

**IN THE DISTRICT COURT
AT HAMILTON**

**I TE KŌTI-Ā-ROHE
KI KIRIKIRIROA**

**CRI-2024-072-000186
[2025] NZDC 13837**

WAIKATO REGIONAL COUNCIL
Prosecutor

v

APEX FARMING LIMITED
Defendant

Hearing: 31 March 2025 via VMR

Appearances: A McConachy for the prosecutor
J Gurnick for the defendant

Judgment: 30 June 2025

SENTENCING DECISION OF JUDGE MJL DICKEY

Introduction

[1] Apex Farming Limited (**Apex**) has pleaded guilty to discharging a contaminant (farm animal effluent) from an effluent storage pond onto land between 28 and 31 January 2024, contrary to ss 338(1)(a), 15(1)(b) and 340(1)(a) of the Resource Management Act 1991 (**RMA**).

[2] The maximum penalty for the offending is a fine of no more than \$600,000.

[3] For the Council Ms McConachy sought a starting point of \$80,000, while Mr Gurnick for Apex Farming submitted that a starting point of \$60,000 is appropriate.

[4] A Summary of Facts was agreed for the purposes of sentencing.¹

[5] No application for discharge without conviction was made. Apex Farming Limited is accordingly convicted on the charge.

Background²

[6] The discharge occurred on a 450 cow, 194ha commercial dairy farm situated at Happy Valley Road in Wharepuhunga. The farm is owned by Apex and operates as a spring calving, low input system.

[7] Glen Leslie is the sole director and 50% shareholder of Apex. His wife is the other 50% shareholder in the company, and they live on the farm. Mr Leslie is fully involved in the day-to-day management of the farming operation. He employs one full time and one part time farm assistant.

[8] A tributary of the Mangawhara Stream flows through part of the farm.

[9] Infrastructure on the farm consists of a herringbone dairy shed and yard, supplementary farm buildings and two in-ground unlined effluent storage ponds. Farm animal effluent generated at the dairy shed is directed to a yard drain junction and gravity fed to the first of two earthen effluent storage ponds (**Pond 1**). There is no stormwater diversion for the yard and no sand trap or sump, so all stormwater, washdown water and any silt and effluent solids from the dairy shed is directed into this pond. Historically, there was an overflow pipe to divert effluent into a second earthen effluent storage pond (**Pond 2**), however the pipe has since been removed and now effluent flows through an unsealed earthen channel between the ponds.

[10] There is a permanent effluent pump and stirrer installed in Pond 1 to pump effluent to a travelling irrigator so it can be spread to land. The pump must be turned on and off manually and there is no monitoring or fail safe technology utilised. There is no pumping infrastructure in place in Pond 2, which must be pumped down or emptied by an external contractor. The shape of Pond 2 is irregular with no evidence

¹ Summary of Facts dated 25 November 2024 (**SOF**).

² SOF at [12] – [23].

it has been lined with clay. Large trees grow alongside both ponds, including a large tree growing in the bank between the ponds.

[11] No leakage tests have been completed on either of the ponds so it is uncertain whether the ponds meet the required sealing standard. The ponds are not fenced to exclude stock and therefore stock can access the edge of the ponds, further compromising their integrity.

Regulatory framework

[12] The farm operates its dairy effluent system under the permitted activity rules of the Waikato Regional Plan (**Plan**). Plan Rule 3.5.5.1 allows for discharges of farm animal effluent onto land subject to certain conditions, including:

- (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 1×10^{-9} metres per second.
- ...
- (f) Effluent shall not enter surface water by way of overland flow, or pond on the land surface following the application.
- (h) The discharger shall provide information to show how the requirements of conditions a) to g) are being met, if requested by the Waikato Regional Council.

[13] The Council has requested evidence from Mr Leslie that the two effluent storage ponds comply with the permeability standard required by the Rule.

[14] Section 15(1) of the RMA states that no person may discharge any (a) contaminant into water; or (b) 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.

