

# **ADMINISTRATION OF COMPLIANCE WITH RESOURCE CONSENTS**

## **Background Report: Manawatu-Wanganui Regional Council**

*Office of the*  
**PARLIAMENTARY COMMISSIONER FOR THE ENVIRONMENT**  
**Te Kaitiaki Taiao a Te Whare Pāremata**

**PO Box 10-241, Wellington**

**October 1996**

*This report is one of three council case studies undertaken as part of an investigation into local authorities' administration of compliance with resource consents. Conclusions from the three case studies are synthesised in a main report available through Bennetts Government Bookshops. A brief summary of findings is available from this Office on request.*

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### **Acknowledgments**

The Parliamentary Commissioner for the Environment and her investigation team would particularly like to thank the staff of the Manawatu-Wanganui Regional Council for their time and for sharing their expertise. We would also like to thank the many individuals who generously assisted in the research for this investigation and the council staff and peer reviewers who assisted in reviewing early drafts of this report.

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# 1 INTRODUCTION

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This review has been conducted under section 16(1)(b) of the Environment Act 1986 in which the Commissioner has authority to examine the effectiveness of environmental planning and management carried out by public authorities, and to advise them on any remedial action the Commissioner considers desirable.

The purpose of the review is to investigate and report on the administration of compliance with resource consents by a territorial authority, a unitary authority (ie a council with combined regional and district functions) and a regional council. It examines the effectiveness of systems, strategies, structures and resources of councils in relation to their obligations under section 35 of the Resource Management Act 1991 (RMA), particularly subsection (2)(d) - monitoring the exercise of resource consents that have effect in the region or district. The objectives are:

- to evaluate three councils' systems for administering resource consents, with emphasis on how they monitor compliance by consent holders and what use is made of information gathered from monitoring; and
- to draw attention to areas of good practice.

The range of consents considered in the review were land use consents and subdivision consents of territorial authorities, and land use consents, coastal permits, water permits and discharge permits of regional councils. 'Compliance monitoring' is a term used in this review to describe a process involving surveillance or checking of resource consents to determine whether consent holders are complying with the conditions of their consents.

In relation to Manawatu-Wanganui Regional Council (M-WRC), in particular, the review focuses on compliance monitoring policies, structures and information management. It examines the range of consents administered by the council, identifies where pressures or constraints exist, and explores options for further improving compliance monitoring. The review identifies issues that the council's compliance monitoring system gives rise to and evaluates it against criteria listed in appendix 1.



## 2 BACKGROUND

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This section provides a brief description of the region and the types of activities and their effects on the environment that are controlled by resource consents. It also outlines the policy framework and the structure of the council which determine how the administration of resource consents is carried out at present.

The Manawatu-Wanganui region covers a land area of 22,179 square kilometres (approximately ten percent of New Zealand's total land area). The population of the region was 226,617 at the 1991 Census. This is approximately seven percent of New Zealand's population, making it the fifth most populous region. Almost half of the population live within the urban boundaries of Palmerston North and Wanganui. The region's population is projected to increase by over 12.4 percent by the year 2016. Recently, settlement patterns have been characterised by a decrease in rural settlement populations and an increase in rural residential lifestyle blocks near larger urban areas like Palmerston North and Wanganui.

Historically, the region's economy was based on its natural and physical resources, particularly timber milling and agriculture. Today it is more diverse with larger urban areas based on the processing or manufacturing and service sectors, while the rural hinterlands are based on the primary sector. Agriculture makes a major contribution to the regional economy. On a regional basis, of those employed in agriculture, more than two-thirds are involved in sheep and beef farming, with smaller proportions in dairy farming and horticulture. The forestry sector is important and is likely to increase in prominence in the future as exotic production forests are harvested during the 1990s.

The types of industries in the region include pharmaceutical research and manufacturers, small appliance and agricultural product manufacturers, and food manufacture and distribution (M-WRC proposed Regional Policy Statement, May 1995).

The council's proposed Regional Policy Statement (RPS) outlines policy relating to monitoring. It identifies three broad types of monitoring required under the RMA:

- **Environmental Monitoring**, which includes baseline monitoring to provide information on the quality of the environment and impact monitoring to identify the effects of activities on the environment.

### 2.1 The Region

### 2.2 Policy framework

- **Compliance Monitoring**, which involves monitoring resource consents to ensure that consent conditions are being complied with. It also includes auditing of self-monitoring by some consent holders to ensure process integrity.
- **Process Monitoring**, which involves monitoring the effectiveness and suitability of national and regional policies and plans in achieving resource management objectives.

The council's policy on compliance monitoring in its proposed RPS includes establishing and maintaining a database on resource consents, identifying key indicators of compliance, and encouraging consent holders to carry out compliance monitoring and impact monitoring of their activities. Monitoring is to be targeted to where environmental results are most important including, for example, where the environmental impact is potentially greatest, such as major discharges, and where environmental quality standards are being compromised.

