

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

**I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKĀURAU**

Decision [2023] NZEnvC 209

IN THE MATTER OF

an application pursuant to s 320 of the
Resource Management Act 1991

BETWEEN

WAIKATO REGIONAL COUNCIL

(ENV-2023-AKL-000139)

Applicant

AND

RAWHITI ENVIRONMENTAL
PARK LIMITED

Respondent

Court: Environment Judge MJL Dickey

Hearing: On the papers

Last case event: 20 September 2023

Counsel: S P Farnell and C L Wilkinson for Waikato Regional Council
J Gurnick for Rawhiti Environmental Park Limited

Date of Decision: 26 September 2023

Date of Issue: 26 September 2023

**DECISION OF THE ENVIRONMENT COURT AMENDING INTERIM
ENFORCEMENT ORDERS**

A: The orders are amended as follows:

Orders

1. Pursuant to ss 320(1) and 314(1)(a)(i) of the Resource Management Act 1991 (RMA), the Respondent is prohibited from commencing the:
 - a. discharge of any contaminant, namely pig effluent, onto land in



circumstances which may result in that contaminant (or any other contaminant emanating as a result of natural processes from that contaminant) entering water, on the property legally described as:

- i. Lot 5 Deposited Plan 7035, Section 31-32; and
- ii. Part Section 30 Block V Aroha Survey District.
(the Property).

2. Pursuant to ss 320(1) and 314(1)(da) of the RMA, the Respondent is to carry out the following actions (where applicable) starting immediately:
 - a. reduce stock numbers in the piggery by sending an additional 100 pigs each week commencing 28 August 2023 and 11 September 2023 to Wilson Hellaby; counting the 86 pigs who accidentally died as a result of poisoning, amounting to 286 additional pigs in total; and
 - b. reduce the level of pig effluent currently stored at the property by:
 - i. transporting 50,000 litres per weekday to Hamilton City Council's Wastewater Treatment Plant or (if available) spreading the equivalent effluent in accordance with any resource consent (maximum required under this condition being 250,000 litres per week);
 - ii. spreading 400,000 litres of effluent on Rawhiti Environmental Park Limited's farm as permitted by ground/weather conditions and nutrient loading rates; and
 - iii. installing and transferring effluent to a flexi tank which will hold one million litres.
3. Pursuant to ss 320(1) and 314(1)(da) of the RMA, the Respondent is to install two Kliptanks, observing the following timetable:
 - a. 10 August 2023 – 29 September 2023:
 - complete bulk earthworks for the Kliptanks
 - complete subterranean plumbing.
 - b. 2 October 2023 – 6 October 2023:
 - complete foundational work for Kliptanks installation
 - verification of site works (required for code compliance certificate) to be done.

- c. 9 October 2023 – 3 November 2023 (four weeks allowed as maximum, including contingency):
 - Kliptanks to be installed and commissioned.
- d. 6 November 2023 – 10 November 2023:
 - transfer four million to 4.5 million litres of treated piggery waste to the Kliptanks (this equates to approximately 1/3 of the total volume currently in the top storage pond).

Terms and conditions

4. Pursuant to s 314(3) of the RMA, the Respondent is required to adhere to the following terms and conditions:
 - a. the orders apply to the personal representatives, successors and assigns of the Respondent to the same extent as they apply to the Respondent.
 - b. the respondents are to provide a daily report to Waikato Regional Council until 4 October 2023. That report shall be sent to IR@waikatoregion.govt.nz by 12 p.m. each working day and must provide an update under separate headings of each of the orders outlined above.

Service

5. The orders should take effect from when they are served on the Respondent, via their counsel.

Costs

6. Costs are reserved.

REASONS

Introduction

[1] The last iteration of the Orders was issued on 23 August 2023.

[2] A judicial teleconference was convened on 12 September 2023 to discuss progress on compliance. The parties were directed to file a joint memorandum

providing an update on compliance and progress with the required works, an update on a potential new issue that has emerged, and whether any amendments to the Orders would be sought.

Joint Memorandum of counsel – 20 September 2023

[3] Rawhiti Environmental Park Limited (**Rawhiti**) confirmed that:

- (a) daily reporting has occurred;
- (b) 100 pigs were culled in the weeks of 28 August 2023 and 11 September 2023 and an amendment has been sought for the 25 September 2023 culling to substitute the 100 pigs to 86 pigs which accidentally died due to potential poisoning. The Council does not object to this substitution but requests evidence of the 86 pigs that have died. The Council reserved its position should the appropriate evidence not be forthcoming;
- (c) 50,000 litres per weekday has been transferred to Hamilton City Council's Wastewater Treatment Plan, with the exception of 14, 15, 20 and 21 September 2023. Rawhiti confirms that spreading occurred on alternative farms in accordance with a resource consent but has yet to advise the Council of the properties on which this spreading occurred;
- (d) Rawhiti confirms that the following amounts were spread on the home farm:
 - (i) 16,000 litres on 13 September 2023;
 - (ii) 56,000 litres on 1 September 2023; and
 - (iii) 96,000 litres on 30 August 2023.
- (e) one million litres of effluent has been transferred to the flexitanks; and
- (f) the installation of the kliptanks is underway however further time is

required and an amendment to the timetable is sought. The Council does not object to the short extension of time sought to install the kliptanks.