[15] 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.

[16] There are no national environmental standards, other regulations, resource consents or rules in the plan that expressly allow for the discharge of a contaminant onto or into land in circumstances which may result in that contaminant entering water in respect of the defendant's farm.

Circumstances of the offending³

[17] At about midday on 31 January 2024, Council compliance monitoring staff arrived at the farm to complete a compliance monitoring inspection associated with the farm's dairy effluent system. They met with Mr Leslie, who confirmed that he was the person responsible for managing the farm and that the farm was owned by his company Apex Farming Limited.

[18] Council staff inspected the two effluent storage ponds and found that both were extremely full, with little to no effluent storage capacity remaining. Pond 2 was actively overflowing farm animal effluent from one end, down the pond embankment and into a low-lying wet area of an adjacent paddock.

[19] Staff established that the effluent was flowing down the paddock for a distance of approximately 40 metres, before discharging into a farm drain. The farm drain did not contain surface water at the time. It was later established that this drain connected to a tributary of the Mangawhara Stream that flows through the farm.

[20] Council staff instructed Mr Leslie to take action to stop the discharge of effluent from Pond 2 and suggested that he bund off the flow path and then arrange to pump the level of the pond down. Mr Leslie later bunded off the overflow point with loose soil to stop the overflow from Pond 2 and turned the irrigator on to start lowering the level of Pond 1.

³ SOF at [24] – [30], [41].

[21] Council staff took three water samples associated with the Pond 2 discharge – a sample of the discharge, a sample halfway down the flow path, and a sample from within the drain. All samples tested indicated high levels of contamination with farm animal effluent.

[22] During a return visit to the farm on the 5 February 2024, Council staff noted that while the level of Pond 1 had been pumped down, Pond 2 was still full, was still relying on the loose soil bunding and had not yet been pumped down.

Explanation

[23] Mr Leslie was formally interviewed. In explanation for the offending, he stated that when they purchased the farm some six seasons ago the farm effluent system required upgrading; however, after purchasing a second dairy farm next door two years ago they had not proceeded with the upgrade due to the estimated costs.

[24] In relation to the overflow, he claimed that following Cyclone Gabrielle (February 2023) leaves and woody debris remained in the pond which constantly blocked the effluent pump. While on leave, his staff member contacted him advising that the effluent pump had blocked and he was unable to irrigate. Mr Leslie decided it could wait until he returned. It was not until he returned to the farm that he became aware that there had been an ‘80 mm’ rain event. He returned the evening of 30 January 2024. He did not check pond levels or fix the irrigation pump until Council staff phoned to say they were coming to the farm on 31 January 2024.

Sentencing Framework

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

[26] The High Court in *Thurston v Manawatu-Wanganui Regional Council* (***Thurston***) provides a useful summary of the approach to be taken to sentencing.⁴ This includes the vulnerability or ecological importance of the affected environment; the extent of the environmental damage, including any lasting or irreversible harm,

⁴ *Thurston v Manawatu Wanganui Regional Council* HC Palmerston North CRI-2009-454-24, -25, -27, 27 August 2010 at [41].

and whether it was of a continuing nature or occurred over an extended period of time; any infrastructural or other precautions taken to prevent discharges; the offender's culpability; deterrence; the offender's capacity to pay a fine; disregard for abatement notices or Council requirements; and cooperation with enforcement authorities and guilty pleas.

[27] Other relevant principles of sentencing include the general desirability of consistency in sentencing levels and the effect of the offending on the community.

[28] I have adopted the two-step sentencing methodology outlined in *Moses v R*.⁵

Environmental effects

[29] The Summary of Facts recorded that:

42. Ponding and the saturation of soil with farm animal effluent creates hydraulic conditions that pose a high risk of direct loss of untreated or partially treated effluent to groundwater. Ponding and irrigation onto saturated soils leads to effluent bypassing the soil matrix and flowing preferentially down macropore's (cracks and wormholes in the soil). Macropore flow results in untreated effluent moving below the plant rooting zone in the soil without complete treatment.

