

Scanned:	8/11/05
Consent #:	R105082 + D5084
R2 Entry:	NA
Officer:	ED
Initials:	KG

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7 November 2005

West Coast Regional Council  
P O Box 66  
GREYMOUTH

Attention: Colin Dall

Dear Colin

## PA Paterson v West Coast Regional Council

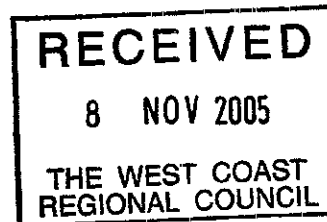
Further to my email this morning, please find **enclosed** a copy of Environment Court decision C164/2005, which strikes out the appeal lodged by Mr Paterson.

Yours faithfully



**Erin Woolley**  
Solicitor

e.woolley@duncancotterill.com



Phil Paterson  
 La Fontaine Rd  
 P.O. Han Han  
 South Westland  
 15/9/05

P1/3

Scanned:	20/9/05
Consent #:	R105082 + 05084
R2 Entry:	-
Officer:	GD
Initials:	KG

The Registrar  
 Environment Court  
 P.O. Box 2069  
 Christchurch

To Whom it may concern

Appellant - Phil Anthony Paterson

I am the applicant to the environment court who is appealing the decision of Mr Barry Joe applications RC05082 & RC05084 (Discharge to land from Aerial 1080 operations)

Grounds on which appeal is based

- Barry Joe has ruled on these applications before & furves the applicant & has no expertise.
- The Regional Council is involved in the operation & in the monitoring which should be independent
- The Regional Council is breaching its conditions under Rule 15, R M AD on the agricultural spray drift.
- The extreme toxic nature of 1080 is not being taken into account. There is no antidote & effects are accumulative. What are the symptoms & remedies. The local doctors don't even know.

- Who is accountable, the aerial crop in 2002 poisoned my land in breach of their contract which made me ill. Justice John Leeson in the High Court ruling CIV 2003-485-001949 that the responsible authority may be breaching the conditions in the aerial application of 1080 and are subject to the special provisions of the Resource Management Act.

- The proposed operation will poison my bees 1080 is a proven insecticide & has been used to kill wasps & bees are attracted by the sugar & nectar in the fruits. 1080 will also accumulate in the honey.

- Scientific evidence says that it is, odourless, tasteless, difficult to detect. It has a LD50 rating of 1, and is the most toxic substance known to man DDT has LD50 rating of 120. Yet it is spread life fertiliser. 1080 binds with the soil like DDT and remains stable in sterile water for 10 years plus. Its effects are accumulative & carcases of animals & insects are toxic.

Evidence also says it kills 100% of rats. The bush rat predate the magpie who with the Weka, Falcon, hawk, morepork regard it as a favourite food.

- The operations are no different to the Nuclear tests of the French. No other country uses 1080 in this fashion & we are being used as guinea pigs. Nubring is the Regional Council with name for a aerial crop.

- The high cost of the operation and no money going to local employment the area being accessible and covered in logging roads
- Native birds, woodhedgeons, bush robin etc are being decimated and are being replaced by introduced species and the impact on frogs which has never been assessed
- Ngahai Tahu are opposed to the use of 1080 (Kara Edwards South Westland spokesperson)
- Proposed operations are to eliminate Bovine TB, the biggest threat is poor movement control of stock. In Britain it is a jail sentence where is the accountability in NZ.
- 1080 can be easily found & used for criminal purposes.  
Relief Sought.

- That 1080 should not be used because of its accumulative & residual effects that alternatives be used, cyanide, ferrators and trapping. These are selective, don't leave toxic carcasses lying around & assessment can be made of possum numbers. Employment will be generated & use will be made of the possum.

