrate national, regional and zone priorities to deliver on agreed zone and community-wide outcomes.
- **Communication** – We will communicate 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 a non-compliance or a breach.

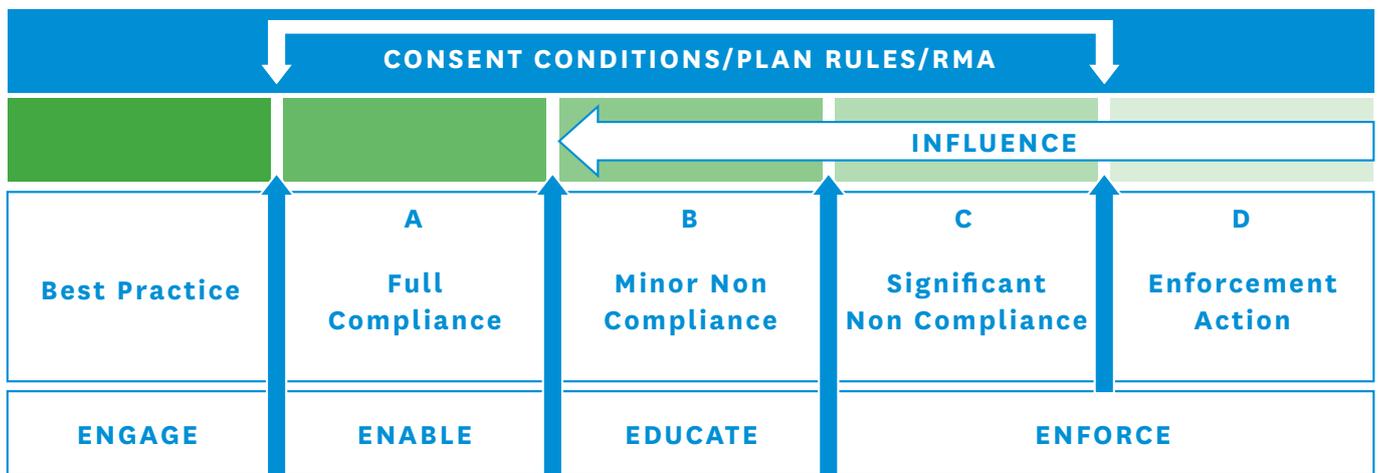
How we work

- **Tuia:** We will maintain our relationship and responsiveness to ngā Papatipu Rūnanga values and concerns
- **Collaborative** – We will work with resource users, our community and stakeholders to ensure the best compliance outcome for our region.

Regulatory spectrum

Achieving environmental and community outcomes is a shared responsibility between Government, resource users, industry and our communities. Our approach to compliance, whether it is monitoring a resource consent or responding to a complaint, is to work with individuals, landowners and industry towards voluntary compliance, and where needed, apply appropriate interventions to address non-compliance, achieve behaviour change and provide deterrence.

We operate across the full regulatory spectrum, which has the following key components – engage, educate, enable and enforce as described below. These are not exclusive of each other but work together and may be carried out by other parts of the organisation.



Engage – This includes consulting with resource users, Papatipu Rūnanga, stakeholders and community on matters that may affect them. Key to this are relationships and communication throughout the process. Key to this engagement are Environment Canterbury’s interactions with Zone Committees and our Zone Delivery programmes.

Educate – This includes informing resource users of what compliance means, and what outcomes are required to achieve compliance. Wherever possible this should be achieved as part of an agreed action plan. Education of communities and stakeholders is also important, so there is a good understanding about what is compliant and how this links to achieving outcomes.

Enable – This is providing opportunities for resource users to be informed regarding industry best practice, help and assistance that is available to them. This includes linking people with industry advisors who can provide assistance. It also includes the promotion and support of audited self-management (e.g. Farm Environment Plans).

Enforce – When breaches of regulations or non-compliances are identified, various enforcement tools are used to bring about positive behaviour change, obtain necessary action, and provide deterrence through appropriate penalties. Enforcement outcomes should be proportional to the seriousness of the adverse environmental effect, the individual circumstances of the breach, culpability of the parties and the significance to the community.

