

Submission on the Resource Management (Restricted Duration of Certain Discharge and Coastal Permits) Amendment Bill

Submission to the
Local Government and Environment Committee

Dr Jan Wright

Parliamentary Commissioner for the Environment

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for the **Environment**
Te Kaitiaki Taiao a Te Whare Pāremata

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Concern about declining water quality is widespread in New Zealand. While the causes are many and varied, there are improvements which can be made to the system that will help. As such, I am making this submission in support of the Bill.

This Bill reinforces the 'polluter pays' principle under the RMA – that pollution and the effects of pollution must be avoided, remedied, or mitigated and that the cost of this management should be internalised.¹

This Bill proposes that a 5 year limit be placed on resource consents that allow the discharge of pollutants in *exceptional circumstances*. Currently that limit is 35 years.

"Exceptional circumstances" is not defined in the RMA but has been defined in case law.² The Environment Court has stated that the intention of the exceptional circumstances provision is the need for security of investment and development, along with signaling *"the need for solutions"* and *"short terms of consent... with stringent conditions to ensure that the applicant is required to take significant steps to meet its environmental obligations."*³

A 35 year time limit provides for the first need, but not the second. It actually signals that there is **no** urgent need to take *"significant steps to meet its environmental obligations"*.

This Bill has its origin in concern about the pulp and paper mill on the Tarawera River in the Bay of Plenty.⁴ In 1954, an Act of Parliament was written with the explicit purpose of enabling this mill to discharge its waste into the river.⁵ Such legislation would be unthinkable today. Although the Tarawera River no longer deserves to be called "The Black Drain", waste from the mill is still discolouring the water.

In 2004, Environment Bay of Plenty published a regional plan that has been specifically written for the management of the Tarawera River catchment.⁶ In 2010, the pulp and paper mill was granted a consent to continue to discharge waste into the river under exceptional circumstances for 25 years.⁷ The conditions in this consent are actually more lenient than the requirements in the council's plan but override them.

It would be a mistake to judge the merit of this Bill solely on the history of this particular case. However, it is extraordinary that the company has been given the right to discharge this waste at virtually the same level right through until 2035.

Changing the 35 year limit on the exceptional circumstances provision to a 5 year limit would signal much more clearly that action is expected in any case where exceptional circumstances are used to delay compliance with the requirements of the RMA.

Clearly there can be cases where it will take time and a great deal of expenditure to treat discharges to an acceptable level. But if it is not practicable to meet a particular standard at the end of 5 years, there is nothing to prevent an application for a second consent.

It is also important to note that there is potential for the exceptional circumstances provision to be used to impose more lenient conditions on **new activities**. This was never intended.⁸

For instance, a recent application for a resource consent under exceptional circumstances was sought for the release of pollution for 35 years from a proposed mine on the Denniston Plateau into the Whareatea River.⁹ While it has not been granted, it illustrates how the provision can be interpreted.

I recommend that this Bill proceed.

Endnotes

- 1 Environment 2010 strategy: A Statement of the Government's Strategy on the Environment (Ministry for the Environment, 2010, September 1995) "*Resource management should ensure that the unpriced environmental effects (or external costs) associated with the production, distribution, and consumption of goods and services are 'internalised', that is, they are assessed and consistently charged to users and consumers who benefit from them.*" (para 15).
- 2 Case law has defined 'exceptional circumstances' as the dictionary definition of 'out of the ordinary'. Three aspects have been considered. First, the significance of the activity – Tasman Paper Mill (\$200 million to NZ economy) in *Te Rangatiranga O Ngati Rangitahi Inc v Bay of Plenty Regional Council*. Second, the historical duration of the activity – Contact Energy (50 years of renewable geothermal electricity) in *Rotokawa Joint Venture Ltd v Waikato RC*. Third, the consequences on human health of not allowing the effects of the activity in the short term – Gisborne District Council (disposal of human waste) in *Rotokawa Joint Venture Ltd v Waikato RC*.
- 3 *Te Rangatiranga O Ngati Rangitahi Inc v Bay of Plenty Regional Council* (See paras 204 and 218).
- 4 Catherine Delahunty, Resource Management (Restricted Duration of Certain Discharge and Coastal Permits) Amendment Bill — First Reading
- 5 Tasman Pulp and Paper Company Enabling Act 1954
- 6 Environment Bay of Plenty Regional Plan for the Tarawera River Catchment.
- 7 At para 228 *Marr v Bay of Plenty Regional Council* [2010] NZEnvC 347.
- 8 "*Section 107 was specifically enacted as it was with the Tasman Mill and the pulp and paper industry in mind.*" At para 128 *Marr v Bay of Plenty Regional Council* [2010] NZEnvC 347.
- 9 At para 487, Decision of Commissioners Appointed by West Coast Regional Council and Buller District Council, 26 August 2011