[4] Additionally, prior to the teleconference on 12 September 2023, counsel were made aware of an issue at the Property in relation to a ponding of effluent in the gully. Remediation discussions between the parties are ongoing and the parties propose to update the Court in one week's time on this issue.

[5] The parties agreed on amendments to the Orders.

Evaluation

[6] I accept that the orders should be amended. In respect of the request to amend the Order relating to stock reductions, I see no great issue in substituting what needs to occur with what has occurred because the aim of the Order is to reduce stock numbers at the piggery. I direct that the evidence of the 86 pigs who died be provided to the Council. I further record that the Council does not object to the short extension of time to install the kliptanks.

[7] I appreciate the ongoing cooperation between the parties in addressing this matter. I will await a further report on the issue of ponding of effluent in the gully and the remediation discussions occurring between the parties.

Orders

[8] For the above reasons, the orders are amended. A tracked version of the amended orders is as follows:

Orders

1. Pursuant to ss 320(1) and 314(1)(a)(i) of the Resource Management Act 1991 (**RMA**), the Respondent is prohibited from commencing the:
 - a. discharge of any contaminant, namely pig effluent, onto land in circumstances which may result in that contaminant (or any other contaminant emanating as a result of natural processes from that contaminant) entering water, on the property legally described as:

iii. Lot 5 Deposited Plan 7035, Section 31-32; and

iv. Part Section 30 Block V Aroha Survey District.

(the Property).

2. Pursuant to ss 320(1) and 314(1)(da) of the RMA, the Respondent is to carry out the following actions (where applicable) starting immediately:
 - a. reduce stock numbers in the piggery by sending an additional 100 pigs each week commencing 28 August 2023; ~~and 11 September 2023 and 25 September 2023, being 300 additional pigs in total~~ to Wilson Hellaby; counting the 86 pigs who accidentally died as a result of poisoning, amounting to 286 additional pigs in total; and
 - b. reduce the level of pig effluent currently stored at the property by:
 - i. transporting 50,000 litres per weekday to Hamilton City Council's Wastewater Treatment Plant or (if available) spreading the equivalent effluent in accordance with any resource consent (maximum required under this condition being 250,000 litres per week);
 - ii. spreading 400,000 litres of effluent on Rawhiti Environmental Park Limited's farm as permitted by ground/weather conditions and nutrient loading rates; and
 - iii. installing and transferring effluent to a flexi tank which will hold one million litres.
3. Pursuant to ss 320(1) and 314(1)(da) of the RMA, the Respondent is to install two Kliptanks, observing the following timetable:
 - a. 10 August 2023 – ~~12~~ September 2023:
 - complete bulk earthworks ~~and foundations~~ for the Kliptanks
 - complete subterranean plumbing.
 - b. ~~21 August 2023 – 1 September 2023~~ 2 October 2023 – 6 October 2023:
 - complete foundational work for Kliptank installation
 - verification of site works (required for code compliance certificate) to be done
 - ~~Kliptanks to be delivered to site.~~
 - c. ~~28 August 2023 – 1 October 2023~~ 9 October 2023 – 3 November 2023 (four weeks allowed as maximum, including contingency):
 - Kliptanks to be installed and commissioned.
 - d. ~~25 September 2023 – 4 October 2023 (or earlier if possible)~~ 6 November 2023 – 1 November 2023:
 - transfer four million to 4.5 million litres of treated piggery waste to the

Kliptanks (this equates to approximately 1/3 of the total volume currently in the top storage pond).

Terms and conditions

4. Pursuant to s 314(3) of the RMA, the Respondent is required to adhere to the following terms and conditions:
 - a. the orders apply to the personal representatives, successors and assigns of the Respondent to the same extent as they apply to the Respondent.
 - b. the respondents are to provide a daily report to Waikato Regional Council until 4 October 2023. That report shall be sent to IR@waikatoregion.govt.nz by 12 p.m. each working day and must provide an update under separate headings of each of the orders outlined above.

Service

5. The orders should take effect from when they are served on the Respondent, via their counsel.

Costs

6. Costs are reserved.

[9] Costs are reserved.

Directions

[10] It is open to the parties to come back to the Court if further directions are required.

[11] A further update is to be provide to the Court on the issue of ponding of effluent in the gully and the ongoing remediation discussions by **3 October 2023**.



MJL Dickey
Environment Judge