RMA compliance monitoring, incident response and enforcement

Compliance, monitoring, incident response and enforcement activities are delivered from within the Operations Group. Where activities require resource consent these are monitored on a user-pays basis and prioritised according to the risk assessment detailed below. Incident response and enforcement activities are primarily driven by complaints made to the Incident Response Line. As staff responsible for these activities work in various sections, integrated regional and zone work programmes have been prepared based on a prioritised approach.

These work programmes focus on:

- Resource consents
- Certificates of compliance and other RMA authorisations
- Permitted activity rules
- Compliance with RMA provisions
- National regulations.

Integrated regional and zone work programmes

An integrated compliance monitoring and incident response work programme has been developed for each zone based on a prioritised approach (see Appendices 1 and 2 for outline of risk prioritisation models). These work programmes respond to national, regional and zone priorities and are presented to, and reported on, at Zone Committees as part of wider zone work programmes.

For example, work programmes may include:

- High risk consents and unauthorised activities
- Stock in waterways
- Sensitive areas identified by Zone Committees and Papatipu Rūnanga
- Water use
- Discharges to water
- Farm environment plans.

When developing regional and zone work programmes, consideration is given to the most appropriate compliance monitoring method, including desktop monitoring, site visits, advocacy and advice visits, audited self-management, industry monitoring, pro-active campaigns, such as the ‘whole of farm approach’.

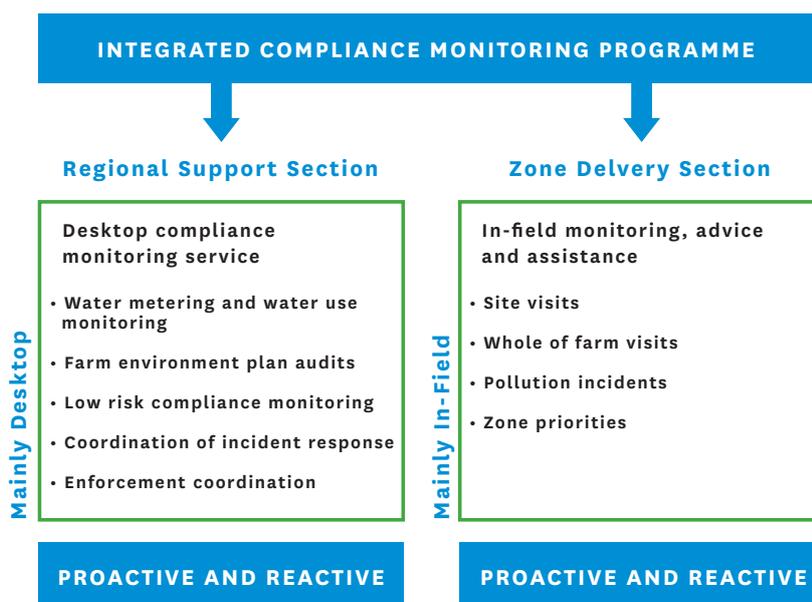


Figure 2 Conceptual approach to integrated Compliance Monitoring Programme

Grading

When a consent has been monitored, or a pollution event investigated, the activity as a whole is graded as either:

- A.** Complies
- B.** Technical or administrative 'non-compliance' however no more than minor environmental effect
- C.** Compliance issues with significant actual or potential adverse environmental effect or repeated technical non-compliance (B)
- D.** Serious compliance issues with major actual or potential adverse environmental effect.

A grading of 'C' or 'D' constitutes a repeated and/or significant non-compliance with one or more consent conditions, or breach of the regional rules. This is not acceptable to Environment Canterbury or the wider community and it is important the Council responds to bring positive behaviour change. The Council will ensure all Grade C and D compliance issues have an agreed action plan in place, to ensure a consent condition will be complied with, or the resource user will cease the unauthorised activity.

Investigations and Enforcement

On receiving any report of a significant non-compliance, an immediate assessment will be undertaken to determine the seriousness of the adverse effects, and the urgency in addressing these effects. Where there are significant adverse effects, a priority (after considering the health and safety of our staff) would be given to avoiding, remedying or mitigating those effects. In cases of imminent, serious and/or irreversible environmental harm, it may also be necessary to resort to immediate enforcement tools such as an interim enforcement order or an abatement notice.

Following this, evidence will be collected, which will be assessed to determine if enforcement action is required (see Appendix 4 for a list of enforcement tools and Appendix 5 for matters considered and the process for commencing enforcement action).

