

**Reprint
as at 2 February 2015**



**Commodity Levies (Milksolids)
Order 2009**

(SR 2009/9)

Commodity Levies (Milksolids) Order 2009: revoked, on 2 February 2015, by clause 24 of the Commodity Levies (Milksolids) Order 2014 (LI 2014/363).

Anand Satyanand, Governor-General

Order in Council

At Wellington this 2nd day of February 2009

Present:

His Excellency the Governor-General in Council

Pursuant to section 4 of the Commodity Levies Act 1990, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following order.

Contents

		Page
1	Title	3
2	Commencement	3

Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.

Note 4 at the end of this reprint provides a list of the amendments incorporated.

This order is administered by the Ministry for Primary Industries.

3	Interpretation	3
4	Levy imposed	4
	<i>Responsibility for payment of levy</i>	
5	Dairy farmer primarily responsible for paying levy	4
6	Collection agent to pay levy on milksolids and recover it from dairy farmer	4
	<i>Determination of levy</i>	
7	Basis for calculation of levy	5
8	Returns must be supplied to DairyNZ	5
9	Maximum rate of levy	5
10	Payment of levy	6
11	DairyNZ must fix actual rate of levy	6
12	Rate if no rate fixed before beginning of levy year	6
13	Notification of levy rate	6
	<i>Payment of levy</i>	
14	When levy payable	6
	<i>Expenditure of levy money</i>	
15	DairyNZ must spend levy money	7
16	Purposes for which levy money may be spent	7
17	Records	7
18	Confidentiality of information	8
	<i>Miscellaneous</i>	
19	Conscientious objectors	9
20	Remuneration of auditors	9
	<i>Mediation of disputes</i>	
21	Appointment of mediators	9
22	Remuneration of mediators	10
23	Conference to resolve dispute	10
24	Conference must be held in private	10
25	Representatives	10
26	Right to be heard	10
27	Evidence	11
28	Mediator may resolve dispute in certain cases	11
29	Costs of mediation	11
30	Appeal to District Court	11
31	Revocation and saving	12

Order

1 Title

This order is the Commodity Levies (Milksolids) Order 2009.

2 Commencement

This order comes into force on 24 March 2009.

Commodity Levies (Milksolids) Order 2009: confirmed, on 18 December 2009, by section 8(e) of the Subordinate Legislation (Confirmation and Validation) Act 2009 (2009 No 67).

3 Interpretation

In this order, unless the context otherwise requires,—

collection agent means—

- (a) a dairy processor whose business is or includes buying milksolids from a dairy farmer; or
- (b) a person whose business is or includes buying milksolids from a dairy farmer for supply directly or indirectly to a dairy processor

dairy farmer—

- (a) means a person whose business is or includes producing milksolids from bovine animals for supply to a dairy processor; and
- (b) includes a dairy farm owner, a dairy farm leaseholder, and a sharemilker

dairy processor means an entity (including a company within the meaning of the Companies Act 1993) whose business is or includes carrying on a dairy factory and disposing of dairy produce

DairyNZ means the body that is known on the commencement of this order as DairyNZ Incorporated

GST means goods and services tax payable under the Goods and Services Tax Act 1985

levy means the levy imposed by clause 4

levy money means money paid or payable under this order as levy

levy year—

- (a) means a period of 12 months starting on 1 June and ending on 31 May; and

- (b) includes both of the following periods:
 - (i) the period starting on the commencement of this order and ending on 31 May 2009; and
 - (ii) the period starting on 1 June 2014 and ending on the expiry of this order

mediator means a person appointed under clause 21(2); and, in relation to a dispute, means a mediator appointed to resolve it

milksolids, in relation to a dairy farmer, means bovine milksolids produced in New Zealand by the dairy farmer and supplied to a dairy processor

sharemilker means a person who—

- (a) is contracted to perform work on a dairy farm (except as an employee); and
- (b) is entitled under a sharemilking agreement to receive a share of the returns or profits from the dairy farm operation.

4 Levy imposed

- (1) A levy is imposed on all milksolids produced in New Zealand by dairy farmers for supply to a dairy processor.
- (2) The levy is payable to DairyNZ.

Responsibility for payment of levy

5 Dairy farmer primarily responsible for paying levy

A dairy farmer who produces milksolids is primarily responsible for paying the levy on it.

6 Collection agent to pay levy on milksolids and recover it from dairy farmer

- (1) A collection agent who buys milksolids from a dairy farmer (except through another collection agent)—
 - (a) must pay the levy on the milksolids; and
 - (b) may recover the levy (and any GST paid in respect of it) from the dairy farmer—
 - (i) by deducting the amount of the levy from the payment made to the dairy farmer for the milksolids; or

- (ii) by recovering the amount of the levy as a debt due from the dairy farmer.
- (2) If subclause (1)(b)(i) applies, the collection agent must provide the dairy farmer with information regarding the amount of levy deducted.
- (3) A collection agent may charge a collection fee of not more than 0.5% of the amount of levy collected (exclusive of GST) plus the GST payable on the fee by—
 - (a) deducting the amount of the fee before paying the levy to DairyNZ; or
 - (b) recovering the amount of the fee as a debt due from DairyNZ.

