Ministry for Primary Industries
Manatū Ahu Matua

Animal Products Notice

# Disposal of Non-conforming Dairy Material or Dairy Product



[Document Date]

Issued under the Animal Products Act 1999

New Zealand Government

# TITLE

Animal Products Notice: Disposal of Non-conforming Dairy Material or Dairy Product

# COMMENCEMENT

This Animal Products Notice comes into force on [Effective Date]

# REVOCATION

This Animal Products Notice revokes and replaces the Animal Products (Disposal of Non-conforming Dairy Material or Dairy Product) Notice 2013 dated 18th February 2013.

# ISSUING AUTHORITY

This Animal Products Notice is issued under sections 45, 167(1)(h) and 167(1)(maab) of the Animal Products Act 1999 and regulation 5 of the Animal Products (Dairy) Regulations 2005.

Dated at Wellington this ... day of ..... 2016



Matthew Stone
Director, Animal and Animal Products
Ministry for Primary Industries
(acting under delegated authority of the Director-General)

Contact for further information
Ministry for Primary Industries (MPI)
Regulation & Assurance Branch
Animal and Animal Products Directorate
PO Box 2526
Wellington 6140
Email: animal.products@mpi.govt.nz

# Contents

# Introduction

This introduction is not part of the Animal Products Notice, but is intended to indicate its general effect.

## Purpose

(1) This notice specifies:

a) the criteria for determining what is non-conforming dairy material or dairy product for the purpose of regulation 5 of the Animal Products (Dairy) Regulations 2005 (Regulations); and
b) prescribes procedures and requirements for the disposal of non-conforming dairy material or dairy product for the purpose of regulation 5 of the Regulations.

(2) The prescribed procedures in Part 3 may (if applicable) be followed by a risk management programme (RMP) operator as an alternative to obtaining the written consent of the Director-General under regulation 5(1) of the Regulations before disposing of non-conforming dairy material or dairy product.

## Background

(1) This notice contains specifications issued under sections 45 and 167 of the Animal Products Act 1999 (Act) that are necessary or desirable to give effect to, or to amplify, the animal product standard prescribed by regulation 5 of the Regulations.

(2) Regulation 5(1) of the Regulations provides that before disposing of non-conforming dairy material or dairy product, RMP operators must either comply with prescribed procedures specified by the Director-General or obtain the written consent of the Director-General. This notice provides the prescribed procedures for disposal of non-conforming dairy material or dairy product.

(3) Processors, RMP operators and exporters of dairy material and dairy product intended for export must identify and ensure compliance with all relevant export requirements in accordance with Part 5 of the Act. The relevant export requirements can be obtained from the MPI website (search on "exporting dairy").

(4) It is expected that a RMP operator will also meet the requirements of local governing bodies and any other relevant legislation, such as the Resource Management Act 1991.



## Who should read this Animal Products Notice?

(1) The following persons should read this Notice:

a) operators of dairy RMPs; and
b) recognised agencies responsible for verification of dairy RMPs.

## Why is this important?

(1) Operating other than in accordance with this Animal Products Notice is an offence under Part 10 of the Act.

## Document history

(1) This Notice replaces the Animal Products (Disposal of Non-conforming Dairy Material or Dairy Product) Notice 2013 dated 18th February 2013.

## Other information

(1) Non-conforming dairy material or dairy product is also subject to relevant requirements in the:

a) Animal Products Act 1999.
b) Animal Products (Dairy) Regulations 2005.

c) Animal Products (Exemptions and Inclusions) Order 2000.
d) Agricultural Compounds and Veterinary Medicines Act 1997.
e) Agricultural Compounds and Veterinary Medicines (Exemptions and Prohibited Substances) Regulations 2011.
f) Australian New Zealand Food Standards Code.
g) Resource Management Act 1991.

# Part 1: Requirements

## 1.1 Incorporation by reference

(1) Under section 168 of the Act, the following documents are incorporated into, and form part of this Notice as standard works of reference the current edition of:

a) DPC 1: Animal Products (Dairy): Approved Criteria for General Dairy Processing (DPC 1); and
b) DPC 3: Animal Products (Dairy): Approved Criteria for the Manufacturing of Dairy Material and Product (DCP 3).