Phil Parker

Decision No. C 164 /2005

IN THE MATTER of the Resource Management Act 1991 (**the Act**)

AND

IN THE MATTER of an appeal under section 120 of the Act

BETWEEN P A PATERSON

(ENV C 247/05)

Appellant

AND WEST COAST REGIONAL COUNCIL

Respondent

BEFORE THE ENVIRONMENT COURT

Environment Judge J A Smith - (sitting alone pursuant to section 279 of the Act)

In Chambers at CHRISTCHURCH

**DECISION TO STRIKE OUT APPEAL**

***Background***

[1] Mr P A Paterson has appealed to the Court from a decision of a hearing commissioner, Mr Barry Loe, for the West Coast Regional Council (**the Council**) granting consents to the Animal Health Board for discharge to land from aerial 1080 operations. The applications are RC 05082 and RC 05084.

[2] The respondent Council has filed a motion for strike out with this Court, together with a memorandum of counsel. This has been served upon Mr Paterson and the Animal Health Board. The Animal Health Board have filed a memorandum supporting the application to strike out

[3] The application alleges:



- (a) the appeal is frivolous and vexatious;
- (b) discloses no reasonable case;
- (c) it would be an abuse of the process of the Court to allow the case to be taken further.

***Preliminary***

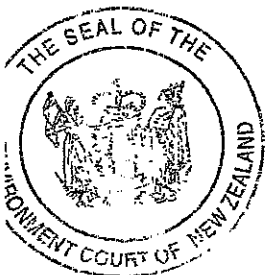
[4] This Court would normally give an opportunity for Mr Paterson, the Animal Health Board and the respondent to consider the question of a hearing. However the memorandum for the Council suggests that, at the very best construction of Mr Paterson's appeal documents, the appeal cannot possibly succeed (see *Penny v Canterbury Regional Council*<sup>1</sup>). Essentially I must be satisfied that Mr Paterson could not succeed even if all Mr Paterson's appeal contentions are established (*Society for the Protection of Auckland City and Waterfront Incorporated v Auckland City Council and AMP Asset Management Limited*<sup>2</sup>).

[5] Having considered the appeal itself, which is annexed hereto and marked "A", I have reached a conclusion that the outcome of this case is so clear that the Council's application must succeed.

[6] The application is made under section 279(4) which states:

*An [Environment Judge] sitting alone may, at any stage of the proceedings and on such terms as the Judge thinks fit, order that the whole or any part of that person's case may be struck out if the Judge considers-*

- (a) *That it is frivolous or vexatious; or*
- (b) *That it discloses no reasonable or relevant case in respect of the proceedings, or*
- (c) *That it would otherwise be an abuse of the process of the [Environment Court] to allow the case to be taken further.*



<sup>1</sup> C101/2000.  
<sup>2</sup> 19/9/2000, High Court Auckland M1031-SW00

[7] For the purpose of this consideration I have proceeded on the assumption that Mr Paterson would be able to establish the various points he alleges to assess whether the grounds for strike out are made out. It is clear from section 279(4) that the Judge may undertake an assessment under that section at any stage of the proceedings, including upon a preliminary reading of the file, without having heard from the parties.

*The status of the activity*

[8] The key ground on which a strike out on this matter must succeed is that the activity in question is a controlled activity. Accordingly consent must be granted, although conditions might be imposed relating to various matters over which the Council has retained discretion. This issue was discussed in detail in *New Zealand Deerstalkers Association Inc v West Coast Regional Council*<sup>3</sup>. It appears many of the grounds raised in the appeal relate to matters beyond those controlled in terms of the plan and would therefore be irrelevant to the determination of this case.

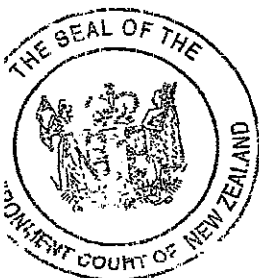
[9] However more fundamental is the relief sought in terms of the appeal:

*That 1080 should not be used because of its accumulative and residual effects, that alternatives be used (cyanide, Feratox and trapping) as these are selective; don't leave toxic carcasses around; and assessment can be made of possum numbers. Employment will be generated and use will be made of the possum*

[10] The only potential possible interpretation of this is that the appellant seeks a refusal of the consent(s). He does not address the conditions of consent or even suggest that certain conditions might require amendment. Reading the whole of the appeal, a construction that the relief seeks modification of certain conditions would be a contradiction of the entire appeal document.

