IN THE DISTRICT COURT
AT TAURANGA

I TE KŌTI-Ā-ROHE
KI TAURANGA MOANA

CRI-2024-079-000277
[2026] NZDC 10781

WAIKATO REGIONAL COUNCIL
Prosecutor

v

KEITH RAYMOND TORRENS
Defendant

Hearing:	3 November 2025
Appearances:	L McMaster for the Prosecutor L Burkhardt for the Defendant
Judgment:	21 May 2026

SENTENCING DECISION OF JUDGE S M TEPANIA

Introduction

[1] Keith Raymond Torrens has pleaded guilty to one charge brought by Waikato Regional Council (**Council**) for unlawfully discharging a contaminant (namely dairy effluent), at a dairy farm located at 407 Waihi Beach Road, Waihi (**property**) on 26 October 2023. The offending is in breach of s 15(1)(b) of the Resource Management Act 1991 (**RMA**).

[2] There has been no suggestion that the defendant should be discharged without conviction, and I hereby convict Keith Raymond Torrens accordingly.

[3] The maximum penalty for the offending is an imprisonment term of two years or a fine not exceeding $300,000.[1]

[4] It is agreed that a fine is the appropriate sentencing outcome, with Ms McMaster proposing a starting point of $75,000 and Ms Burkhardt submitting that a starting point of $30,000 is appropriate.

Background[2]

[5] The property is owned by the defendant, Mr Torrens.

[6] Mr Torrens employs a 50/50 sharemilker on the property, who in turn employs a farm manager responsible for the daily management of the farm including effluent management.

[7] The farm generally milks between 165 and 170 cows twice a day and supplies Fonterra.

[8] Dairy effluent is generated at the milking shed and yard and is directed to a 30,000-litre sump via sand trap. From the sump, effluent is pumped via a series of hoses and hydrants and is applied to the paddocks either by a stationary cannon irrigator or a travelling irrigator.

[9] A summary of facts (**SOF**) was agreed for the purposes of sentencing.[3] The facts giving rise to the offence are set out in paragraphs [23] to [35] of the SOF as follows:

> 23. On the 22nd of March 2023, aerial monitoring of farms within the Waikato was conducted by WRC officers in a fixed wing aircraft.
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> 24. During the flight, they identified a property of concern where it appeared effluent had ponded around a stationary irrigator. The property was identified as 407 Waihi Beach Road, Waihi.

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1 Notwithstanding the recent law change to increase the maximum penalty for the offending under s 81 of the Resource Management (Consenting and Other System Changes) Amendment Act 2025, I apply s 6 of the Sentencing Act 2002. Therefore, the maximum penalty for this offence is two years' imprisonment or a fine not exceeding $300,000 (under the now replaced s339(1)(a) RMA).

2 Summary of Facts filed 7 August 2025 (**SOF**), at [13] – [16].

3 Filed 7 August 2025.

25. WRC officers attended the property where it was observed that farm animal effluent (dairy) had been over-applied within a single paddock.

26. Officers estimated the ponding covered an area of 4 metres x 3 metres and was 25 centimetres in depth in one area, and 20 metres x 2 metres and was 8 centimetres in depth.

27. Samples were collected and analysed by Hill Laboratories, an accredited laboratory, where the samples revealed high levels of contaminants consistent with being farm animal (dairy) effluent.

28. The defendant was spoken to regarding the discharge where he stated his farm manager had a broken foot and may have been relying too much on the stationary cannon irrigator.

29. As a result of the inspection, an Abatement Notice (EAC9153) was issued to the defendant instructing him to cease the unlawful discharge of farm animal (dairy) effluent.

30. At approximately 1pm on the 26th of October 2023, WRC enforcement officers attended the address of 407 Waihi Beach Road, Waihi for the purposes of an Abatement Notice inspection. During this inspection, what appeared to be dark brown effluent sludge and liquid was observed at the storm water diversion outfall.

31. At the time of the inspection there was no active discharge of farm animal (dairy) effluent, however the channel appeared to contain dry matter with the visual and odorous characteristics of farm animal (dairy) effluent.

32. A paddock that appeared to have been recently irrigated was inspected. The irrigator that was used was a stationary cannon irrigator that had been positioned on a slope in a paddock next to the milking shed.

33. Officers noticed a large area of surface ponding consisting of a thick sludge which ran down hill from the irrigator. The runoff from the ponding flowed for approximately 60 metres in a swale like depression under a fence into the next paddock.