## 1.2 Definitions

(1) In this Notice, unless the context otherwise requires -

**Act** means the Animal Products Act 1999

**applicable recognised agency** means the agency recognised by the Director-General and engaged by the RMP business for the purposes of verification of the RMP that covers the non-conforming dairy material or dairy product

**approved** means approved under the Act

**CCP** means critical control point

**liquid dairy material** means raw milk or partially processed unpackaged dairy material in a liquid state

**MPI** means the Ministry for Primary Industries

**non-conforming dairy material or dairy product** means any dairy material or dairy product that meets the criteria set out in clause 2.1 Criteria for determining non-conforming dairy material or dairy product

**product disposal application** means an application to the applicable recognised agency for the approval of the disposal of any non-conforming dairy material or dairy product

**RMP** means risk management programme, and **programme** when used in this document has a corresponding meaning

(2) Any term or expression defined in the Act or Regulations that is used, but not defined, in this Notice has the same meaning as in the Act or Regulations (as the case may be).

# Part 2: Non-Conforming Dairy Material or Dairy Product

## 2.1 Criteria for determining non-conforming dairy material or dairy product

(1) Non-conforming dairy material or dairy product is any dairy material or dairy product that is known or suspected:

a) not to meet requirements imposed by or under the Act; or
b) not to have been processed in accordance with any requirements imposed by or under the Act.

## 2.2 Operator reporting requirements for non-conforming dairy material or dairy product

(1) All non-conforming dairy material or dairy product must be reported to the applicable recognised agency responsible for verification of the RMP by the operator of the programme without delay, except as provided for under subclause (2).

(2) A RMP operator may notify non-conforming liquid dairy material to the applicable recognised agency at an agreed frequency provided that the liquid dairy material is delivered directly to:

a) a primary producer for the purpose of animal consumption; or
b) the place of disposal.

(3) The RMP operator must inform the premises undertaking any further processing of any non-conforming product of the nature of the non-conformance and any conditions advised by the applicable recognised agency prior to the product being released to the further processor.

# Part 3: Disposal of Non-Conforming Dairy Material and Dairy Product

## 3.1 Procedures for disposal of non-conforming dairy material or dairy product

(1) A RMP operator must obtain consent in writing from the Director-General before disposing of non-conforming dairy material or dairy product except where non-conforming:

a) dairy material or dairy product is disposed of to landfill or destroyed in accordance with clause 3.2(1); or
b) liquid dairy material is disposed of to a primary producer for animal consumption in accordance with clause 3.2(2); or
c) liquid dairy material is disposed of to land or waste system in accordance with 3.2(3); or
d) dairy material or dairy product is disposed of in accordance with a written approval obtained from the applicable recognised agency in accordance with clause 3.3 Recognised agency managed product disposal.

## 3.2 Operator managed product disposal

(1) A RMP operator may destroy or dispose of non-conforming dairy material or dairy product at a landfill provided that:

a) no other restrictions have been placed on movement of the dairy material or dairy product by or under the Act; and
b) the RMP operator ensures the dairy material or dairy product is disposed of correctly, and has controls in place to prevent re-release of the product; and
c) the date, place and method of disposal is notified to the applicable recognised agency within 72 hours of the disposal; and
d) evidence is provided to the applicable recognised agency to confirm the disposal occurred as notified (such as landfill receipts) within 72 hours of the disposal.

(2) A RMP operator may dispose of non-conforming liquid dairy material to a primary producer for the purposes of animal consumption provided that:

a) no other restrictions have been placed on movement of the product by or under the Act; and
b) the liquid dairy material is delivered directly to the primary producer; and
c) the RMP operator informs the primary producer that the liquid dairy material must not be subject to further sale or trade; and
d) the liquid dairy material remains under the control of the RMP operator until it is received by the primary producer; and
e) the RMP operator retains evidence to confirm the disposal occurred as provided for in this clause: and
f) the date, place and method of disposal (including the recipient of the liquid dairy material) is notified to the applicable recognised agency at an agreed frequency; and
g) the non-conforming liquid dairy material complies with all applicable requirements under the Agricultural Compounds and Veterinary Medicines Act 1997 (ACVM) and regulations 7 and 8 of the Agricultural Compounds and Veterinary Medicines (Exemptions and Prohibited Substances) Regulations 2011 (ACVM Regs).

(3) A RMP operator may dispose of non-conforming liquid dairy material to land or a waste system provided that:

a) no other restrictions have been placed on movement of the material by or under the Act; and
b) the RMP operator ensures that: —

i) the method of disposal is appropriate for liquid dairy material; and
ii) the liquid dairy material is delivered directly to the place of disposal; and
iii) the person responsible for activities at the place where disposal occurs is advised that the liquid dairy material is not for human or animal consumption; and
iv) the liquid dairy material remains under the control of the RMP operator until the point of disposal to ensure it is disposed of correctly; and
v) evidence is retained to confirm the disposal occurred as provided for in this clause; and
vi) the date, place and method of disposal (including the recipient of the liquid dairy material) is notified to the applicable recognised agency at an agreed frequency.