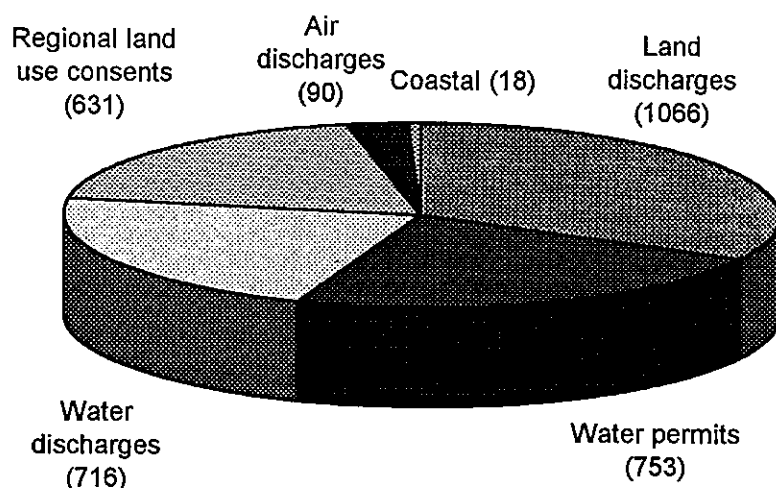
## 2.3 Administration of compliance with resource consents

This section describes the types and numbers of resource consents administered by the council. It also outlines the management structure, and the compliance monitoring information recording and reporting systems.

### 2.3.1 Consents

Between the RMA coming into force and May 1996, the M-WRC administered a total of approximately 3,274 resource consents. The following diagram indicates the types and numbers of consents:

**Figure 1 Consents Administered by the Council up to May 1996**

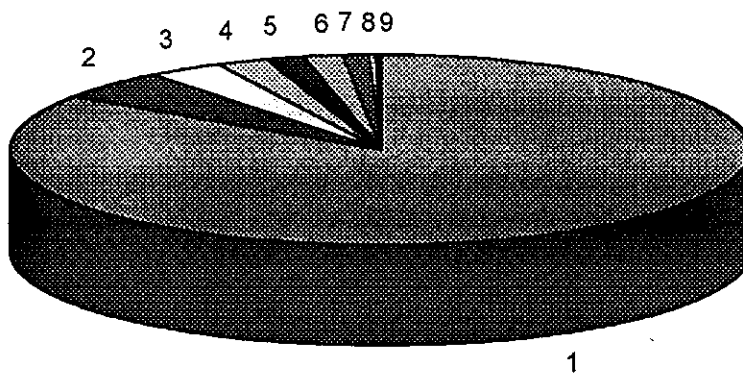




In the year to 30 June 1995, there were 548 consents granted (99.6 percent of consent applications) of which 255 were discharge permits, 208 regional land use consents, 80 were for water permits, and five were for coastal permits.

In the 1994-95 period, 1,294 discharge permits were monitored. The majority of these were for primary agricultural uses and associated processing industries. The other significant discharge group was territorial authority sewage treatment and disposal facilities. Figure 1a gives a breakdown of compliance monitoring and inspections taken from the council's Annual Monitoring Report for 1994-95:

**Figure 1a Compliance Monitoring and Inspections during 1994-95**



1	Cowsheds/piggeries	872
2	Sewage discharges	51
3	Discharges to air	34
4	Industrial discharges to water	22
5	Vegetable washers	18
6	Shingle plant discharges	17
7	Industrial discharges to land	10
8	Landfills	4
9	Agricultural pest operations	3

Most major discharge permit holders carry out self-monitoring of their discharges and forward the results to the council on a regular basis. Staff of the Resource Monitoring Department carry out audits of these permit holders four times each year to check the validity and quality of the data. Of the eight major industrial discharge permit holders who carried out self-monitoring during 1994-95, only three had a 100 percent compliance record. Four had a compliance level of less than 90 percent (range 74 - 87 percent). Comments on these are included in the council's Annual Monitoring Report for 1994-95.

The council carries out its own monitoring of small to moderate-sized discharges, the frequency of which depends on the potential environmental impact and the history of compliance by the consent holder.

In the year to 30 June 1995, a total of 167 incidents of non-compliance were detected. This number refers to non-compliance either with a single condition or several conditions. In other words, if a consent holder is not complying with several consent conditions, only one 'non-compliance' is recorded. There were a few repeat cases of non-compliance which would reduce the number of consents not complied with to about 140. Most related to dairy shed waste disposal and, to a lesser extent, territorial authority sewage treatment facilities.

### **2.3.2 Management Structure**

The council's RMA functions come under the direction of the Director of Resources. Within the Resources Directorate are four departments - Resource Policy, Resource Consents, Resource Monitoring and Resource Investigations (see figure 2).