[11] The Court has no jurisdiction to refuse consent as was made clear to Mr Paterson in the decision of the Court *Paterson v West Coast Regional Council*<sup>4</sup> and was confirmed by the High Court on appeal *Paterson v West Coast Regional Council*<sup>5</sup>.

<sup>3</sup> Decision C16/2001  
<sup>4</sup> Decision C091/2003  
<sup>5</sup> CIV 2003-485-1949



The full impact on many species such as frogs has never been assessed, nor on the bacteria in the earth

**Adverse effects on environment and economics (bees)** - As a contact insecticide, I am concerned that the proposed 1080 drop will poison my bees and others. It has been used to kill wasps and bees have been seen to be attracted to the baits which contain sugar and cinnamon. Not only will 1080 accumulate in the honey and kill my bees, affecting me economically and health-wise, but the death of bees will have a knock-on effect for the farmers who rely on them to pollinate pasture flowers to feed their stock

**Spray drift dangers** -Regional Council is breaching its conditions under Rule 15 of the R.M.A. on the agrichemical spray drift by allowing spray drift to occur during aerial operations. This spray drift has been witnessed by the Mayor of South Westland herself when accompanying an aerial drop operation. When 1080 was aerielly dropped on and around my land (without my agreement) in 2002 I became ill with symptoms which fit with 1080 poisoning. I believe that spray drift caused this illness and Justice John Hansen in the High Court ruling CIV2003-485-001949 said that the responsible authority may be breaching the conditions in the aerial application of 1080 and are subject to the penal provisions of the Resource Management Act. What is to stop this kind of spray drift from happening again and from someone else being poisoned, without even necessarily realising the cause of their illness or death? For there is no publicity on the symptoms or remedies, information which even local doctors do not know. And who is really to be held accountable if the cause is identified? The extreme toxic nature of 1080 is not being taken into account. There is no antidote and effects are accumulative.

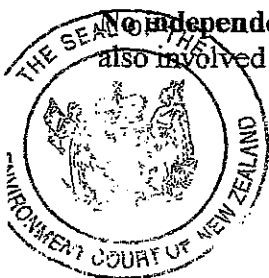
**Undemocratic process** - The Regional Council deems aerial dropping of 1080 to be a "controlled activity" which means that nothing any submitter says can stop them from going ahead with it. They also decide who is "deemed to be an affected party" and thus allowed to make a submission to the hearing, without any advertising of the chance to become deemed as an affected party.

At the hearing the conditions of discharge by the Regional Council are heard by a Commissioner who is appointed by the Regional Council and aided by Mr M. Rowe who is employed by the Regional Council.

The Commissioner (or person responsible) still has yet to notify all of the submitters of his decision, thereby denying them the right to appeal.

How many people in an affected area have to be against aerial dropping before the Council will stop it? In just a one week period between 3 and 10 August 2005 a petition, stating, "We the undersigned residents, oppose the use of 1080 poison in the Hari Hari area", was placed at the local shop and garage and obtained the signatures of 70 Hari Hari voting-age residents. The total population at the last census was 358 (around 100 of these being children) which shows a large percentage of the adult population are against aerial dropping in Hari Hari.

**No independent monitoring** - The Regional Council is involved in the operation and also involved in the monitoring of the operations, which should be independent.



**Tangata whenua and the Treaty of Waitangi** - Mr Loe stated in his decision that he did not find any conflict between the proposed activities and the principles of the Treaty. Yet anything that kills native birds, insects or fish could be deemed to be denying Maori of their "treasures". Local iwi, Nghanai Tahu, are opposed to the use of 1080 according to Kara Edwards, South Westland Spokesperson.

