
Regulating wastewater overflows

3 messages

Jan Heijs <jheijnsz@gmail.com>

Thu, Jun 15, 2023 at 8:59 AM

To: kim.drummond@tasman.govt.nz

Cc: John Ridd <john.ridd@tasman.govt.nz>, Marion <info@ourmapua.org>, Paul McIntosh <pmcintosh64@yahoo.com>, Mike.Schruer@tasman.govt.nz

Hi Kim,

Thanks for coming to the MDCA meeting last Monday.

As discussed, can you:

- 1) confirm you are using rule 36.2.4.1 of the TRMP to decide that wastewater overflows cannot be consented
- 2) can you point me to the section in the RMA that you use to declare overflows in Tasman emergencies?

As discussed after the meeting, it would be great if we could continue the discussion to seek a solution.

Ngā mihi

Jan Heijs

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Paul McIntosh <pmcintosh64@yahoo.com>

Thu, Jun 15, 2023 at 9:06 AM

Reply-To: Paul McIntosh <pmcintosh64@yahoo.com>

To: Marion Satherley <marionawayfromhome@gmail.com>

For correspondence

Sent from Yahoo Mail on Android

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Paul McIntosh <pmcintosh64@yahoo.com>

Fri, Jun 16, 2023 at 11:3

Reply-To: Paul McIntosh <pmcintosh64@yahoo.com>

To: Marion Satherley <marionawayfromhome@gmail.com>

More correspondence...

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----- Forwarded message -----

From: "Kim Drummond" <kim.drummond@tasman.govt.nz>

To: "Jan Heijs" <jheijnsz@gmail.com>

Cc: "Paul McIntosh" <pmcintosh64@yahoo.com>

Sent: Fri, 16 Jun 2023 at 11:20 am

Subject: RE: Regulating wastewater overflows

Kia ora Jan

Thank you for your email following the MCDA meeting earlier this week.

In reply to your first question, I can confirm that rule 36.2.4.1 of the Tasman Resource Management Plan is the rule preventing the consenting of wastewater overflows. Rule 36.2.4.1 has a status of a prohibited activity in the plan and no resource consent can be sought or granted to authorise the activity.

In respect to your second question, my reply out of necessity must draw on a legal explanation which is why I did not think it was appropriate to engage in the detail at the meeting. The first point is that it is important to note that Council does not use the RMA to declare overflows in Tasman as emergencies. Overflows occur for a number of reasons and in every case, the cause, and action taken by the network operator must fit within the framework of the Act if they are to rely on its protections.

Under the RMA they are set out under Part 12 of the RMA. The key emergency provisions are sections 330, 330A, 330B and 331 of the Act. These provisions also have a relationship to section 18 and to the statutory defences for prosecution under section 341 of the RMA. The emergency works provisions temporarily override resource consent requirements under sections 9, 12, 13, 14, 15 of the RMA during times of emergency.

Section 330(1A) of the Act sets out that emergency works powers apply whether or not the adverse effect or sudden event was foreseeable. To use the emergency works provisions, a person or body must be an 'authorised person'. Sewerage and stormwater network utility operators are authorised persons under section 167 of the RMA and section 4 of the Civil Defence Emergency Management Act.

Emergency works provisions can only be used in emergency situations when in the opinion of the person or network operator, there is a need to take preventative or remedial measures to remove the cause, or mitigate any actual or likely effect, of the emergency. Forming an opinion on whether to use emergency works before undertaking the works is guided by sections 330(1)(d)-(f) of the Act. The test is one 'a reasonable person would form'. Once a decision is made to exercise powers, the immediate measures undertaken must only extend to what is necessary and sufficient for dealing with the emergency. The provisions in sections 330 do not extend to any actions that would go beyond either removing the cause of, or mitigating, any actual or likely adverse effect of the emergency.

Section 18(2) of the Act provides immunity from prosecution for an activity that is undertaken in accordance with section 330. It goes without saying that immunity is not extended to work not carried out by authorised persons or, the circumstances are not deemed to be an emergency or, the works are inappropriate in type or scale for addressing the emergency only.

Section 341(1) of the Act provides that RMA offences are strict liability offences which means for all intents and purposes breaches of section 9, 12, 13, 14, 15 of the Act. Strict liability means that no motive needs to be proven.

The defence of due diligence (reasonable care) is available for a strict liability offence in common law and the defences built into the Act through section 341(2) are a codification of that common law defence.

Section 341(2)(b) of the Act provides a defence where the action or event was beyond the control of the defendant (such as through natural disaster, or sabotage), could not have been reasonably foreseen, and were adequately mitigated or remedied by the defendant after the offence occurred.

As a regulator we must operate in accordance with the law and established legal principles. This means giving heed to those protections and defences enshrined in the law if they can be relied upon by the

person. If not, we will apply our enforcement decision making processes to determine an appropriate outcome.

I trust this response addresses your questions. As I inferred above, it involves interpreting various elements of the law as we see it.

Ngā mihi

Kim

Kim Drummond

Kaiwhakahaere Rōpū - Whakaū i te Taiao

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