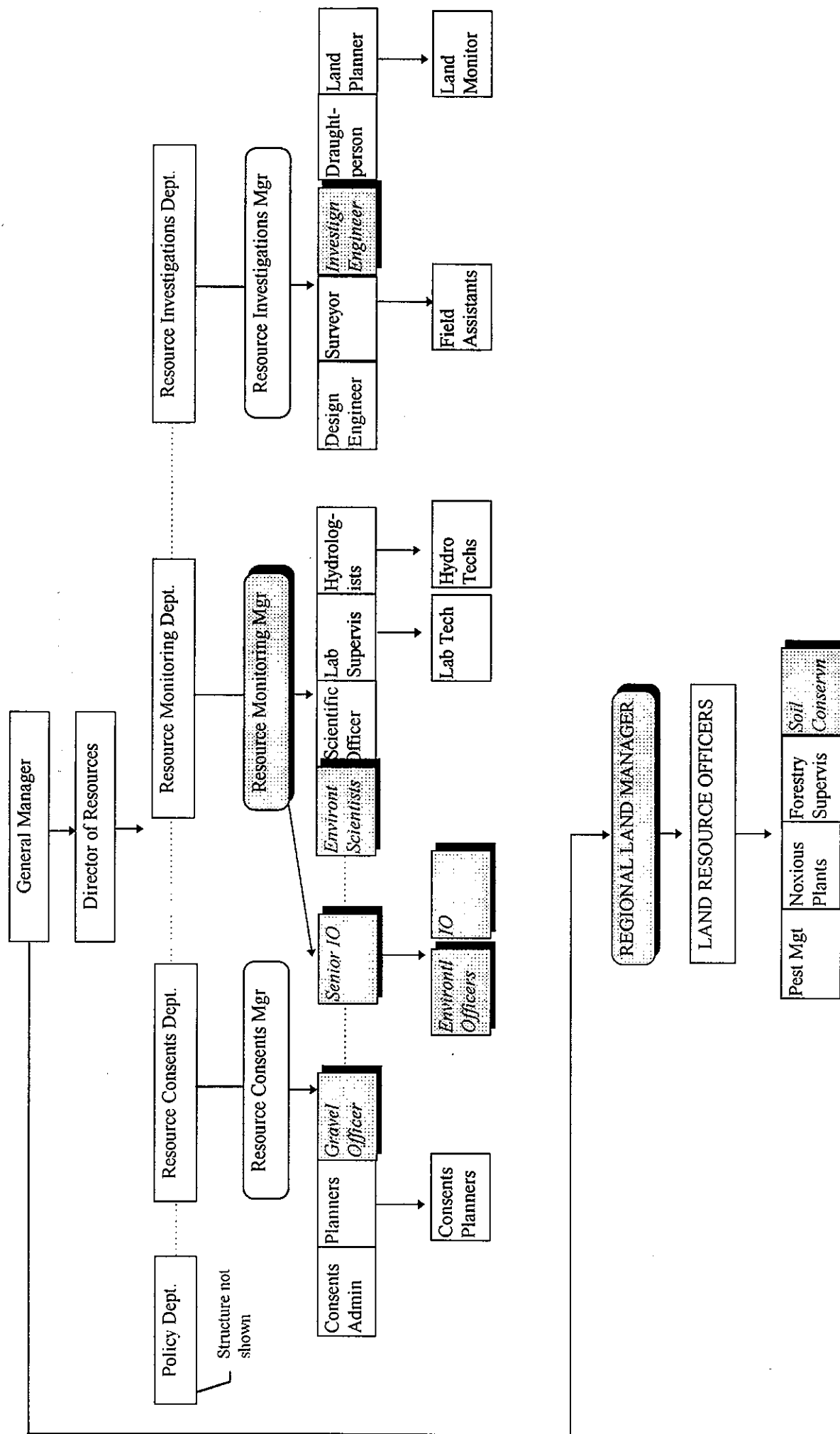
For 1996-97, the Council's total estimated funding is \$23,882,739 and total costs are \$26,628,500 (incl GST) [the difference is funded from reserves, scheme balances, and internal loans]. Of the total services indicative costs for 1996-97, resource monitoring makes up about 8.4 percent or \$2,225,013 (draft Annual Plan, 1996-1997, pp.8-10). The Resource Monitoring Department currently recovers about \$135,000 (or 6.1 percent of the resource monitoring expenditure) through its charges for inspections and monitoring.

Most discharge permit compliance monitoring, not 'self-monitored' by consent holders, is carried out by staff of the Resource Monitoring Department. Other compliance monitoring duties are carried out either in the Resource Consents Department (gravel extraction) or by Land Management staff (land disturbance and agricultural pest control). The Resource Investigations Department undertakes a limited amount of monitoring related mainly to projects such as river control schemes. The purpose of this is to ensure work has been carried out according to design, particularly where new designs or techniques have been used. The Resource Investigations Department also monitors the overall impact of gravel extraction operations on an entire river system where such operations are carried out. This department also provides a check on pest control and soil conservation activity.

In addition to monitoring discharges, the Resource Monitoring Department responds to pollution and hazardous substances incidents and complaints, clean up of contaminated sites, and waste management.

Figure 2

Structure of the Manawatu-Wanganui Resources Directorate



Within the Resource Monitoring Department is a senior investigating officer who supervises five staff involved in impact and compliance monitoring. These include two investigating officers, one of whom deals with industrial discharges, and the other who deals with major discharges (including local authority sewage treatment plants). There are also three environmental officers who focus mainly on effluent discharges from dairy sheds and piggeries. Although monitoring of gravel extraction sits outside this department, the senior investigating officer maintains some oversight of this function. There are also four environmental scientists within the Resource Monitoring Department able to provide technical support for the compliance monitoring staff. Environmental scientists spend about 90 percent of their time on consent applications, that is, providing comments on assessments of environmental effects and making recommendations on consent conditions to the Resource Consents Department.

Due to the large size of the region, soil conservators in the service centres such as Taumaranui and Taihape carry out compliance monitoring work in addition to their normal advisory functions. This includes checking on compliance with conditions of land use consents granted to logging operations and discharge permits issued to dairy sheds, piggeries and vegetable washers. Compliance monitoring comprises about 25-30 percent of the workload of these service centre staff.