## 3.3 Recognised agency managed product disposal

(1) A RMP operator may submit a product disposal application to the applicable recognised agency for approval if:

a) the product disposal application relates to a non-conformance of a type set out in Column 1 (Non-conformance) of the Schedule; and
b) the non-conforming dairy material or dairy product is intended for a use set out in the corresponding row in Column 2 (Disposal option) of the Schedule; and
c) all applicable requirements specified in the corresponding row of Column 3 (Requirements) of the Schedule are met.

(2) A product disposal application must:

a) identify the non-conforming dairy material or dairy product; and
b) specify the reasons for the non-conformance; and
c) specify the corrective actions taken by the RMP operator; and
d) specify the manner of disposal proposed.

(3) If an applicable recognised agency approves a product disposal application, the RMP operator must dispose of the non-conforming dairy material or dairy product in the manner approved by the applicable recognised agency.

(4) If an applicable recognised agency approves a product disposal application in the manner of further processing at another premises, including rendering, or for animal consumption, the RMP operator must:

a) relabel the product to the satisfaction of the recognised agency responsible for the verification of the RMP; and
b) provide evidence of the relabelling to the applicable recognised agency prior to the product being released from the RMP premises.

## 3.4 Recognised agency requirements

(1) An applicable recognised agency that receives a product disposal application must not approve the application unless it can verify that the requirements in clause 3.3(1) have been met.

(2) If the applicable recognised agency has verified that the requirements in clause 3.3(1) have been met, the applicable recognised agency must, subject to subclause (3), approve the product disposal application in writing.

(3) The applicable recognised agency may, if it considers it necessary and after consultation with the RMP operator, approve a manner of disposal that differs from that submitted by the RMP operator.

(4) The applicable recognised agency must, prior to, or in conjunction with giving the RMP operator written approval for disposal pursuant to subclause (2), submit a report in writing to the Director-General confirming the agency's verification of the application of clause 3.3(1).

## 3.5 Records

(1) The RMP operator must retain records kept for the purposes of this Notice:

a) for at least 4 years; and
b) must ensure that the records are retrievable within 2 working days of a request from the Director-General or the applicable recognised agency.

# Schedule – Circumstances for recognised agency managed product disposal

| Column 1 | Column 2 | Column 3 |
|---|---|---|
| **Non-conformance** | **Disposal option** | **Requirements** |
| Known or suspected foreign matter contamination | Release for unrestricted use without further processing | (1) The product meets the requirement for wholesomeness under regulation 6.<br>(2) There is either:<br>a) a downstream critical control point (CCP) to control the potential hazard (for example, metal detector, filter or sifter); or<br>b) the foreign matter present:<br>i) is not of a size or sharpness to cause injury to the mouth or gastrointestinal tract by perforation or other mechanisms; and<br>ii) will not release compounds harmful to health and is not glass greater than 0.1mm. |
| | Release for unrestricted use after further processing | (1) Further processing is carried out in New Zealand, in a premises which has a RMP registered by MPI for this type of operation.<br>(2) The RMP operator must inform the premises undertaking further processing of the product of the nature of the non-conformance and any conditions advised by the applicable recognised agency prior to the product being released from the RMP premises.<br>(3) The further processing application includes either a:<br>a) validated step (for example, filters, separators or sifters) which will remove the potential foreign matter present; or<br>b) metal detection/x-ray step which will detect the presence of foreign matter. This step must be a CCP or operation approved by the applicable recognised agency for the premises carrying out the further processing. |