34. The sludge and liquid that was observed had the visual and odorous characteristics of farm animal (dairy) effluent.

35. Three samples were taken during this inspection and were analysed by Hill Laboratories. Each sample came back with Escherichia coli (E.coli) ranging from 13,000,000 to 19,000,000 cfu per 100ml.

[10] It is common ground that the capacity of the sump is limited and based on staff practices meant that every two or three milkings the sump would be at capacity.

[11] The offending in this case involved effluent ponded around a stationary irrigator and some runoff downhill into the next paddock. It is also recorded that effluent which appeared to be more dated was observed in the channel on the farm.

The Plan and efforts to achieve compliance with dairy effluent management[4]

[12] The farm falls within the boundaries of the Waikato Region and is therefore bound by the terms and conditions of the Plan.

[13] The farm operates its dairy effluent system under the Permitted Activity Rules of the Plan. These Rules have been well publicised, are easily accessible (for example through the WRC website), and are a core compliance requirement for a dairy farming business.

[14] Rule 3.5.5.1 of the Plan allows for discharges of farm animal effluent onto land subject to certain conditions. Conditions relevant to this summary include:[5]

> (a) No discharge of effluent to water shall occur from any effluent holding facilities.
>
> (b) Storage facilities and associated facilities shall be installed to ensure compliance with condition (a).
>
> (c) All effluent treatment or storage facilities (e.g., sumps or ponds) shall be sealed so as to restrict seepage of effluent. The permeability of the sealing layer shall not exceed $1x10^{-9}$ metres per second.
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> …
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> (e) The maximum loading rate of effluent onto any part of the irrigated land shall not exceed 25 millimetres depth per application.
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> (f) Effluent shall not enter surface water by way of overland flow, or pond on the land surface following the application.

[15] Section 15(1) RMA stipulates that no person may discharge any contaminant onto or into land in circumstances which may result in that contaminant (or any other contaminant emanating as a result of natural process from that contaminant) entering water – unless that discharge is expressly allowed by a national environmental standard or other regulations, a rule in a regional plan as well as a rule in a proposed regional plan for the same region (if there is one), or a resource consent.

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[4] SOF, at [1] – [11]; [18] – [22].
[5] Refer Summary of Facts, [18]-[22].

[16] Farm animal effluent is a contaminant pursuant to s 2 of the RMA. Water is also defined in s 2 as meaning water in all its physical forms, whether flowing or not and over or under the ground.

[17] There are no national environmental standards, other regulations, resource consents or rules in the Plan that expressly allow for the discharge of the contaminant described in the SOF onto or into land in circumstances which may result in that contaminant entering water.

Sentencing purposes and principles

[18] The purposes and principles of the Sentencing Act 2002 are relevant.

[19] The High Court in *Thurston v Manawatu-Wanganui Regional Council*[6] (***Thurston***) provided a comprehensive summary of the approach to be taken to sentencing. Persons guilty of offences under the RMA are to be sentenced in accordance with the purposes and principles of both the Sentencing Act 2002 and the RMA.[7] This includes the offender's culpability; any infrastructural or other precautions taken to prevent discharges; the vulnerability or ecological importance of the affected environment; the extent of the environmental damage, including any lasting or irreversible harm, and whether it was of a continuing nature or occurred over an extended period of time[8]; deterrence; the offender's capacity to pay a fine; disregard for abatement notices or Council requirements; and cooperation with enforcement authorities and guilty pleas.

Extent of harm

[20] The adverse environmental effects of effluent discharges are well-known. The cumulative effects of which have often been described by the Court as being "insidious" and "death by a thousand cuts".[9]

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[6] *Thurston v Manawatu-Wanganui Regional Council* HC Palmerston North CRI-2009-454-24, 27 August 2010 at [39] – [51].

[7] Above n 6, at [40] – [41].

[8] Where no specific lasting harm can be identified, an allowance for harm may be made on the assumption that any given offence contributes to the cumulative effect of pollution generally. Above n 6, at [41] – references omitted.