Determination of levy

7 Basis for calculation of levy

- (1) The levy is to be calculated on the basis of the quantity in kilograms of milksolids supplied to a collection agent.
- (2) In determining the quantity of milksolids supplied to a collection agent, DairyNZ may,—
 - (a) if it receives information on the number of kilograms of milksolids supplied by a dairy farmer to the collection agent, rely on that information without further inquiry; or
 - (b) if it receives information on the quantity of liquid milk supplied by a dairy farmer to the collection agent, convert that information to relate to kilograms of milksolids at the conversion rate that DairyNZ determines.

8 Returns must be supplied to DairyNZ

Every collection agent must supply to DairyNZ, in writing and as soon as is reasonably practicable, any information that DairyNZ requests in writing for the purpose of calculating the levy.

9 Maximum rate of levy

The maximum rate of the levy is 5 cents per kilogram of milksolids (exclusive of GST).

10 Payment of levy

The levy must be paid at a single rate.

11 DairyNZ must fix actual rate of levy

DairyNZ must fix the actual rate of the levy,—

- (a) for the levy years ending on 31 May 2009 and 31 May 2010, in accordance with its rules;
- (b) for any subsequent levy year, in accordance with its rules and after consulting with dairy farmers before the beginning of the levy year.

12 Rate if no rate fixed before beginning of levy year

If DairyNZ does not fix the actual rate of levy before the beginning of a levy year, the levy for that year is payable at the rate last fixed under clause 11.

13 Notification of levy rate

As soon as is practicable after the rate of levy for a levy year has been fixed, DairyNZ must notify it—

- (a) in writing to all dairy processors known to DairyNZ; and
- (b) in the *Gazette*; and
- (c) in a major rural publication; and
- (d) in DairyNZ publications.

Payment of levy

14 When levy payable

(1) The due day for payment of the levy to DairyNZ is,—

- (a) in the case of a collection agent that pays a dairy farmer for the supply of milksolids on a monthly basis, the 20th day of the month following the month in which the milksolids were supplied;
- (b) in the case of a collection agent that pays a dairy farmer for the supply of milksolids on any other basis, every 3 months, with payment for the first quarter due on—
 - (i) 20 June 2009 for the first levy year; and
 - (ii) 20 September in any subsequent levy year.

- (2) The latest day for payment of the levy is the last day of the month following the month in which the levy falls due.

Expenditure of levy money

15 DairyNZ must spend levy money

DairyNZ must—

- (a) spend all levy money paid to it;
- (b) invest the levy money until it is spent.

16 Purposes for which levy money may be spent

- (1) DairyNZ may spend levy money for the following purposes relating to bovine milksolids or dairy farmers:
- (a) research and development, including information transfer and farmer technology adoption practices;
 - (b) biosecurity activities, including disease control and mitigation;
 - (c) publishing information to dairy farmers;
 - (d) promoting and advocating on behalf of the dairy industry;
 - (e) developing and supporting dairy databases, including publishing relevant statistics and economic information;
 - (f) education and training;
 - (g) the day-to-day administration of DairyNZ.
- (2) Each levy year, DairyNZ must consult dairy farmers on how it proposes to spend levy money.
- (3) DairyNZ must not spend any levies on commercial or trading activities.

17 Records

- (1) Every collection agent must, in each levy year, keep records of—
- (a) the name, address, and unique supplier number of each dairy farmer who supplied milksolids to it; and
 - (b) the quantity of milksolids supplied by each dairy farmer to it and the period during which the milksolids were supplied; and

- (c) the amount of levy paid to DairyNZ and the date of payment; and
 - (d) the amount of collection fee (if any) deducted by the collection agent.
- (2) DairyNZ must, in each levy year, keep records of—
 - (a) each amount of levy paid to it; and
 - (b) the name and address of each collection agent who paid each amount of levy and the date on which it was received; and
 - (c) how levy money was spent or invested.
- (3) The records required by this clause must be retained for at least 3 years after the end of the levy year to which they relate.

18 Confidentiality of information

- (1) No officer or employee of DairyNZ or any subsidiary of Dairy NZ or any other person who gathers information may disclose (except to some other officer or employee of DairyNZ or any subsidiary of Dairy NZ) any information obtained—
 - (a) under or because of this order; or
 - (b) under the Commodity Levies Act 1990 in relation to this order.
- (2) Subclause (1) does not affect or prevent—
 - (a) the production of records or accounts under section 17(1) of the Commodity Levies Act 1990; or
 - (b) the production of any statement under section 25 of the Commodity Levies Act 1990; or
 - (c) the giving of evidence in any legal proceedings taken—
 - (i) under or in relation to this order; or
 - (ii) in relation to this order, under or in relation to the Commodity Levies Act 1990.
- (3) Subclause (1) does not prevent DairyNZ or any subsidiary of Dairy NZ, or a collection agent, from—
 - (a) disclosing or using any information (not being information relating to an identifiable person) for statistical or research purposes; or
 - (b) disclosing or using any information for the purposes of invoicing and collecting the levy; or

- (c) disclosing or using any information for the purposes of information transfer and farmer technology adoption practices; or
- (d) disclosing or using any information with the consent of every identifiable person to whom it relates; or
- (e) disclosing or using any information as required by law.

