

**IN THE DISTRICT COURT
AT HAMILTON**

**I TE KŌTI-Ā-ROHE
KI KIRIKIRIROA**

**CRI-2024-024-000193
[2025] NZDC 12334**

WAIKATO REGIONAL COUNCIL
Prosecutor

v

ARRICK LIMITED
Defendant

Hearing: 4 February 2025 via VMR

Appearances: A McConachy and K Bucher for Waikato Regional Council
C Muggeridge and A Irvine for Arrick Limited

Judgment: 30 June 2025

SENTENCE DECISION OF JUDGE MJL DICKEY

Introduction

[1] Arrick Limited has pleaded guilty to one charge that on 23 November 2023 it discharged a contaminant onto land in circumstances where that contaminant may enter water, contrary to ss 338(1)(a) and 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 \$90,000, while Ms Muggeridge for Arrick Limited submitted that a starting point of \$65,000 is appropriate.

[4] A Summary of Facts was agreed for the purposes of sentencing.¹ Arrick Limited also adopted the outline of the facts set out in the prosecutor's submissions.²

[5] No application for discharge without conviction was made. Arrick Limited is accordingly convicted.

Background³

[6] This prosecution relates to an unlawful discharge of farm animal (dairy) effluent on a 110-hectare dairy farm located at 246 Tenfoot Road, Taupiri. The farm neighbours several other family farm blocks.

[7] The farm property is owned by Arrick Limited. Taranpal Singh (**Mr Singh**) and Paramjit Singh have been the two directors of Arrick Limited since 2015. They do not reside on the farm.

[8] Mr Singh is currently responsible for the day to day farming operations, including the effluent system. He has one employee who works on a casual basis and assists solely with the milking of the cows. This person has no other role or responsibility on the farm.

[9] For the 2023/2024 dairy season the farm milked 290 – 300 cows at peak, twice a day with no winter milking.

Effluent system

[10] The effluent system consists of an inground unlined earthen effluent Storage Pond which stores animal effluent (**the Pond**). The Pond has a capacity of approximately 2,250m³. Dairy shed effluent is directed to a sand trap and then gravity

¹ Amended Summary of Facts: 16 October 2024 (**SOF**).

² Prosecutor's submissions, at [8] – [15].

³ SOF, at [11] – [23], [36] – [40].

fed via pipe to an inground concrete sump. Effluent is then pumped from the sump to the Pond, which is located approximately 500 metres away.

[11] The farm currently has no irrigation system. Capacity of the Pond relies on effluent pumped out by an external contractor. The Council is not aware of any leakage test having been carried out on the Pond and therefore cannot confirm the required sealing standard.

[12] The discharge of effluent breached the Waikato Regional Plan.

Circumstances of the offending⁴

[13] On 23 November 2023, Council compliance monitoring staff completed a routine monitoring inspection associated with the farm's dairy effluent system. Mr Singh was not present but was advised of the inspection.

[14] Council staff inspected the Pond, which was extremely full with no freeboard or storage capacity available. It was actively discharging farm animal effluent to land.

[15] The Pond was actively overflowing along the southern wall and the northeastern corner of the Pond from multiple points. The southern wall had two points of discharge:

- the first was actively discharging and flowing south of the Pond downhill for approximately 15 metres.
- the second point of discharge was approximately 10 metres away from the first and flowed for approximately 2 metres.

[16] The third discharge was located at the northeastern corner of the Pond. The effluent discharge was seeping through cracks in the bank of the Pond and ponding on land around the discharge point.

⁴ SOF, at [24] – [35].

[17] Council staff contacted Mr Singh. Mr Singh stated he thought the overflow had happened the previous week and said he would contact contractors to assist with the Pond's level. Mr Singh stated he was under financial constraints.

[18] Rainfall data from a rainfall monitoring site near the farm has since been obtained for the period 1 November 2023 to 23 November 2023. This data has confirmed there was sporadic rainfall with a total of 56 mm during this period.

[19] Council staff took three water samples associated with the Pond's discharge. These samples were subsequently analysed by Hill Laboratories and all confirmed high levels of contamination consistent with farm animal effluent.

[20] As a result of the 23 November inspection, on 18 December 2023 an abatement notice was served on Arrick Limited. Copies of the notice were served on its two directors – Mr Singh and Paramjit Singh – directing them to cease and prohibiting them from commencing the unlawful discharge of a contaminant, namely farm animal (dairy) effluent, on the property.

[21] The discharge of effluent breached the Waikato Regional Plan. The farm operates its dairy effluent system under the permitted activity rules of the Plan. Rule 3.5.5.1 of the Plan allows for discharges of farm animal effluent onto land subject to certain conditions. Relevant conditions include:

- (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.

[22] Section 15(1)(b) of the RMA requires 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. The discharge in this case breaches s 15(1)(b) because it was not authorised by any statutory plan or standard and no resource consent was obtained.

Explanation⁵

[23] Mr Singh did not offer an explanation for the offending when approached for a formal interview by the Council.

Sentencing Framework

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

[25] The High Court in *Thurston v Manawatu-Wanganui Regional Council* (*Thurston*) provides a useful summary of the approach to be taken to sentencing.⁶ 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; deterrence; the offender's capacity to pay a fine; disregard for abatement notices or Council requirements; and cooperation with enforcement authorities and guilty pleas.

[26] I have followed the two-step sentencing methodology outlined in *Moses v R*.⁷

⁵ SOF, at [43].