43. The contaminant levels in dairy effluent are many times higher than those at which adverse effects can occur in rivers and streams. As a result, unless an input of effluent is very highly diluted after it enters a river, it can cause a variety of adverse effects there.

[30] Ms McConachy submitted that the serious environmental effects of the discharge of dairy effluent to waterways are well known to the Court. The Courts have accepted that any contamination that goes into the wider environment, no matter how small, adds to the overall cumulative effects on the environment. A consistent theme of sentencing decisions over the past decade is to describe the cumulative effects of effluent discharges on the environment as "insidious" and "death by a thousand cuts."

[31] Mr Gurnick acknowledged that the cumulative impact on the environment of such discharges need to be taken into account but noted that there was no specific environmental impact from this offending.

⁵ *Moses v R* [2020] NZCA 296 at [46].

[32] I conclude that the effects of the offending are low, but are not to be ignored or dismissed. Discharges to groundwater such as this cumulatively contribute to the adverse effects of farm effluent on the environment.

Culpability

Prosecutor's submissions

[33] Ms McConachy submitted that Apex's culpability falls within Level 2 of *Waikato Regional Council v A & B G Chick (Chick)*.⁶ The Council accepted that the offending was not deliberate but can best be described as occurring because of Apex's recklessness in prioritising the purchase of another dairy farm when it was aware the effluent management system on its current farm was not fit for purpose. Apex did not monitor the levels of the effluent storage ponds or maintain the effluent pumps. It displayed a cavalier attitude towards the management of animal farm effluent on the property, which caused a foreseeable discharge of animal farm effluent into a tributary of the Mangawhara Stream.⁷

[34] Ms McConachy claimed that the unlawful discharge was a direct result of Apex's lack of investment in its effluent management system, when it was known that it was not fit for purpose. The Council acknowledged that Apex did not profit directly or indirectly from the offending but it did benefit financially in its failure to spend money on environmental compliance. Ms McConachy submitted that Apex prioritised profit over environmental compliance.

⁶ *Waikato Regional Council v A & B G Chick* (2007) 14 ELRNZ 291 (DC) – *Level 1 – least serious* – this range of offending reflects unintentional one-off incidents occurring as a result of a system failure. The range of penalty reflects the spectrum from the rarely used but wide discretion to discharge without conviction, to offending which encompasses some failure to adequately maintain the system, or failure to take timely restorative action. It also reflects little or no effect on the environment. *Level 2 – moderately serious* – this range of offending reflects unintentional but careless discharges usually of a recurring nature over a period of time, or of incidents arising from the malfunction of different parts of the system. The offending is often manifested by a reluctance to address the need for a safe system of effluent disposal, resulting in delays in taking restorative action. It also reflects little or at the most a moderate effect on the environment. *Level 3 – more than moderately serious* – this range of offending reflects the more serious offending. Offending that is deliberate, or if not deliberate, is occasioned by a real want of care. It is often associated with large plural discharges over time or one large one off event. It often exposes a disregard for the effects on the environment.

⁷ Ms McConachy corrected this submission after the hearing, acknowledging that there was no discharge into the Stream.

Defendant's submissions

[35] Mr Gurnick submitted that the offending straddles Levels 1 and 2 of *Chick*. He submitted that Apex was not reckless, there was no deliberateness, it is not egregious offending, and it is not the most serious offending of its kind.

[36] He submitted the offending arguably depicts a farm owner being let down by poor communication from the farm worker. He noted the Council focused on the farm's infrastructure, describing the offending as occurring because of Apex's recklessness in prioritising the purchase of another dairy farm rather than upgrading the effluent system. However, Mr Gurnick submitted the Court needs to be careful about drawing a nexus between the farm's infrastructure and the reason for the discharge. Aside from there being no pumping infrastructure in Pond 2, there is no suggestion in the Summary of Facts that the farm had deficient infrastructure, which is consistent with there being no issue since the farm was purchased. Such infrastructure could be better described as being liable to human error.

