

**IN THE ENVIRONMENT COURT
AT CHRISTCHURCH
I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHĪ**

Decision No. [2021] NZEnvC 105

IN THE MATTER	of the Resource Management Act 1991
AND	an application pursuant to sections 314, 316 and 319
BETWEEN	CANTERBURY REGIONAL COUNCIL
	(ENV-2021-CHC-80)
	Applicant
AND	WARREN MILLER HISLOP
	Respondent

Court:	Environment Judge J E Borthwick
Hearing:	On the papers in Chambers at Christchurch
Last case event:	13 July 2021
Appearances:	M Dysart for Canterbury Regional Council R Smith for Warren Miller Hislop
Date of Decision:	21 July 2021
Date of Issue:	21 July 2021

ENFORCEMENT ORDERS (BY CONSENT)

A: Under sections 279(1)(b) and 314(1)(da) of the Resource Management Act 1991, the Environment Court, by consent, orders that Warren Miller Hislop, the landowner of 122 Racecourse Road, Amberley:

- (1) cover and keep covered with silage cover called AGTUF the burnt remains of tyres set alight on 29 January 2021 (burnt tyre waste) as



well as the soil placed over it (soil), together forming the pile ('the Pile') located on land at 122 Racecourse Road Amberley, ('the Property') subject to the following conditions:

- (a) the rolls of AGTUF cover shall be laid over the Pile so that there is an overlap of at least 2 metres at each join;
- (b) the top surface of the joins shall be taped so that all the joins are securely sealed;
- (c) clean gravel shall be placed at regular intervals over the surface to hold down the cover and prevent wind action disturbing it;
- (d) clean gravel shall be placed around the base to weigh down the edges so that wind action does not disturb the placement of the cover;
- (e) the shape of the Pile shall be maintained so that the drainage pattern is designed to prevent water draining towards contaminated soil located north, northeast and east of the Pile;
- (f) the monitoring check list as approved by the Canterbury Regional Council (labelled "A" attached to and forming part of these Orders) shall be completed on each due date as identified on the checklist and any defects identified in the covering system shall be recorded on the monitoring check list specifying the remedial action required;
- (g) any remedial action required shall be completed on the same day as it is identified;
- (h) a list of remedial actions and completion dates shall be provided to the Canterbury Regional Council during each site visit by a compliance officer which shall be at least monthly; and the location of any remedial action undertaken since the last compliance visit shall be identified to the compliance officer.

B: Any party may apply to the court under section 321 of the Resource Management Act 1991, to cancel these orders provided:

- (a) all of the Pile has been removed from the Property to a landfill approved by Canterbury Regional Council; and
- (b) Canterbury Regional Council has confirmed in writing to the Landowner that the Pile has been removed and the land under and around the Pile has been remediated to its satisfaction.

REASONS

Introduction

[1] On 13 July 2021 Canterbury Regional Council ('Regional Council') applied under s316 of the Resource Management Act 1991 ('the Act') for an enforcement order of the kind specified in s314(1)(da) of the Act against Warren Miller Hislop ('the respondent'), the landowner of a 44.4642 hectare property at 122 Racecourse Road which has the legal description Lot 3 DP502943 ('the Property').

[2] The application is supported by:

- (a) affidavit of Andrew Arps, Canterbury Regional Council Zone Manager Northern Zone, dated 9 July 2021;
- (b) affidavit of Stephen Howard, Canterbury Regional Council Monitoring and Compliance Officer for the Northern Zone, dated 13 July 2021;
- (c) affidavit of Dr Lisa Scoot, Canterbury Regional Council Hydrologist (groundwater quality), dated 9 July 2021;
- (d) affidavit of Angelique Hyde, Landowner's Farm Manager, dated 9 July 2021; and
- (e) joint memorandum of the applicant and respondent.

[3] The nature of the enforcement order is to require the respondent to cover a pile containing the remnants of a tyre fire caused by arson at his property at 122 Racecourse Road, Amberley. The cover must be a water-proof material and the pile needs to be kept securely covered until the remnants can be removed to an approved landfill. The cover is to prevent rainwater entering the burnt

remnants which contain contaminants including toxic ash.

[4] The Regional Council states the order is required to avoid or mitigate any likely adverse effect of contaminants in the pile of burnt tyre waste on the respondent's property, leaching to groundwater which is used for potable supply by the Amberley township and used by other downstream property owners who have bores. The risk to groundwater and the need for the cover is explained in the affidavit of Dr Scott. To date no contamination has been detected.¹

[5] A further purpose of the application is to demonstrate to the community that every practical and legal measure is being taken to protect potable supply for the community and for individuals.

Background

[6] The threat to groundwater arises from the placing of some 200,000 end-of-life tyres on the Property under a lease. Enforcement orders were obtained requiring the companies who placed them there to remove all of them by 31 December 2018.²

[7] This did not occur as only about 40,000 were removed and the companies were subsequently prosecuted and found guilty of failure to comply with the Enforcement Orders.³

[8] Prior to the fire in January 2021, the Regional Council and the respondent co-operated to find a way to lawfully dispose of the tyres, including a proposal to have them recycled at the Golden Bay Cement in Whangārei, which began using end-of-life tyres as fuel in March 2021.