[9] See for example *Manawatū-Whanganui Regional Council v Manawatū District Council* [2024] NZDC 3930 at [7]; *Northland Regional Council v Roberts* DC Whangarei CRN 12088500369, 371-

[21] Ms McMaster, for the prosecutor, noted that ponding and the saturation of soil with farm animal effluent creates hydraulic conditions that pose a high risk of untreated or partially treated effluent entering groundwater. Such surface concentration can cause effluent to bypass the soil matrix and flow preferentially down cracks and wormholes in the soil (micropores) to below the plant rooting zone without complete treatment. Micropore flow may result in pathogenic micro-organisms directly contaminating groundwater and drinking water quality.

[22] Ms Burkhardt, for the defendant, highlighted that the SOF confirmed that no effluent entered surface water or groundwater, and that the discharge was confined to the paddock area. Further, given that the incident did not occur during persistent or heavy rainfall, any likelihood of contaminant movement or environmental damage was reduced.

[23] Although there is no evidence of wider contamination, the Court has observed on many occasions that it is the cumulative effects of discharges of contaminants onto ground and into waterways that is of concern, and that temporary, potential and cumulative effects can all be taken into account under the RMA.[10] It is not enough to point to a lack of information on actual adverse effects as they are well-known.[11] I am satisfied that the significant ponding that occurred in this case caused adverse effects to the environment, albeit at a lower scale in comparison to other cases involving offending of this kind.

Culpability for the offending

[24] Ms McMaster considers Mr Torrens' culpability falls within level two of *Chick*. In support of that conclusion, she submitted that the discharge was foreseeable and was caused primarily by the poor state of effluent infrastructure on the farm. There was plainly insufficient effluent storage capacity, and therefore the farm was heavily

376, 18 September 2013 at [18]; *West Coast Regional Council v Potae and Ven Der Poel Limited* CRI-2009-009-017910 DC Greymouth 20 April 2010 at [49]; *Thurston and Tawera Land Company Limited v Manawatū-Wanganui Regional Council* CRI-2009-454-25, CRI-2009-454,27, CRI-2009,454-24, 27 August 2010 at [51].

[10] Section 3 RMA.

[11] *Bay of Plenty Regional Council v CRS Tauranga Ltd* [2021] NZDC 4071, at [80].

reliant on irrigation to pasture. Further, Ms McMaster noted that Mr Torrens was put on notice by the formal warning and the abatement notice, issued in March 2023.

[25] Ms Burkhardt submitted that any sentence should recognise the nature of Mr Torrens' culpability in context – including the operational circumstances of the offending, the role of system limitations, and the steps Mr Torrens has taken to ensure full compliance since. Ms Burkhardt noted that Mr Torrens is an 82-year-old retired farmer with limited operational involvement.

[26] In her submissions Ms Burkhardt pointed to the withdrawal of charges against the sharemilker and farm manager and maintained that this also informs the Court's assessment of the nature of the offending. She noted that both men were directly responsible for the day-to-day operation of the effluent system, yet the prosecution determined that it was not in the public interest to pursue those charges. In her view, that outcome supports the conclusion that the incident, while regrettable, was not characterised by deliberate or reckless conduct, but by a combination of operational oversight and insufficient system resilience.

[27] Ms Burkhardt submitted that the discharge resulted from a combination of factors rather than a single point of failure. The immediate cause was a lapse by farm staff in failing to move the irrigator, likely compounded by other sub-optimal operational practices. She submitted that these are matters that occurred within the control of the sharemilker and his farm manager, rather than under Mr Torrens' direct supervision.

[28] Ms Burkhardt further submitted that Mr Torrens' subsequent engagement of a farm consultant and completion of a bladder installation demonstrates that he has taken responsible steps to ensure full compliance going forward.

Findings on culpability

[29] Mr Torrens' culpability for the offending must be assessed in the context of his limited operational involvement, age and stage. However, while he has employed a skilled sharemilker for the last 20 years he maintains responsibility for financial decisions in relation to the farm, including any major infrastructure expenditure.

[30] Mr Torrens stated that he had purchased a 180,000-litre bladder "a couple of years ago" and at the time of the inspections was waiting for it to be installed to increase the storage capacity for effluent on the farm.

[31] In his affidavit he accepted that the limited storage capacity of the sump also contributed to the risk of non-compliance, particularly during wet conditions when irrigation could not occur. With the benefit of hindsight, Mr Torrens acknowledged that earlier installation of the bladder would have provided greater operational flexibility and reduced that risk.