[37] Mr Gurnick submitted that Mr Leslie did not have a formal effluent management plan because he typically attended to effluent management on the farm. If Mr Leslie was on leave, one of Apex's employees had responsibility for managing effluent. Mr Leslie would pre-prepare the irrigator so that the employee only had to press a button on the irrigator and it would run before the auto-timer turned it off. Mr Leslie confirmed that the system had been put in place for when he went away for four and a half days, which is when the breaches are said to have occurred.

[38] Mr Gurnick submitted that there had been some trouble from the fallout of Cyclone Gabrielle that had resulted in a build up of debris in Pond 2.⁸ In the days before Mr Leslie went on leave he had taken the level of the pond down as low as possible, and considered there was capacity in the pond. However, during his time away there had been around 80 millimetres of rain, which was more than expected.

⁸ Given that it was debris build-up in Pond 1 that would cause the effluent pump to block, I find it is likely Mr Gurnick intended to refer to Pond 1.

[39] Mr Gurnick submitted that Mr Leslie only became aware of the overflow when he got back to the farm from leave. He was not told that the pond was overflowing when advised by an employee that there was a problem with the irrigator.

[40] Mr Gurnick submitted the principal cause of the discharge was, regrettably, a combination of heavy rainfall and Apex's staff member failing to notify Mr Leslie that there was minimal headroom available in Pond 2. Mr Gurnick submitted these circumstances are significant because:

- (a) there is no evidence that Apex had inadequately trained its staff members;
- (b) the staff member was responsible for the management of the farm given Mr Leslie was on leave at the time of the discharge; and
- (c) Mr Leslie had no knowledge of the offending or any issues that might have inevitably resulted in offending, as he was not on site when it occurred.

Conclusion on culpability

[41] I accept that the circumstances that led to the offending comprise a somewhat unfortunate combination of occurrences. Mr Leslie states that he did all he could to 'future proof' the ponds before he went away by bringing the pond levels down and setting up the irrigator for a 'push button' operation. He claimed that the discharges occurred while he was away, that unexpectedly heavier than usual rainfall brought the pond levels up and caused the overflow. Pond 1 was vulnerable because of the build-up of debris in it from Cyclone Gabrielle, which according to Mr Leslie constantly blocked the effluent pump.

[42] The fact remains, however, that Pond 2 overflowed while Mr Leslie was away. Pond 1 should have been cleared of debris – Cyclone Gabrielle occurred at the start of 2023. I infer from the overflow that effluent management on the farm was overly vulnerable to operator error or rainfall events. Having no effluent management protocols in place makes it difficult to determine if the effluent disposal system was inherently vulnerable or fit for purpose, and whether or not the operator in charge of

the system while Mr Leslie was away knew enough about the system to ensure no effluent discharges would result.

[43] Mr Leslie stressed that the employee did not advise him of an issue with the ponds when he spoke to him about problems with the effluent pump and being unable to irrigate. He decided the problem could wait until his return. That speaks to a lack of awareness on the employee's part of what the system required and what his responsibilities were to ensure compliance with the Act and the Regional Plan. I also take into account Mr Leslie's admission that an upgrade to the farm's effluent management infrastructure was put to one side when Apex purchased a second dairy farm two years ago.

[44] I conclude therefore, for all the above reasons, that Apex could have done more with its systems: cleared Pond 1 of debris, developed an effluent management plan – including a system for employee training and proof that had occurred. While Mr Leslie had clearly taken steps to arrange for effluent management in his absence, the fact of the discharge spanning four days speaks to an overall finding of careless management. I do not accept that Apex was cavalier in its management as asserted by the Council. I place the offending at the lower end of Level 2 of *Chick*.