Miscellaneous

19 Conscientious objectors

- (1) Any person who objects on conscientious or religious grounds to paying an amount of levy in the manner provided for in this order may pay the amount to the chief executive of the Ministry of Agriculture and Forestry.
- (2) The chief executive must pay the amount to DairyNZ.

20 Remuneration of auditors

A person appointed as an auditor under section 15 of the Commodity Levies Act 1990 must be remunerated by DairyNZ at a rate determined by the Minister of Agriculture after consultation with DairyNZ.

Mediation of disputes

21 Appointment of mediators

- (1) This clause applies to any dispute about—
 - (a) whether a person is required to pay the levy; or
 - (b) the amount of levy payable.
- (2) Any party to a dispute may ask the President of the Arbitrators and Mediators Institute of New Zealand Incorporated to appoint a person to resolve the dispute by mediation.
- (3) If asked under subclause (2), the President (or a person authorised by the President) may appoint a person to resolve the dispute by mediation.
- (4) The mediator's appointment ends if—
 - (a) the parties to the dispute resolve it by agreement; or
 - (b) the mediator resolves the dispute under clause 28.

22 Remuneration of mediators

- (1) A mediator must be paid remuneration (by way of fees and allowances) agreed to by the parties to the dispute.
- (2) If the parties to a dispute cannot agree on a mediator's remuneration, the President of the Arbitrators and Mediators Institute of New Zealand Incorporated (or a person authorised by the President) must—
 - (a) fix the remuneration to be paid to the mediator; and
 - (b) specify how much of that remuneration (if any) each party must pay.
- (3) A party must pay to the mediator any amount specified as payable by that party under subclause (2)(b).

23 Conference to resolve dispute

- (1) A mediator may organise and preside at 1 or more conferences between the parties to a dispute to try to resolve the dispute.
- (2) Every conference must be held on a day, and at a time and place, fixed by the mediator and notified in writing to the parties.

24 Conference must be held in private

Only the mediator and the parties to a dispute may attend a conference, unless clause 25 applies.

25 Representatives

A mediator may allow a representative of any party to a dispute to attend a conference if the mediator is satisfied that it is appropriate in the circumstances.

26 Right to be heard

The following persons may be heard at a conference:

- (a) every party to the dispute; and
- (b) every representative of a party allowed by the mediator to attend the conference.

27 Evidence

- (1) A mediator may hear and take into account any relevant evidence or information, whether or not it would be admissible in a court of law.
- (2) A mediator may, on the mediator's own initiative, seek and receive any evidence, and make any investigations and inquiries, that the mediator thinks desirable to resolve a dispute.
- (3) A mediator may require any person giving evidence at a conference to verify the evidence by statutory declaration.

28 Mediator may resolve dispute in certain cases

- (1) A mediator may resolve a dispute for the parties if—
 - (a) the dispute is not resolved at a conference; or
 - (b) the mediator believes that the parties are unlikely to resolve the dispute, whether or not they confer directly.
- (2) A mediator who resolves a dispute under subclause (1) must give each of the parties written notice of the mediator's decision and the reasons for the decision.
- (3) The parties must comply with the mediator's decision.

29 Costs of mediation

Each party must pay the party's own costs in relation to the mediation.

30 Appeal to District Court

- (1) A party to a dispute who is dissatisfied with the decision made by a mediator under clause 28 may appeal to a District Court against the decision.
- (2) The appeal must be brought by the filing of a notice of appeal within 28 days after the making of the decision concerned, or within any longer time that a District Court Judge allows.
- (3) The Registrar of the Court must—
 - (a) fix the time and place for the hearing of the appeal and notify the appellant and the other parties to the dispute; and
 - (b) serve a copy of the notice of appeal on every other party to the dispute.

- (4) Every party to the dispute may appear and be heard at the hearing of the appeal.
- (5) On hearing the appeal, the District Court may confirm, vary, or reverse the decision appealed against.
- (6) The filing of a notice of appeal does not operate as a stay of any process for the enforcement of the decision appealed against.

31 Revocation and saving

- (1) The Commodity Levies (Milksolids) Order 2003 (SR 2003/54) is revoked.
- (2) Despite subclause (1), amounts of levy that become payable to DairyNZ under the Commodity Levies (Milksolids) Order 2003 before the commencement of this order continue to be due and payable as if that order had not been revoked.

Rebecca Kitteridge,
Clerk of the Executive Council.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 5 February 2009.

Reprints notes

1 *General*

This is a reprint of the Commodity Levies (Milksolids) Order 2009 that incorporates all the amendments to that order as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Commodity Levies (Milksolids) Order 2014 (LI 2014/363): clause 24
Subordinate Legislation (Confirmation and Validation) Act 2009 (2009 No 67): section 8(e)