[32] Ms Burkhardt noted that Mr Torrens discussed his concerns about the sump's capacity with Council staff. She referred to the following inspection note which records the exchange:

> …I go through the farm survey with Keith, we then discuss the lack of storage on the farm, and Keith points out that they have a bladder, but it hasn't been installed. I explain that I highly recommend he installs the bladder and Keith asks if it's compulsory, as he has concerns about rats eating the bladder and that issues may arise with blockages of the system. I explain that how the farm is managed and what infrastructure he installs is ultimately up to him, but I highly recommend installing storage as a piece [sic] of mind to ensure the farm can always be compliant with the regulations. I explain that if he chooses not to have storage and we come out again in future and notice further issues on the farm, then there is more likely to be enforcement action. I ask how many days storage the sump would provide, Keith says about 5. I then explain that if it rains for more than 5 days in a row or if conditions aren't suitable to irrigate for more than 5 days in a row, then it means he would either need to irrigate when conditions are unsuitable, or allow the sump to overflow, both of which are scenarios that would be in breach of the regulations that the farm operates under. Keith acknowledges my points but asks again if it's compulsory and we recycle the same conversation, I reiterate the same points.

[33] As a result of that interaction, Mr Torrens formed the view that no immediate action was required unless directed by the Council. In oral submissions, Ms Burkhardt said that Mr Torrens' view was that he asked repeatedly if the bladder installation was compulsory, and at no point did the Council officer confirm it was. However, my interpretation of the inspection note, as I pointed out in the hearing, is that the officer emphasised the need for adequate storage; how Mr Torrens went about that was a matter for him. Further, the officer clearly explained that while it may not be compulsory, should adverse weather conditions befall, Mr Torrens essentially runs the risk of non-compliance with the regulations.

[34] I do not accept Ms Burkhardt's submission that Mr Torrens' then-failure to take further steps to address the potential risks of inadequate storage reflects more a lack of appreciation of the seriousness of Council's concerns, than any deliberate disregard for compliance. While accepting that, it nevertheless seems to me that there was also a lack of appreciation of the existing substandard effluent infrastructure and the consequences of its potential failure, with a choice made at that point by Mr Torrens to run the risk of not installing the bladder, which has clearly not paid off.

[35] I agree with Ms McMaster that the photos taken on 26 October 2023[12] clearly show elevated levels of effluent build up, which tends to suggest the system was not fit-for-purpose during or after the winter period, especially when compared with the photo taken on 23 March 2023.[13] While there was no fault with the infrastructure, it is clear that the farm's effluent system was inadequate insofar as it was heavily reliant on staff irrigating frequently, regardless of weather, to avoid overflow.

[36] As an experienced professional farmer of some 60 years, it is reasonable to expect that Mr Torrens would have been familiar with the rules and regulations under which the farm must be operated; and given the reliance on the Permitted Activity rules under the Plan, the need to comply with those rules and regulations and the taking of measures to ensure those obligations are being met.

[37] In short, we have a situation of an experienced farmer in his sunset years, with limited operational involvement, still as landowner retaining responsibility for major infrastructure purchases, and making an error in judgment by failing to install sufficient storage capacity (in this case installation of the bladder) earlier which would have provided greater operational flexibility and reduced that risk. This left the system vulnerable to human error or lack of oversight. Mr Torrens should have been more proactive.

[38] I acknowledge that the issue here was in part, an operational one. While lack of storage capacity was a contributing factor, the primary cause was a failure on the part of the farm manager to move the irrigator, a situation Mr Torrens was not aware

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[12] Defendant's submissions dated 28 October 2025, below paragraph [11].
[13] Above n 11.

of. Further, the farm manager and sharemilker had an established practice of irrigating perhaps more frequently than was necessary; and the decision to do so despite not having moved the irrigator resulted in the offending.

[39] Mr Torrens has responsibility as landowner and has acknowledged that in his guilty plea and affidavit. However, there was an issue previously in similar circumstances that gave rise to the abatement notice and which should have put Mr Torrens on notice.

[40] In my view, there was a clear misunderstanding of what was needed in terms of operational requirements (particularly in terms of the effluent system), and an obvious failure on the part of Mr Torrens, albeit understandably given his limited involvement in that respect. As the person with responsibility for the purse and making decisions on infrastructure, he needed to inform himself of the operations to ensure there was sufficient storage capacity and that the system was not unreliable. He had an ongoing responsibility to provide efficient and effective infrastructure. As he had purchased the bladder, it makes no sense to the Court that he would not install it.