Starting point

Prosecutor's submissions

[45] Ms McConachy submitted that due to the wide factual range underlying environmental offending, it is commonly accepted that there are no tariffs for that offending.⁹

[46] She submitted the different levels of seriousness set out in *Chick* provide some guidance to assessing and distinguishing between different levels of offending relating to unlawful discharges of dairy farm effluent. She noted that the *Chick* levels remain relevant in terms of assessing the seriousness of the offending, however the

⁹ *West Coast Regional Council v Potae and Ven Der Poel Limited* DC Greymouth CRI-2009-009-17910, 20 April 2010 at [19], citing: *Ling v Christchurch City Council* HC Christchurch CRI-2004-409000212, 2 December 2004; *Chick* at [7]; *Heenan v Manukau City Council* HC Auckland CRI-2006-404-69, 10 August 2006 at [28].

corresponding level of penalty must now be higher than the levels suggested in that case, an approach she submitted has been confirmed by the Courts on numerous occasions.¹⁰

[47] Ms McConachy cited the following decisions as being of assistance when assessing an appropriate starting point for the offending: *Waikato Regional Council v Te Korunui Farms*; ¹¹ *Waikato Regional Council v Cazjal Farm Ltd (Cazjal Farm)*; ¹² *Waikato Regional Council v ANP Farms*; ¹³ *Waikato Regional Council v Donald*; ¹⁴

¹⁰ *Thurston; Waikato Regional Council v Cazjal Farm Ltd* [2023] NZDC 10973 at [18].

¹¹ *Waikato Regional Council v Te Korunui Farms* [2023] NZDC 4181 – two charges relating to discharges of dairy effluent to water. Effluent ponds full to capacity, sand trap at a farm underpass was full. The adverse effects were moderate. Localised acute effects in the tributary below the ponds. The defendant was highly careless; the system was vulnerable to human error or lack of oversight, arrangements ought to have been made to pump down the ponds, the defendant ought to have known there was an issue. Starting point of \$120,000; \$80,000 for the pond overflow and \$40,000 for the discharge from the underpass.

¹² *Waikato Regional Council v Cazjal Farm Ltd* [2023] NZDC 10973 – two representative charges relating to three unlawful discharges of dairy effluent to land and breaching an abatement notice. Mr Walling was the director of Cazjal Farms, which was the owner of the farm. The effects of the offending were moderate; elevated levels of contaminants. Such discharges have a cumulative effect on waterways. Cazjal Farm and Mr Walling had to provide infrastructure, had oversight of the farm and had the ability to influence farming operations. They were on notice that there were issues with management of farm effluent. They failed to meet their ownership and governance responsibilities, including in relation to information sharing and induction/training. The system had been upgraded but there were problems which contributed to the discharges. Upper Level 2 of *Chick*, on the cusp of Level 3. Starting point of \$120,000; \$100,000 for the discharges, \$20,000 for the abatement notice offence. Upheld in *Walling v Waikato Regional Council* [2023] NZHC 3437.

¹³ *Waikato Regional Council v ANP Farms* [2024] NZDC 13550 – two charges of permitting the discharge of farm animal effluent onto land from an effluent irrigator and one charge of breaching an abatement notice. Effects on the environment were moderately serious. The Court found ANP was careless at the time of the first offence and highly careless at the time of the second offence given the time that elapsed between offences. Ample opportunity to address issues. No supervision or training was provided to the farm manager, no effluent management plan; system vulnerable to human error. The offending sat in Level 2 of *Chick*. Starting point of \$135,000; \$50,000 for the November 2022 offending, \$65,000 for the June 2023 offending, \$20,000 for the abatement notice offending.

