

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

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

Decision [2023] NZEnvC 222

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 October 2023

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

Date of Decision: 24 October 2023

Date of Issue: 24 October 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 until installation of the Kliptanks has been completed 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 is to provide a fortnightly report to Waikato Regional Council until 10 November 2023. That report shall be sent to IR@waikatoregion.govt.nz by 12 p.m. every second Monday commencing 9 October 2023 and must provide an update under the same headings as previous reporting requirements.

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 26 September 2023.

[2] A further update was to be provided to the Court on the issue of ponding of effluent in the gully and the ongoing remediation discussions by 3 October 2023.

Joint Memorandum of counsel – 4 October 2023

[3] Waikato Regional Council sought an extension of the interim enforcement orders with minor amendments. The parties agreed to amend the interim enforcement orders.

[4] Rawhiti Environmental Park Limited (**REPL**) advised that it will be in a position to update the Council with a plan to remediate the ponding of effluent in the gully by 6 October 2023. The Council reserved its position to seek further directions from the Court should the remediation plan be unsatisfactory to the Council. The Council proposed to update the Court by Friday, 13 October 2023 should further directions be required.

Waikato Regional Council memorandum – 20 October 2023

[5] Waikato Regional Council filed a memorandum dated 20 October 2023 updating the Court on its position in relation to the ponding of effluent in the gully.

[6] The Council advised it had received correspondence from REPL on 6 October 2023 advising:

(a) the remediation small product trial “proof of concept” will occur in the week of 9 October 2023 which will include taking samples and pump testing;

(b) subject to the above working, the week commencing 16 October 2023 will

see the implementation of a sediment containment plan, pumping of the product back through to the concrete collection tanks, through the solid separator and into the AD pond as usual;

- (c) the sediment containment plan will be finalised after the proof of concept trial when testing reports show what protocols are required and what pumping and other equipment is required for the week commencing 16 October 2023; and
- (d) the exact date for pumping to occur on the week commencing 16 October 2023 will be advised after the proof of concept has been conducted subject to weather forecast conditions.

[7] The Council made numerous enquiries about the ponding effluent in the gully. On 19 October 2023, the Council received correspondence from REPL stating the shareholders have confirmed that the start of the gully remediation will occur next week, in that the plugging of each end of the drain will be blocked, with a sediment and containment plan implemented at the same time.

[8] The memorandum attached a chronology of discussions between the Council and REPL.

[9] The Council remains concerned that REPL has not remediated the gully to date, despite indicating it would do so for some time, and is concerned about the ongoing environmental effects posed by the effluent in the gully on-flowing into the spring. The Council considers it has made its position clear on numerous occasions, further discharges (howsoever occurring) while REPL seeks to remediate the site are not acceptable.

[10] The Council sought a judicial teleconference to discuss these matters.

Evaluation

[11] I accept that the orders should be amended. The parties have agreed to the

amendments. The amendments are in keeping with the original purpose of the Orders, but they do allow some changes to timeframes, in particular around reporting to the Council.

[12] I appreciate the ongoing cooperation between the parties in addressing this matter.

[13] In relation to remediation of the gully, a judicial teleconference will be convened in due course. The registry will be in contact with parties to arrange a suitable date/time.

Orders

[14] 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 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 [until installation of the Kliptanks has been completed](#) 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 Kliptank 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 ~~R~~respondents ~~are~~is to provide a ~~daily~~fortnightly report to Waikato Regional Council until ~~4 October~~10 November 2023. That report shall be sent to IR@waikatoregion.govt.nz by 12 p.m. ~~each working day~~every second Monday commencing 9 October 2023 and must provide an update under ~~separate~~the same headings ~~of each of the orders outlined above~~ as the previous reporting requirements.

Service

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

counsel.

Costs

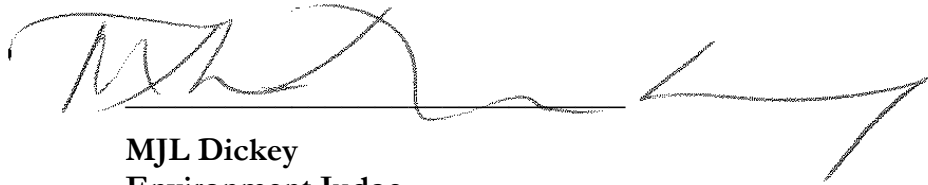
6. Costs are reserved.

[15] Costs are reserved.

Directions

[16] In relation to remediation of the gully, a judicial teleconference will be convened in due course. The registry will be in contact with parties to arrange a suitable date/time.

[17] It is open to the parties to come back to the Court at any time if further directions are required.



MJL Dickey
Environment Judge