[41] Under those circumstances I categorise Mr Torrens' culpability as moderately careless.

Comparative cases

[42] There is no tariff case for offending under the RMA. It is also commonly recognised that no two RMA cases are exactly alike due to the multitude of factors that go into sentencing.

[43] Ms McMaster referred to the following cases as being comparable to this case: *Waikato Regional Council v Cazjal Farms & Ors* (***Cazjal Farms***),[14] *Waikato Regional Council v Arrick Ltd* (***Arrick***),[15] *Waikato Regional Council v Apex Farming Ltd* (***Apex Farming***),[16] *Waikato Regional Council v Te Korunui Farms* (***Te Korunui Farms***),[17]

[14] *Waikato Regional Council v Cazjal Farms & Ors* [2023] NZDC 10973 – The defendants were sentenced for offending in respect of three instances of dairy effluent discharge and three breaches of an abatement notice, encapsulated within two representative charges. Judge Kirkpatrick described the offences as being at the higher end of level of 2 and on the cusp of level 3 in *Chick*. The Court accepted some overlap between CFL and Mr Walling noting that Mr Walling's involvement was not limited to that of CFL, as he handled the overall operation of the company, attended the property and directed others. The Court imposed starting points of a $100,000 fine on both CFL and Mr Walling for the s 15 discharge offending, which was then uplifted to a starting point fine of $120,000 for both defendants to reflect the breaches of the abatement notice.

[15] *Waikato Regional Council v Arrick Ltd* [2025] NZDC 12334 – This case involved an overflow of effluent from a storage pond. Effluent was actively flowing from three separate locations. From the first, effluent had flowed overland for approximately 15 metres; from the second effluent had flowed overland for approximately 2 metres; and from the third effluent was seeping through the cracks on the banks of the pond and ponding on land around the discharge point. The farm relied on effluent being pumped out of the pond by an external contractor. At the time of the inspection, the storage pond was overflowing and had no freeboard available. The environmental effects of the offending were assessed as being low. Judge Dickey found that the defendant had been highly careless in its effluent management. There was a need for close attention, given that there was no way to bring down the pond level save for it being emptied by a contractor. The Judge found that the level of attention was lacking. Taking into account the need for deterrence, and recording that the defendant knew there was a problem for at least a week but took no steps to address it, Judge Dickey adopted a starting point of $75,000.

[16] *Waikato Regional Council v Apex Farming Ltd* [2025] NZDC 13550 – Apex Farming Ltd involved a discharge from an overflowing effluent pond. There were two effluent storage ponds at the property, both of which were extremely full. Effluent was actively overflowing from one of the ponds, causing an overland flow of effluent for a distance of approximately 40 metres. The effluent discharged into a farm drain, which connected to a tributary stream. The offending was caused by infrastructural failings, including a lack of available effluent storage facilities. The Court concluded that the offending fell within the mid-range of Level 2 and adopted a starting point of $70,000.

[17] *Waikato Regional Council v Te Korunui Farms* [2023] NZDC 4181 – Te Korunui Farms faced two charges relating to two discharges of dairy effluent to water. An inspection of the effluent ponds found that they were full to capacity. Pond 1 was extremely full. Pond 2 was actively overflowing from a low point at one end overland down the pond embankment and directly into a tributary stream, a distance of approximately six metres. Additionally, a sand trap near an underpass was found to be full of effluent and effluent solids, to the point that the sand trap was no longer visible. Effluent was spilling over onto the surrounding ground, with liquid effluent flowing overland and into a drain running alongside the farm race. This drain discharged approximately 25 metres away into a tributary of the Te Mata Stream. Judge Dickey found that the defendant was highly careless in its approach to effluent management and that there was a 'cascade of problems'. The system was vulnerable to human error or lack of oversight. Judge Dickey noted both ponds getting full, the pump breaking down, the sand trap not being emptied, the pump to its sump breaking down and staff being 'too busy' due to staff shortages. The Court noted that the defendant 'could have arranged for an effluent pumping contractor to pump down the ponds'. Judge Dickey imposed a global starting point of $120,000 which comprised of $80,000 for the pond overflow and $40,000 for the discharge near the underpass.

Waikato Regional Council v ANP Farms Limited (***ANP Farms***),[18] and *Waikato Regional Council v Lockwood* (***Lockwood***)[19].