¹⁴ *Waikato Regional Council v Donald* [2021] NZDC 5514 – two charges related to offending at each of the farms. Neither involved the discharge to surface water. At one farm effluent had discharged from ponds into a drain for approximately 100m before discharging into a paddock and ponding. At the second farm effluent discharged to groundwater from a series of stationary irrigators and two underpass sumps. The Court categorised the case as being at the top of Level 2 or the lower area of Level 3 of *Chick* and set the following starting points: a. \$75,000 for the first discharge given it represented a systemic issue; b. \$60,000 for the second discharge, giving a total starting point of \$135,000. To account for the fact that Mr Donald was the director of the General Manager, not the owner or manager of either farm; and was responsible for the governance and management rather than the operations, the starting point was reduced by one third, leaving a starting point of \$90,000.

Manawatū-Whanganui Regional Council v Phillips (Phillips);¹⁵ and *Waikato Regional Council v John Lockwood*.¹⁶

[48] Ms McConachy noted that in *Cazjal Farm*, the offending was on the cusp of Level 3 of *Chick*; there were two representative charges to reflect three discharges. She accepted the offending in *Phillips* is more serious because there was a deliberate discharge directly into water. Ms McConachy accepted that the offending here is similar to the first instance of offending in each of those cases.

[49] Finally, Ms McConachy submitted that \$70,000 appears to be the minimum available starting point for a discharge of effluent from a pond or irrigator.

[50] Placing Apex's culpability within Level 2 of *Chick*, considering the aggravating features of the offending and the guidance provided in the cases cited, Ms McConachy submitted that an appropriate starting point is a fine of \$80,000, representing just over 13 per cent of the maximum penalty.

Defendant's submissions

[51] Mr Gurnick submitted that a starting point of \$60,000 is appropriate for this offending. He referred to a number of cases in support of his submissions, highlighting the following: *Waikato Regional Council v H & S Chisholm Farms Ltd (Chisholm)*,¹⁷

¹⁵ *Manawatu-Whanganui Regional Council v Phillips* [2024] NZDC 28633 – one charge of discharging dairy effluent to land. The discharge was into a catchment or a river subject to a formal community rehabilitation project. The Court found there was a lack of adequate effluent storage available during extended periods of rainfall or wet weather. The defendant was aware of this and on notice for nearly six years prior to the offending. The discharge was deliberate. The offending was at the cusp of Level 2 and 3 of *Chick*. Starting point of \$90,000.

¹⁶ *Waikato Regional Council v Lockwood* [2020] NZDC 24932 – two charges of discharging dairy effluent to land. The gravity of the offending and the culpability of the defendant were assessed as moderately serious. The Court found that, while not deliberate, the causes of the discharges demonstrated at least a reluctance and possibly a real want of care to address infrastructure deficiencies on a timely basis. It also noted that the ponding was not dealt with promptly. Starting point of \$75,000 for the first offending and \$55,000 for the subsequent offending, resulting in an overall starting point of \$115,000.

¹⁷ *Waikato Regional Council v H & S Chisholm Farms Ltd* [2018] NZDC 20594 – two charges relating to effluent discharge, one charge of contravening an abatement notice. Moderately serious offending falling within the upper part of Level 2 *Chick*. Starting point of \$85,000.

Bay of Plenty Regional Council v Brooklyn Dairy Farm Ltd (Brooklyn Dairy);¹⁸ *Waikato Regional Council v Dyson (Dyson)*;¹⁹ and *Waikato Regional Council v Blackler (Blackler)*.²⁰

[52] He submitted that the level of culpability is most similar to that of the defendant in *Dyson*. However, Mr Dyson’s knowledge of the issues that led to the offending – and his failure to remedy them in a timely way – makes the offender in *Dyson* more culpable than Apex. Furthermore, the multiple charges in *Dyson* self-evidently make it more serious than this case. *Dyson* supports the starting point sought for Apex.

[53] Mr Gurnick submitted that *Brooklyn Dairy* concerned more serious offending, evidenced by the Judge finding that the defendant was reckless. Mr Gurnick noted that in *Blackler*, a higher level of fine was imposed for offending which arguably had graver environmental consequences than here. This was highlighted by Judge Harland, who categorised the impact on the environment as “at the high end of moderately serious”. Furthermore, the case demonstrates that penalties significantly lower than those sought by the Council are available where offending involves actual discharges to water.