**Possible criminal use** - Whereas people must be proven to be of sound mind to obtain a gun license or cyanide license, aerial dropping of 1080 means releasing tons of deadly poison into the public sphere for anyone to find and use for criminal purposes.

**Unwise use of taxpayers' money** - At an estimated \$25 per hectare for aerial dropping this comes to around \$558 000 for one drop in this area. This money spent on ground-based control methods could provide many valuable jobs and at the same time target only possums and save the taxpayer money. With the use of cyanide or traps ground-based hunters would also have the bonus of being able to make use of the dead carcass for fur or skins and the exact number of possums dying would be known for certain, as well as the real danger of secondary poisoning removed. The area in question has mostly been done by ground-based methods in the past and is easy terrain, covered in forest roads and with a large number of bait station pots already in position.

**TB and stock movement** - Poor stock control is the greatest threat to TB infestation. With stricter control on stock movement TB numbers on the West Coast are beginning to drop.

**TB and possums in Hari Hari** - Recent ground-based operations have been carried out and many autopsies performed, not one of them turning up a possum with TB.

**Lack of regard for animal welfare** - 1080 is known to induce slow and painful deaths. Possums and dogs are both known to take hours to die - an average of 8 hours for a possum. This is inhumane. Despite the fact that possums are seen as pests, they did not ask to be brought to this country and do not deserve to suffer such lingering and excruciating deaths.

**Risk to pets** - Several pets have died around Hari Hari as a result of past operations and in a rural area such as this it is not feasible to expect dog owners to keep dogs always tied up or muzzled.

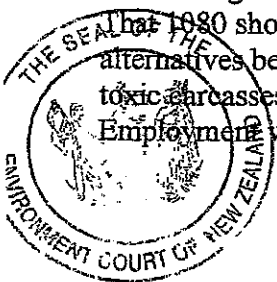
**Risk to hunters** - There is a very real risk to hunters in eating meat which has been poisoned with 1080 and Hari Hari has a large number of people who eat wild game.

**Impact on tourism** - Having signs all over our beautiful bush warning people of deadly poison is not a good look for our "clean green New Zealand" image.

Relief sought:

That 1080 should not be used because of its accumulative and residual effects, that alternatives be used (cyanide, Feratox and trapping) as these are selective; don't leave toxic carcasses around; and assessment can be made of possum numbers.

Employment will be generated and use will be made of the possum.



4/4.

Signature of appellant:

Date:

Address for service of appellant:

Phil Paterson  
La Fontaine Rd.  
RD1  
Hari Hari

Telephone:  
03-753-3218 (contact)

Contact person:  
Daniel Lane (partner in Paterson's Apiaries)

Names and addresses of persons served with a copy of this notice:

- Noel L. Rayner (Lawyer), Haddon Chambers, 3 Haddon Pl., Dunedin
- Minister of Conservation, Parliament, Wellington
- Department of Conservation, Private Bag 701, Hokitika
- T. E Nolan, Flat Rd, RD1, Whataroa
- G. L. Humphris, Wanganui Flat Rd, RD1, Hari Hari
- P. Tomasi, 13 Main Rd, Hari Hari
- D. & K. Lane, Main Rd, RD1, Hari Hari
- K. Bee, Haddock Rd, RD1, Hari Hari
- L. & M Molloy, La Fontaine Rd, RD1, Hari Hari
- J. McIntosh & S Black, P.O. Box 2, Hari Hari
- J. Anderson & J. Wylie, Bonar Farm, Main Rd, RD1, Hari Hari
- A. McAllister, West Coast Regional Council, P.O. Box 66, Greymouth

I attach the following documents to this application:

- a) A copy of the relevant decision by the Commissioner of Hearing
- b) A copy of the High Court ruling CIV2003-485-001949
- c) A copy of the petition opposing aerial dropping of 1080 in the Hari Hari area.

*Phil Paterson* appellant 14/10/005.