### **2.3.3 Information management**

A number of methods are used for recording and retrieving information on consents, and for recording and following up complaints:

- The paper filing system keeps information on consent applications, assessments of environmental effects, public submissions on notified applications, council officer reports on applications, decisions arising from any hearings, the consents including their conditions after they have been granted, follow-up inspections including notes on non-compliance, abatement notices and warning letters, and general correspondence. Separate files are kept for each consent.
- All reports and complaints about environmental incidents not caused by consent non-compliance are recorded on a complaints (pollution incident) register. This is a hard copy file held in the Compliance Monitoring section of the Resource Monitoring Department.
- Incidents of non-compliance, either detected by council staff or through a complaint, together with a summary of follow-up action are recorded on the consents management electronic database (CONMAN). Non-compliance with consent conditions is more likely to be discovered during routine compliance monitoring visits than through complaints. A hard copy of a non-compliance report

may also be placed on file, but this is not done consistently or in a uniform manner. Such reports could be in the form of a record pad (a green form, hand-written as a file note), an inspection check sheet (a white form used for air discharges), an inspection report (white, used to report on discharges generally), or a land management report form (a pink copy). Another set of pink copies are used for keeping information on dairy sheds and piggeries. These copies also contain information on the inspection charges and are kept together in a separate file in the Compliance Monitoring section, not on the property file.

The data administration officer uses the information collected on the CONMAN database to prepare a monthly summary report on resource consent decisions and applications. The manager of Resource Monitoring receives a print-out of the resource consent decisions for each month. This lists the details of each consent holder and the type of consent granted, but does not include information on consent conditions or a record of compliance.

The council's Corporate and Annual Plans identify a number of performance measures for the Resource Monitoring Department. This includes a compliance monitoring programme which identifies the number of monitoring visits to be undertaken during the financial year. The larger discharge permit holders who carry out self-monitoring, currently a total of 13, are to be audited four times per year. The remaining discharge permit holders are monitored between once and twelve times per year depending on the discharge quantity and quality, and the history of compliance.

#### **2.3.4 Performance measure reporting**

The council has introduced a system of grading dairy sheds in the region. This classifies the waste treatment systems into four categories according to their compliance record, management and potential environmental impact. There are about 200 dairy shed discharge permit holders in the top or 'five star' category which denotes 'excellent systems - no current or foreseeable compliance problems' (M-WRC Annual Monitoring Report 1994-95, p.11). Since 1991, the majority of dairy sheds (on average about 56 percent) have been in the second best group ('four star' category: 'good systems - no current compliance problems, future problem prevention requires good management'). About six percent are in the lowest or non-complying group ('one star' category: 'unsatisfactory systems - unsatisfactory compliance at time of inspection, remedial action required').

Follow-up enforcement action for non-compliance with conditions depends on the scale, severity or effects of the non-compliance. Generally, permit holders are first given the opportunity to remedy the non-compliance. This is followed up with a further visit after a reasonable time. If non-compliance persists, options such as abatement

notices, interim enforcement orders, enforcement orders and prosecution are considered. Enforcement action during 1994/95 included eight abatement notices and two prosecutions (M-WRC Annual Monitoring Report 1994-95, p.2).

The Resource Monitoring Department prepares a quarterly 'non-compliance report' to council. This includes a table of non-complying consent holders and the details of non-compliance for each. In the report for the last quarter of 1995, for example, 34 non-compliances were noted and two abatement notices issued. The majority of non-compliances related to dairy shed waste discovered during routine inspections.

An Annual Monitoring Report is produced by the council. This summarises monitoring activities, including compliance monitoring, pollution incidents, waste management and hazardous substances, and impact monitoring.

Other performance requirements of the Resource Management Department include commenting on consent applications within three days of the close of submission period, responding to pollution incidents within 24 hours, and presenting a monthly report on pollution incidents.

### 2.3.5 Charges

The draft Annual Plan for 1996-97 sets out the council's administrative charges pursuant to section 36 of the RMA. This includes monitoring charges payable by consent holders for routine monitoring inspections by council staff, comprehensive monitoring programmes related to individual consents, and impact monitoring programmes for surface water, ground water, and gravel resources.

Projected cost recoveries for 1996-97 are estimated to be \$172,500 for consents administration, \$356,000 for all monitoring charges, and \$160,000 for gravel extraction. The charges for routine monitoring inspections are either \$50 or \$80 per visit plus associated analytical costs. The higher charge applies to inspections of discharges to water, pollution incidents or non-compliance follow-up inspections. In cases where the routine inspection fee does not cover the council's actual and reasonable expenses, a uniform mileage charge of \$64 plus actual staff time spent at the site applies.

The system of charges is based on four principles:

- **Consistency.** Charges should not vary greatly between years.
- **Matching costs to benefits.** Where benefits are enjoyed by the consent holders rather than the community as a whole, the individual users should pay the costs of administration and monitoring of consents.

- **Public good.** For some monitoring (eg surface water flow and groundwater monitoring) there is a strong element of public good. In such cases two thirds of the net cost of monitoring programmes is met from the general rate and one third from consent holders.
- **Equity.** Classes of users should be treated in the same manner (eg travel costs are charged uniformly, irrespective of location).