Communication

We will communicate with all relevant parties to ensure there is full understanding of the situation, responsibilities and action required.

A compliance monitoring report (CMR) provides detailed documentation, and grades compliance with individual conditions of a resource consent, as determined by the monitoring officer. Where compliance issues are identified, the compliance monitoring report is a written notice of this, and may require certain actions to 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.

Following the investigation of a pollution event, the alleged offender will be advised, either verbally or in writing, of the outcome and any actions that are required in order to achieve compliance. We will also communicate with other parties affected by the pollution event, including the complainant.

Where serious breaches of the RMA are identified (whether related to a resource consent or unauthorised activity) Environment Canterbury will, where possible, provide interim advice about an investigation in response to the breach. The alleged offender will be advised in writing of the outcome of this investigation as soon as a decision has been made.

Environment Canterbury operates a 'no surprises policy' and as such if a significant non-compliance occurs, we will address the correspondence to the most senior management position within the organisation involved. Copies will also be sent to the most senior person at the site and to the regular point of contact.

Reporting

Regional and zone specific reports documenting compliance monitoring, incident response and enforcement actions against region and zone targets will be prepared every year.

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, the current Fees and Charges 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.

Review

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

Glossary of terms

Audited Self-Management

Is an overarching term that describes a tool by which activities are undertaken to achieve specified outcomes and progress to achieving those outcomes are in turn measured and reported on by way of an audit.

Best Practice

Is a method, or technique, that has been generally accepted as superior to any alternatives because it produces results that are superior to those achieved by other means or because it has become a standard way of doing things, e.g., a standard way of complying with legal or ethical requirements.

Compliance Monitoring

Is a key component of any effective environmental compliance and enforcement programme. It encompasses all of the means used to make a compliance determination. In this document, it refers to the monitoring of resource consents and permitted activities under the RMA and regional plans, to assess compliance.

Complaint

Any details provided to Environment Canterbury alleging a breach of the RMA – usually reported to the 24 hour Incident Response Line.

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.

Canterbury Water Management Strategy

The Canterbury Water Management Strategy puts finding solutions for freshwater management in the hands of the community, with support from councils and Ngāi Tahu. The strategy sets out freshwater goals and targets to deliver sustainable environmental, social, cultural and economic benefits from our water resource. Ten community-led water zone committees have been established to develop freshwater recommendations to ensure council plans give effect to these goals.

Farm Environment Plan

A tool for farmers to recognise key on-farm environmental risks that relate to water quality and can have an effect on cultural values (māhinga kai) and biodiversity; and set out a programme to manage those risks through the implementation of good management practices.

Incident Response

Response to either an incident or complaint relating to a suspected breach of the Resource Management Act 1991. A complaint is defined as information received concerning an alleged activity, whereas an incident is a confirmed breach of the Resource Management Act requiring some intervention by the organisation.

Long-Term Plan

The Long-Term Plan sets out the 10-year plan and the next 3-years of planservice priorities, work programmes and resource requirements, such as expenditure and funding.

Papatipu Rūnanga representative bodies of the whānau and hapū of traditional marae-based communities, each with their own area/rohe. There are 10 Ngāi Tahu Papatipu Rūnanga we work with in the Canterbury region. Also referred to as mana whenua.

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.

Plans

Within this document, the plans referred to include the Land and Water Regional Plan, Sub-Regional Plans, Canterbury Air Regional Plan and Coastal Plan.

Pollution Event

Is the capture of an incident or complaint on the pollution events database.

Regional Committee

The Canterbury Water Regional Committee is made up of representatives from Environment Canterbury, territorial authorities, rūnunga, Ngāi Tahu, and one member from each of the zone committees. The committee was established to address regionally significant water management issues such as infrastructure and environmental enhancement projects.

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.

Resource User

An individual or company using a resource whether it is authorised or not.

RMA - Resource Management Act 1991

Zone Committee

Water zone committees develop actions and tactics to deliver on the 10 targets of the Canterbury Water Management Strategy in their zone and record and recommend them to Council through the Zone Implementation Programmes (ZIPs). They then oversee and champion the implementation of these recommendations by Environment Canterbury and other Canterbury Water Management Strategy partners. Water zone committees are made up of people with a wide range of interests in water who have a strong connection to the zone.