[44] Ms McMaster submitted that the present offending shares similarities with the offending in *Apex Farming* and *Te Korunui Farms*. However, she considered that the present case is more serious, given that the offending was caused by the substandard effluent infrastructure on farm. The farm ran on a sump-only system – there were no operational effluent ponds. As such, irrigation had to occur almost constantly. Ms McMaster considers there is a direct link between the substandard infrastructure and the offending. She further submitted that the defendant benefitted financially by not undertaking effluent infrastructure upgrades.

[45] It is Ms McMaster's contention that the present offending is also more serious than the offending in *Arrick*. There was clearly insufficient effluent storage available meaning that there was a reliance on irrigation every two or three milkings. The prosecutor's view is that it was entirely foreseeable that irrigation would have to occur

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[18] *Waikato Regional Council v ANP Farms Limited* [2024] NZDC 13550 – ANP Farms Limited pleaded guilty to two charges of permitting the discharge of effluent onto land from an irrigator where it may enter water and one charge of breaching an abatement notice. The first charge related to a large area of ponded effluent that was approximately five metres by eight metres and up to 100 millimetres deep. An abatement notice was issued. Approximately six months later, an abatement notice inspection was carried out during which several areas of ponding were located along the irrigator's run. Council staff noted that the ground along the run was saturated underfoot and there was ponding throughout the area of application, which was measured as approximately 60 metres in length by 20 metres across. Judge Dickey assessed the effects on the environment from the offending as moderately serious. The Court considered that the defendant had acted carelessly in respect of the first discharge and highly carelessly in respect of the second. The Court considered that the offending fell within the second *Chick* band and adopted an overall starting point of $135,000, taking account of the totality principle. That comprised $50,000 for the first instance of offending, $65,000 for the second instance of offending and $20,000 for the breach of abatement notice.

[19] *Waikato Regional Council v Lockwood* [2020] NZDC 24932 – The defendant pleaded guilty to two charges of contravening s 15(1)(b) of the Resource Management Act by discharging contaminants (dairy effluent) to land in circumstances where it may enter water. The defendant was the owner and operator of the farm. He managed the dairy operation and was on site full-time. On 17 October 2019, Council officers made a visit to the farm to check compliance. The officers found two sizeable areas of ponded effluent, one about 18 m long and the other about 12 m long. The depth of each pond was sufficient to overtop the officers' gumboots. A re-inspection on 7 November 2019 showed that the ponded effluent had been left to soak into the ground, rather than any steps having been taken to remove it. On 25 August 2020, another compliance inspection was undertaken. The travelling irrigator was found detached from the drag hose with a flat tyre. An area of ponded effluent was observed measuring about 60m in length with varying widths. The gravity of the offending and the culpability of the defendant were assessed as moderately serious. Judge Kirkpatrick considered that, while not deliberate, the causes of the discharges demonstrated at least a reluctance and possibly a real want of care to address the infrastructure deficiencies on a timely basis. He also noted that the ponding was not dealt with promptly. Taking all those matters into account, a starting point of $75,000 was imposed for the first offending. The subsequent offending received a starting point of $55,000. After adjustments for totality, that resulted in an overall starting point of $115,000.

in adverse weather conditions. Additionally, Mr Torrens was put on notice by the formal warning and abatement notice that was issued for effluent ponding just seven months prior to the offending. Ms McMaster submitted that that significantly aggravates the offending in this case. Accordingly, she suggested that an appropriate starting point is $75,000.

[46] Ms Burkhardt submitted that none of the cases cited by the prosecution present a fact pattern comparable to this case, where the landowner resides on the property but does not participate in day-to-day management decisions. Mr Torrens had long relied on an experienced operator to manage effluent operations, and reasonably assumed that the system was being operated in accordance with applicable regulatory and industry requirements. For these reasons, Ms Burkhardt submitted that the cases cited by the prosecution can be distinguished on both their facts and their degree of culpability.

[47] Ms Burkhardt referred me to *Bay of Plenty Regional Council v Grobecker Farming Ltd & Mary Allen Farm Ltd* (***Grobecker***)[20] as being comparable to the present case. She submitted that, like *Grobecker*, this case concerns an owner responsible for governance rather than operation, a single short-lived discharge, minimal effects (indeed less serious here, with no direct discharge to water), and post-offence upgrades. However, unlike that case Mr Torrens had retained the same sharemilker for nearly two decades and, aside from one similar over-application six months earlier, had no history of compliance issues.