[9] The arson event in January 2021 resulted in the incineration of the tyres at the Property and has meant that the recycling project cannot be implemented.

¹ Affidavit of Dr Lisa Scott dated 9 July 2021 at [33].

² *Canterbury Regional Council v Le Roy* [2018] NZEnvC 53.

³ *Canterbury Regional Council v Annexure Services Limited* [2020] NZDC 16116.

Instead, the removal now involves addressing the lawful disposal of the combustion products which include toxic ash.

[10] The Regional Council has applied for funding from the Ministry for the Environment and the respondent has agreed to meet the balance of the cost of the lawful disposal.

[11] Until funding is secured and contracts are in place, the removal process cannot commence.

[12] The decision has been made to place a waterproof cover over the waste material and to retain it in position until all the contaminated material has been removed.

[13] The respondent has already attended to the purchase and placement of the cover which is to satisfaction of the Regional Council. A monitoring programme has been established and commenced. This is explained in the affidavit of Stephen Howard.

[14] The Regional Council and the respondent have agreed on a monitoring programme to ensure that the cover remains effective and in place until all the material on the Pile has been removed and disposed of lawfully. A copy of the monitoring check list to be completed by the respondent is annexed marked "A".

[15] Due to the time required for: acquisition of funding, establishment of contracts, removal of the material, and soil testing; the remediation of the Property may not be completed for some 18 months.

Proposed Enforcement Orders agreed

[16] The application is being made with the consent of the respondent who has agreed to the placement of the cover and to the cover being retained over the fire residue until all the residue is lawfully disposed of and the respondent is notified that the Property is remediated.

Consideration

[17] I am satisfied that the orders proposed are necessary under s314(1)(da) of the Act in order to avoid, remedy or mitigate actual or likely adverse effect on the environment.

[18] It is recorded that these orders are made under s 279(1)(b) of the Act, being orders made by consent, rather than representing a decision or determination on the merits under s 279. The court is satisfied that the making of these enforcement orders falls within the court's jurisdiction and conform to the purpose and principles of the Act.

Outcome

[19] By consent, the application for enforcement orders is granted.

[20] There are is no order as to costs.

Jane S.



J E Borthwick
Environment Judge



Cap Monitoring Self-Assessment Checklist
122 Racecourse Road, Amberley

DATE:

Daily*Visual Inspections- integrity of cover		
Leakage - visual check of soil around the cap.		
Item to check	Comments/action required and date action completed	Initials
Is there any spillage of fire debris on soil outside the cap?		
Is there any sign of liquid leakage other than to the designated drainage area?		
Damage or punctures in the cover, slumping, compaction, or water pooling		
Item to check	Comments/action required	Initials
Is there any visible signs of damage or weakness in the material or wear and tear?		
Is water pooling on the cover?		
Is there any signs of slumping or compaction?		
Pest control – visual inspection of signs of nesting or damage		
Item to check	Comments/action required	Initials
Is there any signs of nesting or damage on the top of the cover?		
Are there any signs of nesting and underneath the edges of the cover or points where vermin may enter the pile?		
Wind uplift- weighted bags and dust discharge from underneath		
Item to check	Comments/action required	Initials
Are the gavel piles effective to hold the cover in place ?		
Is there any dust discharging from the edges of the pile?		

Aesthetics – loose edges of cover		
Item to check	Comments/action required	Initials
Does the cover look tidy and any loose edges have been secured?		
Cover overlap		
Item to check	Comments/action required	Initials
Do the cover overlap areas remain intact and there is no space for water ingress?		
Record keeping – record evidence of the integrity of the cover		
Item to check	Comments/action required	Initials
Have all relevant records been kept? Including photos, repair related invoices, completed checklists etc.		

*Daily for the first 4 weeks then once every 48 hours, but an inspection is expected within 24 hours after a heavy rainfall or other extreme weather event.

DATE:

Daily* Site and Boundary Checks		
Housekeeping/Health & Safety**		
Item to check	Comments/action required	Initials
Are there any new hazards (potential and actual) that need to be managed?		
Are the controls for existing hazards in place, effective, and there is no potential to harm workers and visitors to the site?		
Security/accessibility/prevention of further storage on-site		
Item to check	Comments/action required	Initials
Are the fences required around the perimeter of the Pile intact?		
Is the access gate (road) locked when the site is unoccupied?		
Is site access for visitors controlled?		
Is the site clear other than the capped area? Note: the site only contains the fire debris and the materials associated with the cover and cover maintenance.		
Site Drainage/water pooling		
Item to check	Comments/action required	Initials
Are there any signs of water pooling in the paddock containing the fire debris?		
Is all drainage to the designated drainage area (i.e. to the West and South and not to the north northeast or east)?		

*Daily for the first 4 weeks then once every 48 hours, but an inspection is expected within 24 hours after a heavy rainfall or other extreme weather event

** This is not a Health & Safety compliance checklist. The landowners and any contractors used on the site hold responsibilities as PCBUs under the Health & Safety at Work Act.