Zone Delivery Section/Teams

A team/section with a range of functional roles that have previously been working with individuals, or groups, to inform, encourage or require action to achieve a variety of sustainable outcomes.

Zone Implementation Program

The document of actions and tactics to deliver on the 10 targets of the Canterbury Water Management Strategy.

Appendices:

- **Appendix 1** Risk based approach to compliance monitoring
- **Appendix 2** Risk prioritisation of pollution events
- **Appendix 3** Compliance assessment grading for consent monitoring, farm environment plans (FEP) and pollution events
- **Appendix 4** Enforcement options
- **Appendix 5** Matters considered prior to commencing enforcement action
- **Appendix 6** Offences under the Resource Management Act
- **Appendix 7** Glossary of terms

Appendix 1 – Risk based approach to compliance monitoring

When an application for a resource consent is assessed, the risk rating of the activity is determined using the five factors listed below. Throughout the life of the consent this risk rating may be reviewed, based on changing regional and zone priorities. The risk rating score for a consent can be used to help prioritise compliance monitoring inspections for maximum effectiveness. Risk is defined as the probability that an objective will not be achieved. In this case, we are trying to manage the risk that environmental harm and degradation will occur.

Every proposed and consented activity will have a different risk associated with it, and that needs to be understood so that an effective consenting process and monitoring programme can be put in place.

To understand and manage this risk, it must be quantified. This will enable comparison of risk between different activities, and prioritisation of effort to reduce that risk to an acceptable level. Risk in this case can be calculated by working out the magnitude of potential damage and the probability it will occur.

The five factors are: Scale, affected environment, mechanism of damage, compliance history and quality management.

Scale or volume of activity – Large scale activities have the potential to cause more harm than small activities.

For example

- Discharge consents – how much is being discharged?
- Land use consents – what is the size of the area affected? How much is being excavated?
- Water use consents – what is the volume of the take, the rate of take and return period?

Affected environment – The environment within which an activity has a direct, or indirect, effect on will have a given level of vulnerability to environmental harm occurring. Therefore, we need to consider the location of the activity, including receiving environment or source.

For example

- Is it in an over allocated zone or catchment?
- Is it in a clean air shed?
- Is it a sensitive catchment?
- Is there any downstream use? It could range from little or no downstream use, or some use a great distance downstream to use for drinking water supply, contact recreation and/or food gathering?
- What are the in-stream values? Is there a lack of biota or is the environment impoverished, homogenous or ubiquitous, or is the environment characterised by rare, threatened or endangered species?
- Ngāi Tahu values; silent file, sensitive area, mahinga kai site, does it affect marae / papakāinga drinking water and/or were strong concerns expressed by Papatipu Rūnanga through the consenting process.
- Public interest (identified by CWMS zone committees in zone implementation plans).

Mechanism of damage – The toxicity, persistence and intensity of the substance that is being taken or discharged or removed. For example:

- Discharge consents – are the contaminants being discharged to land, water or air?
- Land use consents – is the material being extracted is it renewable?
- Water use consents – are there hydraulic connections to other bores and/or surface water. Are there low flow restrictions?

Probability of occurrence will be determined by several factors, including:

Compliance history – People with a history of poor compliance are more likely to allow environmental harm to occur.

- This factor can also be used over the lifetime monitoring of the consent to adjust the risk and as such the monitoring frequency if a consent holder's compliance history improves, or gets worse.

Quality management – Consent holders with a well-developed audited self-monitoring programmes who undertake good management practices are less likely to allow environmental harm to occur. For example:

- Water take consents – water measurement device, telemetry and daily data upload to Hilltop.
- Discharge consents – SCADA (supervisory control and data acquisition) management, automatic fail safe devices, precision variable rate irrigators.
- Land use consents – operating in accordance with the erosion and sediment control guidelines.
- Nutrient consents – an audited Farm Environment Plan in place with an 'A' audit grade.

RISK
= Likelihood something unacceptable will happen
= Effect of failure x probability that failure will occur
= (scale + affected environment + mechanism of damage) x (compliance history + quality management)

The overall risk score determines the approximate site visit frequency.