### 3 COMPLIANCE MONITORING ISSUES

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This section comments on the council's policies, structures and systems for compliance monitoring. It focuses on pressures and constraints faced by the council, and how it is responding to monitoring duties. It also identifies opportunities for improving the administration of compliance with resource consents.

The proposed Regional Policy Statement provides an overview and a number of objectives, policies and methods, expressed in very broad terms, about monitoring in general and compliance monitoring in particular (see 'Policy framework' in previous chapter). Currently, the council lacks an overall monitoring strategy which provides direction and focus for all its monitoring responsibilities, but work on this is in progress. A report on development of a monitoring strategy was presented to the council in 1996. This is the first step towards a review of all monitoring programmes and practices to ensure they meet both statutory requirements and good management practices. The proposed monitoring strategy intends to use monitoring information, including compliance monitoring, to provide feedback on the suitability and effectiveness of council's policies and their implementation.

#### 3.1 Policy - monitoring strategy

The monitoring strategy proposals envisage four types of monitoring reports being prepared which will incorporate 'Pressure-State-Response' indicators. This is an approach developed by the Organisation for Economic Development and Co-operation (OECD)<sup>1</sup> which relates causes (measured by environmental **pressure** indicators) with environmental effects (measured by indicators of the **state** of the environment's 'health') and **responses** by the community to reduce environmental pressures and/or improve environmental conditions. The four reports proposed are:

1. A **Compliance/Pollution Incident Report** at monthly and quarterly intervals to identify pressures on resources.
2. An annual **Environmental Management Report** which reports on environmental policy and regulatory activities under the RMA. This will draw on the monthly and quarterly reports in (1) and will address both pressures and responses.
3. A **State of the Environment Report (SER)** at intervals of three years. This will provide information indicating the 'state' of the environment and to some extent the pressures, and will provide a baseline against which future SERs can be compared.

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<sup>1</sup> OECD (1991). *Environmental Indicators: A Preliminary Set*. Paris:OECD; and OECD (1994). *Environmental Indicators: OECD Core Set*. Paris: OECD.

4. A **Policy/Plan Review Report** which will be prepared as the regional policy statement and regional plans come up for review. This will draw on information from (2) and (3).

The proposed monitoring strategy and reports will fill a gap which exists at present. In relation to the targeting, timing and frequency of compliance monitoring, consideration also needs to be given to the sensitivity of the receiving environment to adverse effects. A further consideration is the capability of consent holders to undertake complex technical monitoring. In some cases, such as dairy shed effluent discharges, the consent holder will rely on council monitoring staff to carry out necessary testing of effluent quality to check against the conditions.

Information from monitoring is not analysed in detail, nor is it currently being fed back into a council review of its policy or of the consent conditions it imposes. This is considered necessary to ensure that the council is achieving both its environmental objectives and the purpose of the RMA.

## 3.2 Structure

Six staff in the Resource Monitoring Department focus on compliance monitoring. Three staff work full time on monitoring dairy sheds and piggeries. Although staff from other sections contribute to the total compliance monitoring resources, many minor discharge consents are not monitored. The three environmental scientists in the Resource Monitoring Department spend much of their time processing resource consent applications so that, for these staff, compliance monitoring is a low priority. Reviewing and providing technical advice on consent applications seems to be a better use of their skills. Any consent monitoring role for environmental scientists would be better focused on technically complex matters.

Although compliance monitoring is primarily a function of the Resource Monitoring Department, aspects of consents monitoring are also dealt with by council officers in other departments. Monitoring of land disturbance, gravel extraction, and river control schemes are examples of activities requiring consents not monitored by the compliance monitoring group within the Resource Monitoring Department. Responsibility for monitoring these activities is scattered throughout the Land Management, Consents, and Investigations Departments. There is a strong case for better **coordination and overview** of all consent monitoring to ensure, among other things, consistency in the implementation of compliance monitoring policies and procedures.

The Council could consider a number of ways to achieve better coordination of compliance monitoring. One option would be to have all compliance monitoring carried out by compliance monitoring staff

within the Resource Monitoring Department. This would have the advantages of a focused unit with specified goals and objectives, and would ensure compliance monitoring is carried out systematically and consistently. One of the drawbacks of this option is the physical size of the region which makes it difficult for compliance monitoring staff, located in Palmerston North, to provide an even coverage of consent holders.

Another option, which involves using staff currently located in other departments and the region's various service centres, is for the compliance monitoring budget to be used for 'purchasing' compliance monitoring time and resources. The advantages are that it ensures a specified level of compliance monitoring is carried out systematically and consistently, and staff who carry out compliance monitoring are accountable to the Resource Monitoring manager for meeting compliance monitoring programme targets. It also enables management to make best use of staff resources and expertise. Under such an arrangement, there is less likelihood of compliance monitoring just being an informal 'add-on' duty to be undertaken if and when possible.

Information from the monitoring of resource consents, including compliance checking, inspection sheets and reports, abatement notices and follow-up activity, needs better coordination and a consistent approach to the way information is collected and recorded. The development of an information strategy would be a useful first step, followed by regular reviews of such a strategy, to ensure it meets council's information needs.