[48] Further, Ms Burkhardt submitted that the present offending is less serious than that in *Grobecker*, pointing to the different policy framework in the Waikato where Mr Torrens relied on the permitted activity rules. The farm owner in *Grobecker* relied on a resource consent and was responsible for the implementation of that consent,

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[20] *Bay of Plenty Regional Council v Grobecker Farming Ltd & Mary Allen Farm Ltd* [2025] NZDC 4281 – Both the operator (Grobecker Farming Ltd) and the consent-holding owner (Mary Allen Farm Ltd) pleaded guilty to a single discharge from a travelling irrigator entering a farm drain and ultimately the Matatere Stream. The Court found the ecological effects minimal, describing a short-term "pulse disturbance" with no lasting harm, though recognising the cumulative contribution to catchment degradation. Judge Tepania distinguished between the operator's active failures and the owner's governance omissions but held both moderately careless. The Court stressed that a consent holder "cannot take a hands-off approach" and must proactively ensure compliance. Both were fined on the same basis. A $55,000 starting point was adopted for each defendant (Level 2 carelessness under *Chick*).

including the conditions, and had not ensured the sharemilker was informed of those requirements. On balance, Ms Burkhardt concluded that the offending in *Grobecker* was more egregious because it involved a direct discharge to water and the defendant owner, Mary Allen Farm Ltd., was a company.

[49] The defendant seeks a starting point of $30,000 to reflect the limited nature of the discharge (no direct entry to water), Mr Torrens' non-operational role and reasonable reliance on an experienced operator, the context of the earlier warning, the effective remedial steps taken post-offence, and the need for deterrence without elevating penalty beyond what is fair and proportionate given his age and the lower statutory maximum applying to natural persons.

Assessment of starting point

[50] In terms of culpability I consider that the unexplained failure, by a farmer of some experience, to check that operational matters on his farm were consistent with the decisions he was making on expenditure and the need to maintain or upgrade infrastructure to be similar to that of the owner defendant in *Te Korunui Farms*. I do note, however, that in *Te Korunui Farms* the defendant was found to be highly careless, and there were also some distinguishing aggravating features including a direct discharge to a waterway and multiple instances of failure to repair key elements of infrastructure (i.e. the pump), as well as failure by the on-site staff to perform farm maintenance (i.e. cleaning out the sump) for a number of months.

[51] Nevertheless, it is incumbent on farmers to ensure that their effluent systems are fit for purpose, which includes satisfying themselves that there is sufficient effluent storage capacity to avoid unlawful effluent discharges. The lack of effluent storage made it foreseeable that irrigation would have to occur in adverse weather conditions. Farm owners must recognise the need to actively monitor effluent and infrastructure, including having adequate effluent storage facilities on farm. I accept the prosecutor's submission that Mr Torrens derived an indirect benefit by avoiding the financial costs associated with urgently maintaining and upgrading the effluent management system.

[52] While this may be slightly overstated, as Ms Burkhardt submits, I refer to Justice Miller's finding in *Thurston*:[21]

> [47] The offender's gains, as this case illustrates, include the avoided costs of preventing pollution. Polluters may also gamble, as Mr Thurston did, on regulators failing to identify and successfully prosecute them. In such cases deterrence may justify fines that exceed any gains that the offender hoped to make from any one incident. In an environmental context, it has been suggested, using the example of a postponed investment in water cleaning equipment, that:
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> > Criminal law is the only legal instrument available to force a potential polluter to make this investment, he will only do so (and thus avoid the crime) if the fine that will eventually be imposed multiplied by the probability of detection and conviction is higher than the money he can save by not investing in the equipment.
>
> (footnote omitted)

[53] The offending is also similar to that in *Grobecker*, not less than as Ms Burkhardt submits, noting that some accountability and general deterrence are factors which come into play in this case where the offender, an experienced farmer, failed to undertake clear responsibility, as landowner, to ensure that the farm was properly run in compliance with the RMA and the Plan.

[54] I do not accept that there is any distinction between a reliance on permitted activity rules and reliance on a resource consent. All effluent discharges need to be authorised, whether by way of a national environmental standard or other regulations, permitted activity rules in a regional plan, or by resource consent. Unlawful discharges are exactly that – unlawful.