		Compliance History + Quality Management				
		Probability				
Scale + Affected Environment + Mechanism of Damage	Effect	2	3	4	5	6
	9	18	27	36	45	54
	8	16	24	32	40	48
	7	14	21	28	35	42
	6	12	18	24	30	36
	5	10	15	20	25	30
	4	8	12	16	20	24
3	6	9	12	15	18	

Scores	Rating	Default Inspection Frequency
36-54	High	Quarterly
27-35	Med-High	Six monthly
18-25	Medium	Annually
12-16	Med-Low	Two yearly
6-10	Low	No default inspections

NB: These scores relate to the table above.

Every consent in the region has a risk score and an approximate site visit frequency. Zone teams then assess the consents in their area and develop a monitoring programme based on national, regional and zone priorities. This may mean that some lower risk consents are elevated in priority for monitoring. However, regardless all 'very high' and 'high' risk consents should be monitored annually.

Appendix 2 – Risk prioritisation of pollution events

The focus on incident response is:

- The safety and health of staff attending the incident. Staff will not attend incidents after dark unless the incident is deemed an emergency, nor will they attend incidents at previously identified high-risk addresses alone. In these cases, the decision to attend will be made in consultation with the back-up officer who will accompany the staff member should attendance be considered necessary;
- Avoiding, remedying or mitigating any adverse effect of the activities on the environment; and
- The investigation of the incident to determine culpability of any offending party.

Prioritisation is an essential component of enforcement work because investigation and prosecution resources are finite and, as a general rule, a regulator needs to consider how it can best devote its resources with very serious cases taking precedence over less serious cases and those cases where common sense dictates that a less formal response is appropriate.

Major/D	Immediate response by available staff irrespective of Zone.	<ul style="list-style-type: none"> • Major incidents which have a serious or potentially serious adverse effect on the environment (discharges to surface water (chemical, biological) in large volumes – those with the ability to change the visual or physical nature of the receiving environment permanently or semi permanently); • Major incidents in which the regional council's attendance has been requested by the emergency services; and • Discharges in which the regional council have received multiple complaints concerning the same location or address and where there is a high adverse effect on the environment with a significant or potentially significant adverse effect (sensitive locations = public places, schools, hospitals).
Moderate/C	Directly assigned to an Incident Response or Resource Management Officer (if the site is consented).	<ul style="list-style-type: none"> • An incident that may have a significant or potentially significant adverse effect on the environment. However, the 'immediate' categorisation is not required as the evidence of the discharge will not be lost or compromised; • Incidents reported where the location is rural and it is not possible to respond within the immediate timeframe; • Incidents reported which are outside the 'Immediate' category; • Matters of national importance as defined by S.6 RMA; preservation of coastal marine area, wetlands, lakes and rivers and their margins (inappropriate use and development); • Matters of national importance as defined by S.6 RMA; in respect to Maori and their cultural traditions with their ancestral lands, water, sites, waahi tapu and other taonga; • Any reported incident with a moderate effect or potentially moderate effect on the environment – but no permanent or long-term environmental effect; • Incidents involving the attendance of a third party organisation (Police, Territorial Local Authorities's Department of Labour (DoL) whereby a multi-agency approach is considered beneficial to incident resolution; • Incidents which have been previously reported and are of an ongoing concern to either the complainant or organisation. An agreed number of complaints would trigger the need for the incident to be managed by a Lead Case Officer; and • Incidents graded or re-graded by the respective Zone Manager or Regional Leader Investigations as warranting a response within the timeframe.
Minor/B	Electronically assigned to respective Zone Team folder for assignment to officer as and when available.	<ul style="list-style-type: none"> • Incidents which are not of a serious or moderate environmental impact but where a site visit may be considered necessary to assist in determining a resolution; • Incidents which are outside the 'soon' category, and whereby delay in site attendance will not have a serious adverse effect on the environment; • Incidents which an officer is not available to attend, but in which a site visit is necessary due to the on-going nature of the incident (a re-grading of the incident may be appropriate); • Incidents graded or re-graded by the respective Zone Manager or Regional Leader Investigations as warranting a response within another timeframe; and • Incidents downgraded by a Zone Manager or Regional Leader Investigations due to conflicting operational demands.
Minor/B	'Desk top' response	<ul style="list-style-type: none"> • Incidents not requiring a site visit on this occasion which are not of a serious or moderate environmental impact; and • Advice given by telephone or letter is the only requirement due to the nature of the incident.
Minor/B	Referred response	<ul style="list-style-type: none"> • Incidents not requiring a site visit and referred to either another internal section or external agency.
Complies/A	No response	<ul style="list-style-type: none"> • No breach of the RMA.