### **3.3 Information management**

Resource management information needs to be collected, stored, compiled, retrieved and used for two primary reasons:

#### **3.3.1 The need for information**

##### *a The requirements of the RMA*

All local authorities have a duty under section 35 of the RMA to gather information, monitor, and keep records. They are required, to 'gather such information ... as is necessary to carry out effectively its functions under the Act' (s 35(1)). This includes keeping reasonably available 'information which is relevant to...the monitoring of resource consents ...' (s 35(3)). The information to be kept by a local authority includes:

- records of each consent granted (including transfer of consents);
- records of extensions of time periods and waivers granted;
- a summary of all written complaints received during the preceding five years, and the action taken to deal with them (s 35(5)).

*b Decision-making purposes*

A local authority needs information to enable it to carry out a number of management functions including processing accounts, allocating resources, gathering evidence for enforcement action, and reviewing policies, plans, strategies and procedures.

### **3.3.2 The purpose of information systems**

The value of any information is determined by how it is used. The purpose, aims and objectives for collecting information, therefore, need to be clearly established **before** information systems are designed and implemented.

Monitoring of resource consents is an essential part of an overall framework for evaluating resource management policies, plans, strategies, programmes, objectives and targets. Information from compliance monitoring is necessary to:

- assess the effectiveness of, and to renew or review, consent conditions;
- assess and review monitoring programmes;
- determine whether council policies and strategies relating to consent monitoring, and their relevant information requirements, need to be revised;
- assess any effects on the environment of activities holding resource consents.

### **3.3.3 Evaluation of current information systems**

The council operates a number of parallel systems for collecting consent monitoring information. There are forms for recording information on particular types of activities (eg dairy sheds and piggeries, land disturbance, and discharge permits), a system to record charges for visits, a form designed for checking air discharge permit operations against the conditions of consent, and an electronic system (CONMAN) for recording dates of inspection and advice given to consent holders. There is a strong case for rationalising all records into a system which combines the best features and requirements.

The features of the current electronic database of consents are limited. Due to lack of space, information on visits entered into the database have to be abbreviated. A separate field has a copy of the consent conditions. No automatic 'bring up' system alerts an officer to revisit a consent holder to check on outstanding work, or follow up on abatement notices. Information from the database is used to prepare monthly reports on consent applications and decisions, but these reports do not include information on non-compliance.

An examination of some property files from the filing system revealed problems with the way information is recorded and stored on file. This

is not a problem unique to the council. Only a few of the files examined had a concise but comprehensive chronological order of events and actions, starting from the application for consent to the granting of consent, and the follow-up visits to check on compliance with conditions. Other files had no record of follow-up visits to check on consent conditions or, in some cases, compliance with abatement notices. Some of the files had multiple copies of the same document (eg officers' reports on applications that went to a hearing, and the decision of the hearing committee).

Currently, two systems operate for recording information about compliance monitoring - a paper system and an electronic system. Neither is complete. The information system is fragmented, resulting in difficulties in retrieving and making good use of the information collected.

### **3.3.4 Improving the management of information**

During the examination of files, there was some difficulty in locating key documents such as resource consents and reports on compliance with consent conditions. This could be remedied by, for example, using a specific colour of paper for each type of document. The documents this should apply to include:

- the resource consent application;
- officers' reports on the application;
- the decision of the council on the application;
- the resource consent and conditions;
- reports on compliance monitoring visits and follow up action on complaints;
- enforcement action, including copies of notices and a report on the outcome of any enforcement action.

The pink copy of the forms used for recording information on visits to dairy sheds and piggeries are also used to record inspection charges. These serve a number of purposes, but the inspection record does not appear in the property file. Instead, they are stored in one file for the purpose of keeping a record of visits and charges. Since the forms are designed so that the record of charges can be separated from the inspection report, it would not be difficult to file the inspection report on the property file and keep a separate record of charges for accounting purposes.

As noted above, the electronic database (CONMAN) has limitations. The council acknowledges these and is considering replacing the current database. During the design of the new system, consideration should be given to a protocol for recording information on compliance monitoring which avoids the same information having to be recorded more than once.

As a general principle, information systems should be designed to suit a particular purpose and have clear objectives. Compliance monitoring information should enable the council to determine whether the 'system' is functioning and achieving what it was designed to achieve, for example, a target level of compliance with consent conditions.

### **3.4 Other issues**

The non-compliance reports to council provide a summary of defects found during the previous three months. Most relate to dairy shed effluents.

#### **3.4.1 Reporting mechanisms**

The reports do not indicate the extent to which consent holders comply or fail to comply with all their conditions. There may be an assumption that other consent holders, not on the list, comply fully with their consent conditions.

Another method is to develop a monitoring programme which provides a systematic check on all consents. This would form the basis of regular reports to council on the level of compliance by all consent holders. Persistent non-compliance should be highlighted, and any follow-up action or recommendations noted.

#### **3.4.2 Compliance monitoring manual**

A staff manual for those involved in compliance monitoring would be useful to ensure a consistent approach to the procedures for monitoring, investigating, reporting and enforcing conditions of consent. It would also be an opportunity to rationalise the investigation report forms of which there are currently a wide range.

#### **3.4.3 Review of abatement notices**

There was evidence of some abatement notices having remained on file for some time, with no indication of whether the terms of the notices had been complied with. A regular review of such notices is necessary to ensure they have fulfilled their purpose.