| Column 1 | Column 2 | Column 3 |
|---|---|---|
| Known or suspected foreign matter contamination | Release to local market for animal consumption without further processing | (1) The product meets the requirement for wholesomeness under regulation 6.<br>(2) The RMP operator must inform the receiver of the product of the nature of the non-conformance and the details of the known or suspected foreign matter contamination prior to the product being released from the RMP premises.<br>(3) The foreign matter present:<br>a) is not of a size or sharpness to cause injury to the mouth or gastrointestinal tract by perforation or other mechanisms; and<br>b) will not release compounds harmful to health and is not glass greater than 0.1mm. |
| | Release to local market for animal consumption after further processing | (1) Further processing is carried out within New Zealand in a premises that meets the Act and/or ACVM requirements (as applicable).<br>(2) The RMP operator must inform the premises undertaking further processing of the product of the nature of the non-conformance and any conditions (size of filters used etc.) advised by the applicable recognised agency prior to the product being released from the RMP premises.<br>(3) The further processing application includes a:<br>a) filtration step (that is managed as a CCP) which will remove the potential foreign matter present; or<br>b) metal detection/x-ray step which will detect the presence of foreign matter. It is expected that appropriate calibration and validation of operational records will be maintained by the operator and available on request. |
| | Release for technical grade industrial application (not for human or animal consumption) use | Product is not to be exported to any market requiring official assurances and the RMP operator must:<br>a) relabel the product to the satisfaction of the applicable recognised agency, and<br>b) inform the receiver of the product of the nature of the non-conformance and any conditions advised by the applicable recognised agency prior to the product being released from the RMP premises. |

| Column 1 | Column 2 | Column 3 |
|---|---|---|
| Heat treatment failures, including CCP failures, (as stated in the operator's RMP) where not all applicable heat treatment criteria have been met | Release for unrestricted use after further processing | Further processing is carried out within New Zealand in a premises which has a RMP registered by MPI for this type of operation, and the:<br>a) further processing application must include a heat treatment step compliant with DPC 3 heat treatment criteria, which will ensure the resultant product has received an applicable heat treatment compliant with relevant requirements; and<br>b) RMP operator must inform the receiver of the product of the nature of the non-conformance and any conditions advised by the applicable recognised agency prior to the product being released from the RMP premises. |
| | Release for unrestricted use without further processing | An assessment has been carried out by a MPI recognised RMP evaluator with a Heat Treatment – Dairy endorsement (go to the MPI website and search on "registers & lists). The assessment must confirm that the product has received a heat treatment that is compliant with the minimum time and temperature requirements prescribed in DPC3. |
| | Release for animal consumption use without further processing | Product is not to be exported to any market requiring official assurances which require heat treatment attestations. |
| CCP failure other than heat treatment (as stated in the operator's RMP) | Release for unrestricted use | Measures have been taken to ensure the product remains fit for intended purpose as required under the Act. For example:<br>a) filter/sifter failures where all foreign matter has been recovered and/or where it has been positively identified that there would have been little/no foreign matter risk e.g. checking of intrusive maintenance records etc.; or<br>b) metal detector check failures, where the potentially affected product has been rescanned through a fully functioning metal detector. |
| *Cronobacter sakazakii (E.sakazakii*) levels exceeding the limit specified in Table A1.0 of DPC1 | Release for use in products excluding infant formula, human milk fortifiers or formula for special medical purposes intended for infants when intended as the sole source of nutrition | (1) Further processing is carried out within New Zealand, in a premises which has a RMP registered by MPI for this type of operation.<br>(2) The further processing must not occur in an area that blends or packs:<br>a) dried infant formula; or<br>b) human milk fortifiers; or<br>c) formula for special medical purposes intended for infants; or<br>d) dried ingredients for infant formula. |

| Column 1 | Column 2 | Column 3 |
|---|---|---|
| *B. cereus* or *S. aureus* microbiological levels exceeding the limit specified in Table A1.0 of DPC1 | Release for unrestricted market animal consumption use without further processing | The level of *B. cereus* must not exceed 20,000 cfu/g.<br><br>The level of *S. aureus* must not exceed 100,000 cfu/g. |
| | Release for unrestricted market animal consumption use with further processing | (1) Further processing is carried out within New Zealand in a premises which has a RMP registered by MPI for this type of operation.<br>(2) The RMP operator must inform the premises undertaking further processing of the product of the nature of the non-conformance and any conditions advised by the applicable recognised agency prior to the product being released from the RMP premises.<br>(3) The level of *B. cereus* in the resultant product must not exceed 20,000 cfu/g.<br>(4) The level of *S. aureus* in the resultant product must not exceed 100,000 cfu/g. |
| *E.coli* microbiological levels exceeding the limit specified in Table A1.0 of DPC1 | Release for unrestricted use after further processing | (1) Further processing is carried out within New Zealand in a premises which has a RMP registered by MPI for this type of operation.<br>(2) The further processing application includes a heat treatment step compliant with DPC 3 heat treatment criteria, which will ensure the:<br>a) product has received a heat treatment compliant with all applicable heat treatment criteria; and<br>b) resultant product meets any applicable limits. |
| | Release to local market for animal consumption without further processing | (1) The non-conforming dairy material or dairy product must not be given to young animals (up to 2 weeks post weaning) and for:<br>a) pigs, the level of *E. coli* must not exceed 50,000 cfu/g;<br>b) Other species (other than pigs) the level of *E.coli* meets the fitness for purpose requirements under regulations 7 and 8 of the ACVM Regs. |