Appendix 3 – Compliance assessment grading for consent monitoring, farm environment plans (FEP) and pollution events

Each resource consent or pollution event is assessed and graded A, B, C, or D. Grades A and B are considered compliant with relevant conditions or rules and C and D are considered non-compliant.

The above grading system supports Environment Canterbury's approach to work with industry, land holders and individuals to achieve voluntary compliance wherever possible and to act using its regulatory enforcement tools where required. This grading system also assists with assessing a wide range of activities integrated with our compliance monitoring functions that deliver education and awareness, support for technology installation, joint-industry programmes and incentives. Furthermore, this approach assists with delivering the CWMS outcomes through integrated work programmes in response to local priorities.

Appendix 4 – Enforcement Options

Action may be taken to remedy a breach or respond to an incident. 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.

There is a range of enforcement approaches available to Environment Canterbury including informal and formal legal processes.

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.

Notice of non-compliance

Where an incident occurs, or is identified at a time when the incident site is unoccupied or unattended, a notice of non-compliance is issued and left in a prominent position. The notice may be viewed in the same way as a compliance monitoring report in that it is a written notification requesting or directing that certain actions be taken in a specified timeframe to remedy the alleged non-compliance. The notice is issued notwithstanding further enforcement action.

Abatement notice

An abatement notice is a formal written notice that the RMA specifies can be issued only by a warranted enforcement officer (as defined under Section 38 of the Act), requiring certain actions 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. 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 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:

- An unlawful activity, i.e. something that contravenes the RMA itself, a resource consent condition, plan rule or regulation, (a 'cease or do not commence' notice); and
- A lawful activity that is noxious, dangerous, offensive or objectionable to the extent that it has an adverse effect on the environment and should not be taken (a "section 17" notice);
- 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).

Written warning

A written warning is a notice to an offender warning them of an offence and setting out the ramifications of further offending in the same manner. 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 Section 8 of this policy) would be appropriate in the circumstances; and
- There appears to be no risk of ongoing or repeat non-compliance.

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.

An infringement notice may be issued when:

- The offence is one that may be dealt with by 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;
- It is likely to be an effective deterrent and is sufficiently severe for the offence; and
- None of the applicable defenses are available.

Prosecution

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

Decision to prosecute

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 information 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;
- To act as a deterrent to other resource users; 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;

- That there is sufficient evidence to establish a prima facie case
- That it is considered to be in the public interest;
- That the environmental effect of the breach warrants court action
- The culpability of the offender.

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.

Alternative Environmental Justice

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 information 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.

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.

It is generally sought as part of a prosecution, however can stand alone as a singular enforcement tool. It can be appropriate where a request or abatement notice is has been 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 noncriminal 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 guideline 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).

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.

Appendix 5 – Matters considered prior to commencing enforcement action

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. Including impact on Papatipu Rūnanga values;
- Achieving compliance; and
- Deterrence and compensation/penalty.

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 below:

1. The seriousness, imminence and/or reversibility of adverse environmental effects. For example
 - a. Magnitude of actual adverse effect
 - b. Nature of the receiving environment eg. significance to Papatipu Rūnanga
 - c. Irreversibility and/or duration of effects
 - d. Potential effects;
2. Past and present conduct of the resource user. For example
 - a. Deliberateness of offence
 - b. History of situation/alleged offender
 - c. Was the incident avoidable?
 - d. Commitment to ensure compliance
 - e. Documented warnings
 - f. Remediation/mitigation
 - g. Remorse demonstrated;
3. The significance to the community. For example
 - a. Prevalence of offence
 - b. Need for deterrence
 - c. Upholding integrity of the Law
 - d. Public expectation of prosecution
 - e. Sense of injury or upset ('victim impact')
 - f. External complaints
 - g. Considerations of fairness and balance;
4. Legal availability of particular enforcement tools;
5. Failure or ineffectiveness of compliance promotion measures;
6. Implications for the application of the RMA; and
7. 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).

Prosecution is an enforcement tool to be used 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.

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.

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.

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.

Appendix 6 – 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 four months of the contravention in the case of an infringement, or six months from when the contravention should have come to the notice of the Regional Council in the case of a prosecution.

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