[55] I have considered Ms Burkhardt's submission regarding the higher corporate ceiling and that the starting point sought by the defendant takes into account the distinction between natural persons and other entities in terms of penalties imposed under the RMA. I have considered that submission carefully with the High Court's decision in *Walling v Waikato Regional Council*[22] in mind.

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[21] At [47].
[22] [2023] NZHC 3437.

[56] Given the level of culpability coupled with the more general environmental effects here, and not any specific direct effects on waterways, my view is that the offending sits comfortably in the Level 2 *Chick* range.

[57] At the same time, and like *Grobecker*, the notice to the defendant by the formal warning and the abatement notice also provide a more serious context. The purpose of issuing abatement notices is to avoid repeat offending, and so forms an important part of the statutory scheme for enforcement under the RMA and statutory planning documents made under it.[23] In this case, an abatement notice had been issued. How Mr Torrens chose to comply with the notice was ultimately his own decision to make. I do not accept the point made by the defendant that "the abatement notice did not include any technical direction to install the storage bladder". The Council was not obliged to provide such technical advice; it was only required to enforce its Plan, and it has a wide discretion as to the manner in which it does so.

[58] For the purposes of s 8(e) Sentencing Act 2002, and in all the circumstances, I determine that the appropriate starting point in this case is the sum of $60,000. I do not consider that a starting point of $60,000 can be regarded as particularly onerous, rather it is consistent with sentencing levels and the need to impose the least restrictive penalty that is appropriate in the circumstances.

Mitigating factors

[59] I agree with Ms Burkhardt that there was no direct benefit gained from the offending, I therefore do not consider that there are any aggravating factors which warrant an uplift from the starting point.

[60] Ms Burkhardt submitted that a 10 per cent reduction from the starting point is appropriate to reflect Mr Torrens' cooperation, age and circumstance, prior good character, and remedial steps.

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[23] *Waikato Regional Council v J B Thomas & Sons Ltd* [2023] NZDC 14601.

[61] Further it is submitted that Mr Torrens has sought to accept responsibility and now recognises that his reliance on others to direct action was not sufficient. As detailed in Mr Torrens' affidavit, he was apologetic for his failure in this regard.

[62] I find that it is expected that defendants will cooperate with the Council in its investigation, act promptly on recommendations, and take steps to remedy any non-compliances and/or to avoid further breaches from occurring. Remediation after the fact to ensure compliance with what is legally required does not earn a discount.

[63] However, I recognise altogether Mr Torrens' past good character (having no previous convictions), the genuine remorse shown, his age and circumstance, the remedial steps taken and his co-operation with the Council, acknowledging that co-operation can reasonably be expected. For that reason, I will allow a total credit of 10 per cent.

[64] Ms McMaster disagreed that Mr Torrens should receive the full 25 per cent reduction from starting point for an early guilty plea. Ms Burkhardt set out the chronology of events, emphasising that a response to the defendant's request for further information (9 January 2025) was not provided until 2 April 2025, at which point Mr Torrens was then properly advised, with further data provided through May. The prosecutor maintains that this was not further disclosure but more technical information regarding groundwater which it did not need to provide but did so only to avoid trial. Plea negotiations were finalised by July 2025 with Mr Torrens promptly entering his guilty plea. I accept a plea was entered at the earliest opportunity.

[65] This gives an overall reduction on that basis of 35 per cent.

[66] The end outcome is a penalty of $39,000.

Financial capacity

[67] Section 40 of the Sentencing Act 2002 requires me to take into account the financial capacity of the defendant and this may have an effect of reducing the amount of the fine.

[68] No submissions were made in this respect, and I consider the matter no further.

Final penalty outcome

[69] I have applied the two-stage approach to sentencing outlined in *Moses v R*[24] and as clarified in *Mo'unga v R.*[25]

[70] I have convicted the defendant and impose a fine of $39,000.

[71] In terms of s 342(2) of the RMA, I order that 90 per cent of the fine be paid to the Waikato Regional Council.

[72] I also order the defendant to pay court costs of $143 and solicitor fees of $113.

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Judge S M Tepania
District Court Judge | Kaiwhakawā i te Kōti ā-Rohe
Date of authentication | Rā motuhēhēnga: 21/05/2026

[24] *Moses v R* [2020] NZCA 296, at [45]-[47].
[25] *Mo'unga v R* [2023] NZHC 1967, at [27] to [39].