[54] *Chisholm* concerned discharges both in the context of overfilled effluent ponds and irrigation pumping leading to pooling. It also concerned the breach of an abatement notice to cease the unlawful discharge of farm animal effluent which was flowing from an effluent pond to a tributary. Mr Gurnick submitted that the offending in *Chisholm* is at a greater scale due to all discharges occurring directly into a

¹⁸ *Bay of Plenty Regional Council v Brooklyn Dairy Farm Ltd* [2023] NZDC 17655 – discharge of dairy effluent, reached waterway. Level 2 of *Chick*, moderately serious offending. Offending classified as reckless. There was nobody at the farm responsible for effluent management. Workers lacked the experience and/or expertise to operate the system unsupervised. The defendants did not have sufficient safeguards and oversight. The defendants were let down by an employee who made unauthorised modifications and abandoned their employment. Starting point of \$75,000.

¹⁹ *Waikato Regional Council v Dyson* [2023] NZDC 26386 – three charges of permitting the discharge of dairy farm animal effluent onto land. High levels of contaminants consistent with farm effluent in the tributary of the Waikato River. The offending in relation to pond discharge was negligent. Culpability was lower for the stormwater diversion discharge. Moderately serious band of offending. There were pressures on the activity at an infrastructure level and the defendant had been told about these by contract milkers. Starting point of \$70,000.

²⁰ *Waikato Regional Council v Blackler* [2018] NZDC 16180 – three charges of discharging farm effluent where it entered water. Effects categorised as at the high end of moderately serious. Operational and management failures rather than being directly attributable to systemic failure. Starting point of \$80,000.

waterbody. The global \$85,000 starting point fine in *Chisholm* supports the starting point submitted by the defendant.

Conclusion on starting point

[55] There is not a great deal of difference between the starting points proposed by counsel.

[56] I have considered all the cases to which I was referred. Taking into account my findings on environmental effects and culpability (Level 2 *Chick*), I find that this case has similarities to *Dyson* and *Lockwood*. While the offending was a result of a combination of events, all not entirely of the defendant's making, an effluent discharge spanning four days did occur. With better employee education and closer attention to the build-up of debris in Pond 1 it may have been avoided. I do not view the failures as indicative of a reluctance to address the issues but more as trying to juggle the vagaries of an aging system that was heavily dependent on close management. I find the Council's proposed starting point of \$80,000 too high in the circumstances and adopt a starting point of \$70,000.

Aggravating and mitigating factors

[57] Ms McConachy submitted that Apex, having pleaded guilty at the earliest opportunity, is entitled to a discount from the starting point of up to 25 per cent. She made no submissions on further mitigating factors that may adduce additional discounts.

[58] Mr Gurnick submitted that Apex has no previous convictions and is of good character, proposing that a 10 per cent discount is available for this factor. He also submitted that the early guilty plea, following resolution discussions with the Council that saw Mr Leslie personally removed from the proceedings, justifies the full discount of 25 per cent in terms of *Hessell v R*.²¹

²¹ *Hessell v R* [2010] NZSC 135, [2011] 1 NZLR 607.

[59] I allow a discount of 25 per cent for the early guilty plea and five per cent for good character.

Financial capacity

[60] Mr Gurnick advised that if the Court considers the offending to be reckless, Apex seeks to make further submissions as to financial capacity to pay any such fine. I have not made such a finding so no further submissions are necessary.

Outcome

[61] I have convicted Apex Farming Limited. I impose a fine of \$49,000.

[62] 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.

[63] I also order that Apex Farming Limited is to pay court costs of \$143 and solicitor's fee of \$113.

Judge MJL Dickey

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

Date of authentication | Rā motuhēhēnga: 30/06/2025