#### **3.4.4 Consent conditions**

There were examples on files of consents with conditions which were indeterminate, and difficult to enforce. For example: 'the effluent storage pond is to be designed to the satisfaction of the General Manager of the Regional Council...'.

The range of views expressed by some individuals and interest groups<sup>2</sup> who have had dealings with the council on resource management issues included:

### **3.4.5 Opinions on the council's performance**

- Council compliance monitoring and enforcement staff are generally helpful in responding to requests to investigate matters. However, the council appears reluctant to take a stronger stance on enforcement action for non-compliance with consent conditions, particularly repeated infringements and in relation to district councils as consent holders.
- Some matters of concern have taken, and are continuing to take, a long time to resolve. Concern was expressed, in particular, at the use of waivers and extensions to time limits which has the effect, in one case, of allowing unsatisfactory situations to continue.
- The council should examine options for improving compliance monitoring in remote locations. One suggestion was the appointment of local residents as 'wardens'.
- Concerns of one iwi were the lack of consultation and the need to monitor impacts of cultural significance (eg river control works).

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<sup>2</sup> Of the three individuals and three interest groups contacted by letter, five responded and were interviewed by telephone. Some of the views expressed covered issues beyond the scope of this review. While the number and range of people contacted cannot be regarded as a representative sample of ratepayers in the region, their comments provide insights into how the public perceive the effectiveness of the council's monitoring and enforcement of consent conditions.





## 4 FINDINGS

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The evaluation of the council's administration of compliance with resource consents is based on criteria outlined in appendix 1.

The proposed Regional Policy Statement provides a general policy framework for, amongst other things, the council's monitoring responsibilities. Currently, compliance monitoring is taking place without specific objectives, targets or an implementation framework. The proposals for 1996-97, outlined in the draft Annual Plan indicate that the council will be preparing a monitoring strategy which will address the need for guidance on how it will fulfil its monitoring duties generally, and its consent monitoring functions in particular. The monitoring strategy also needs to incorporate compliance monitoring targets for the Resource Monitoring Department.

### 4.1 Policy

The council has a number of staff in the Resource Monitoring Department who focus on monitoring of resource consents. Some staff in other departments carry out monitoring of particular consents, but it is not their primary function and consequently may not receive high priority. This may lead to fragmentation, inconsistencies and poor accountability. There are opportunities to improve the coordination of the council's compliance monitoring functions to enable staff resources, as well as their expertise and location, to be used more effectively and efficiently. There are currently no regional compliance monitoring or enforcement functions delegated to territorial authorities in the region. The benefits, such as a more rapid response to complaints, and the costs of delegating some of these functions to territorial authorities, especially in the more remote areas, need to be explored

### 4.2 Structure and resources

There is evidence of good communication links between the Resource Consents and Resource Monitoring Departments. Staff in the latter have the opportunity to comment on and prepare technical reports for consent applications before staff in the former prepare relevant consent conditions. However, technical matters may sometimes be altered by the Consents staff without further reference back to the monitoring or investigations staff. A more effective checking system needs to be developed to ensure that consent conditions are both legally and scientifically defensible.

Most consents administered by the council have conditions which are technical and quite specific in nature. In general, this enables conditions to be measured, and compliance to be determined in a relatively straightforward way. This provides certainty for the consent

### 4.3 Consent conditions

holder, the council and the public. However, there were examples in the files examined, where some conditions were not specific. For example, 'testing points and access to them [shall be provided] as required by the regional council', or 'testing [will be carried out] at such times and using such methods as the regional council may determine'.

#### **4.4 Monitoring systems**

The council has developed effective performance measures for its Resource Monitoring Department. This includes compliance monitoring performance criteria (eg number of inspections per year for different categories of consent holders). A grading system for dairy sheds and piggeries also determines how often visits are made by staff to check on compliance with conditions, and what the consent holder is charged for those visits. This creates an incentive for consent holders to comply with consent conditions. It also enables the review or renewal of their consents to be processed more efficiently.

The council has also established targets for response times in relation to pollution incidents and dealing with complaints. Regular reports are submitted on pollution incidents and non-compliance with consent conditions.

Effective use is made of service centre staff to monitor the activities of consent holders in the more remote parts of the region, as well as identifying activities that may be operating illegally.

#### **4.5 Monitoring programmes**

The Annual Plan for the Resource Management Department sets out a number of performance measures including auditing or compliance monitoring programmes for all consent holders in the region. The nature and extent of monitoring for each consent holder depends on the significance of the discharges and the potential for adverse environmental effects.

#### **4.6 Information management**

This is one aspect of the council's compliance monitoring work most in need of review. The current system is fragmented and uncoordinated, there are inconsistencies in the way information is gathered and stored, and the information collected is not put to good use. The council needs to re-examine its information requirements and determine how best it can meet both statutory obligations and internal system needs.

Currently, monitoring information is not being used, for example, to assess and review the effectiveness of policies, strategies, programmes and consent conditions, or the impacts of these on the environment. The proposed monitoring strategy will provide the opportunity to address these issues.