| Column 1 | Column 2 | Column 3 |
|---|---|---|
| Pathogen levels exceeding the limit specified in Table A1.0 of DPC1 | Release for rendering for industrial application (not for consumption) use | The RMP operator must inform the premises undertaking rendering of the product of the nature of the non-conformance and any conditions advised by the applicable recognised agency prior to the product being released from the RMP premises. |
| Standard Plate Count (SPC) levels exceeding the limit specified in the Australia New Zealand Food Standards code for powdered infant formula products | Release for non-infant formula products with further processing | (1) Further processing is carried out within New Zealand, in a premises which has a RMP registered by MPI for this type of operation.<br>(2) The RMP operator must inform the receiver of the product of the nature of the non-conformance and any conditions advised by the applicable recognised agency prior to the product being released from the RMP premises.<br>(3) The further processing application will ensure the resultant product:<br>a) complies with the current Australia New Zealand Foods Standards Code, as applicable; and<br>b) is truthfully represented. |
| Truth of labelling failures other than infant formula products | Release for unrestricted use after further processing | (1) Further processing is carried out within New Zealand, in a premises which has a RMP registered by MPI for this type of operation.<br>(2) The further processing application will ensure the resultant product complies with:<br>a) the Australia New Zealand Food Standards Code; and<br>b) any relevant Overseas Market Access Requirements (OMARs) under the Act, as applicable. |
| Expired date mark | Release to local market for animal consumption | Product complies with regulations 7 and 8 of the ACVM Regs. |

| Column 1 | Column 2 | Column 3 |
|---|---|---|
| Incorrect scoop size or missing scoop for canned powdered infant formula products | Release for local market animal consumption use with further processing | (1) Further processing is carried out within New Zealand, in a premises which;<br>a) has an RMP registered by MPI for this type of operation; or<br>b) satisfies section 8B of the Animal Products (Exemptions and Inclusions) Order 2000.<br>(2) The RMP operator maintains control of the product until it is delivered to the place where further processing will occur.<br>(3) The RMP operator must have an agreement:<br>a) with the recipient that no product is on sold or supplied to another person in its original packaging; and<br>b) that the recipient takes all reasonable steps to ensure that the product is only used for animal consumption. |
| | Release for local market animal consumption use without further processing | (1) The product complies with regulations 7 and 8 of the ACVM Regs.<br>(2) The RMP operator must maintain control of the product until it is delivered to the place where animal consumption will occur.<br>(3) The RMP operator must have an agreement:<br>a) with the recipient that the product is not to be sold or supplied to another business, and<br>b) that ensures the recipient takes all reasonable steps to ensure that the product is only used for animal consumption. |
| Sorbic acid levels exceeding the limit specified in the Australia New Zealand Food Standards code | Release for animal consumption use without further processing | Product complies with regulations 7 and 8 of the ACVM Regs. |
| Beta Lactam or other identified antibiotic residues | Release for local market animal consumption use | Product complies with regulations 7 and 8 of the ACVM Regs. |

| Column 1 | Column 2 | Column 3 |
|---|---|---|
| Nitrates and Nitrites levels exceeding the limit specified in Table A2.0 of DPC1 | Release for unrestricted human consumption use after further processing | (1) Further processing is carried out within New Zealand, in a premises which has a RMP registered by MPI for this type of operation.<br>(2) The RMP operator must inform the premises undertaking further processing of the product of the nature of the non-conformance and any conditions advised by the applicable recognised agency prior to the product being released from the RMP premises.<br>(3) The further processing application will ensure the resultant product is:<br>a) in compliance with sections 9 and 10 Specified Contaminants of DPC1; and<br>b) sampled and tested at an increased frequency. |
| | Release for animal consumption use with or without further processing | Product complies with regulations 7 and 8 of the ACVM Regs. |
| Product stored outside RMP chain | Release for export to Australia without official assurances or local market use | Product meets the RMP exemption criteria in regulation 8A or 8B, as applicable, of the Animal Products (Exemptions and Inclusions) Order 2000. |
| Product intended for export with official assurances that has been transported outside RMP/Regulated Control Scheme chain | Release for export without official assurances or local market use | Product meets the RMP exemption criteria in regulation 8A or 8B, as applicable, of the Animal Products (Exemptions and Inclusions) Order 2000. |