Examples of good practice include:

## 4.7 Good practice

- The Resource Monitoring Department produces quarterly reports on non-compliance with consent conditions, monthly reports on pollution incidents and complaints, and an annual monitoring report.
- The council's monitoring charges, including the key principles on which charges are based, are clearly set out in the Annual Plan.
- Major discharge permit holders are encouraged/required to carry out self-monitoring and are audited on a regular basis.
- There are good links between the Resource Monitoring Department and other sections of the council, particularly the Resource Consents Department which drafts the consent conditions. Consent applications go to technical staff for appraisal, comment and proposed conditions before resource consents staff draft any conditions.
- The council has a group of staff in the Resource Monitoring Department which focuses on compliance monitoring. Staff in other council departments and service centres complement the work of the Compliance Monitoring section.
- The council is preparing a monitoring strategy which will give clearer direction to its monitoring responsibilities under the RMA.
- Air discharge permit inspection sheets include the conditions of the consent. This assists compliance monitoring staff to check compliance with consent conditions.
- The Resource Monitoring Department is expected to meet a certain level of performance in its compliance monitoring functions. Performance measures also include response times for dealing with complaints and pollution incidents.



## 5 RECOMMENDATIONS

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It is recommended:

### **Monitoring strategy**

- 5.1 That, in developing its proposed monitoring strategy, the council incorporates a system which links the information gathered from the monitoring of resource consents, impact monitoring and state of the environment reporting. Such a system should enable council to evaluate the effectiveness of its policies, strategies and consent conditions to achieve the purpose of the RMA and control adverse effects on the environment.

### **Structural arrangements**

- 5.2 That the council investigates options for improving coordination of and accountability for the administration of compliance with resource consents, including the options of 'purchasing' compliance monitoring from other departments and delegating some compliance and monitoring functions to territorial authorities.

### **Information management**

- 5.3 That an information strategy be developed to achieve better coordination of and access to information on resource consents. This should include a protocol for recording information on compliance monitoring which avoids unnecessary duplication.
- 5.4 That a compliance monitoring manual be developed for compliance monitoring staff. This is to promote a consistent approach to monitoring, investigating, reporting and enforcing conditions of consent.
- 5.5 That a colour coding or other identification system be developed which enables key documents to be located easily in the paper files. Documents that fall into this category include applications for resource consents (including accompanying information on the assessment of environmental effects), council officers' technical reports, the decision of the council on the application, the resource consent and conditions, reports on compliance monitoring and complaints follow-up, and copies of abatement notices or other enforcement action.

- 5.6 That the various types of consent monitoring and investigation report forms be replaced with a standard report form.
- 5.7 That when abatement notices are complied with they are cancelled and marked as such on the file.

**Consent conditions**

- 5.8 That consent conditions are checked before they are issued to ensure they are achievable, measurable and enforceable.

## REFERENCES

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Manawatu-Wanganui Regional Council. *Annual Report, 1994-95.*

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Manawatu-Wanganui Regional Council. *Compliance Monitoring Report for Ruapehu District Council, 1994-95.*

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# **APPENDIX 1**

## **CRITERIA FOR EVALUATING COUNCILS' COMPLIANCE MONITORING SYSTEMS**

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### ***Policies / plans***

- Policies, objectives and priorities are stated to guide compliance monitoring systems and procedures.
- A monitoring strategy and priorities are set out in the council's Annual Plan or other publicly available strategic document.

### ***Structure and Resources***

- The council has established a management structure and adequate resources to enable it to carry out compliance monitoring duties effectively and efficiently.
- Effective internal communication links are in place between those parts of the council which prepare plan provisions (eg standards, terms and other rules), those which set consent conditions, and those which monitor compliance and/or carry out enforcement.

### ***Consent conditions***

- Consent conditions are achievable, measurable, clearly stated, enforceable, and appropriate to the scale and intensity of the activities and their effects.
- Consent conditions are consistent with the council's resource management policies and objectives in the regional/district plan, and with the purpose and principles of the RMA.

### ***Monitoring Systems***

- Systems and procedures are in place to monitor compliance with plans and consents in a consistent and effective manner, and to enable the council to comply with its duties under s 35 of the RMA.
- Clear advice is given to both existing consent holders and applicants for consents on general and specific monitoring requirements related to their consents.

- A system exists for recording and following up complaints about non-compliance with consent conditions, and reporting on the outcome of any investigation.
- The council has systems in place that enable identification of activities which require a resource consent, but are operating without one.
- Consents with a good track record are processed and renewed more efficiently.

### ***Monitoring Programmes***

- Systematic programmes for monitoring resource consents have been developed by the council.
- Individual monitoring programmes are negotiated between the council and consent holders, with provision for public input where necessary, and the distribution of costs and responsibilities between the consent holder and the council are clearly defined and legally defensible (with reference to s 36(4) and s 108(3) and (4)).

### ***Information Management***

- Council is clear about the purpose for collecting compliance monitoring information and the use to which the information will be put.
- Information is stored in an accessible and consistent manner.
- Information is readily retrievable.
- Consent monitoring information is analysed and used:
  - a) to gather information on the environmental effects of an activity covered by a resource consent;
  - b) as a basis for reviewing conditions, and renewing resource consents;
  - c) as a basis for reviewing compliance monitoring policies, programmes and procedures;
  - d) for enforcement purposes.
- Information from compliance monitoring is publicly available, and is able to be linked with information generated by or for other monitoring requirements (eg s 35(2)(a) and 35(2)(b)).