⁶ *Thurston v Manawatu-Wanganui Regional Council* HC Palmerston North CRI-2009-454-24, -25, -27, 27 August 2010, at [41].

⁷ *Moses v R* [2020] NZCA 296 at [46].

Environmental effects

[27] A report from Robert Dragten, a water quality scientist, confirmed that:⁸

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

Prosecutor's submissions

[28] Ms McConachy submitted that the serious environmental effects of the discharge of dairy effluent to waterways are well known to the Court. 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.” Any contamination that goes into the wider environment, no matter how small, adds to the overall cumulative effects on the environment.

[29] In *Manawatū-Whanganui Regional Council v Manawatū District Council*, in response to a submission that the contaminant load of the discharge to the waterbodies would have been extremely small, Judge Dwyer commented:⁹

[7] From one point of view those contentions may well be correct but, as counsel will be aware, that is not the point. It is frequently the case for discharges of this type that there is no precise measurement of the duration or volume of discharge nor any evidence of direct physical effects such as fish kill, growth of sewage fungus and other organisms or the like. However, paragraph [29] of the summary of facts cites the presence of elevated levels of various contaminant elements in the tributary downstream of the pump station which would have added cumulatively but incalculably to the nutrient values in the already degraded waters downstream. Such contributions made by a myriad of individually insignificant discharges are sometimes called death by a thousand cuts.

[30] Ms McConachy submitted that the various water samples which were taken confirmed a high level of contaminants.

⁸ SOF, at [41] and *Land Treatment of Farm Dairy Effluent* report by Robert Dragten dated 11 April 2018.

⁹ *Manawatū-Whanganui Regional Council v Manawatū District Council* [2024] NZDC 3903, at [7].

Defendant's submissions

[31] Ms Muggeridge submitted that because the Pond, or more precisely the discharge points, are some distance from the nearest farm drain (60 metres south of the existing pond), the receiving environment was groundwater.

[32] Arrick Limited acknowledged the potential adverse effects on groundwater from ponding and the saturation of soil with effluent. However, Ms Muggeridge submitted that the incident, while preventable, was entirely accidental. In any event there was no evidence of specific environmental effects other than the general cumulative environmental effects that discharges can have on groundwater.

Findings on environmental effects

[33] There are clear and known adverse effects on the environment from the saturation of soil with effluent. This offending would have added cumulatively but incalculably to the nutrient values in the groundwater. I assess the environmental effects of the offending as low.

Culpability

Prosecutor's submissions

[34] Ms McConachy submitted that the offending came about due to Arrick Limited's highly careless management of effluent. The only way to reduce the Pond's level was to engage an external contractor to remove the effluent using a pump truck. As a result, the effluent system relied on manual monitoring of the pond level to ensure that contractors were engaged whenever there was limited storage capacity available.

[35] She submitted that Arrick Limited must have known that the Pond was at full capacity. The Pond is 500 metres from the dairy shed and if visual inspections were completed it would have been obvious that there was no freeboard available.

[36] Further, when Mr Singh was spoken to by Council staff, he said that he believed the overflow had happened during the previous week. This suggests that he was aware that the Pond was actively discharging effluent. Despite being aware of the

discharges, the company did not engage a contractor to reduce the Pond's level. In that respect, Ms McConachy submitted that the company's conduct can be seen as being highly reckless.

[37] Moreover, Ms McConachy submitted that the poor state of the effluent infrastructure on the farm was causative of the offending. There was inadequate effluent storage capacity, which meant that Arrick Limited was heavily reliant on contractors attending to remove effluent using a pump truck. There is no irrigation system, which would have enabled the spreading of effluent to pasture. Given the need for careful oversight and visual inspections, a prudent operator should have had protocols or procedures in place to ensure that the Pond level was adequately maintained.

[38] Ms McConachy submitted that the Court will be well aware that the management of a farm's dairy effluent system is an ever-present farming consideration. It is incumbent on farmers to ensure their effluent systems are fit for purpose, which includes making sure that there is sufficient effluent storage capacity to ensure there are no unlawful effluent discharges. She submitted that it is reasonable to expect farm owners and managers to recognise the need to actively monitor effluent and infrastructure, including the effluent storage facilities on a farm.

[39] Ms McConachy acknowledged that Arrick Limited did not profit directly from the offending. Nevertheless, she submitted that it has indirectly benefitted from not expending money on contractors to remove effluent. Further, she submitted that the company has benefited from not expending money to undertake upgrades to the effluent infrastructure on the farm.

[40] In *Thurston*, the Court held:¹⁰

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:

¹⁰ *Thurston*, at [47].

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)

[41] Ms McConachy submitted that an important aspect of sentencing is to ensure that it is economically unattractive to offend in this way. Despite being aware that the Pond was overflowing, Arrick Limited avoided being put to the significant cost of engaging contractors to lower the Pond's level. This has come at a cost to the environment. She submitted the resulting penalty must therefore have sufficient sting that it is not simply seen as a licence fee to incentivise defendants to avoid incurring necessary effluent related expenses.

Defendant's submissions

[42] Ms Muggeridge submitted that while the company's conduct was careless, it was not reckless. She submitted that if it were to be reckless, that would involve crossing a high threshold of wilful blindness. She submitted that the evidence does not establish any state of mind that amounts to recklessness. The system, when pumped as it has been for years, is a working system.

Findings on culpability

[43] The Summary of Facts recorded that the Council has, on numerous occasions, spoken to Mr Singh about the Pond. While the Council argued there were inadequacies in the farm effluent disposal infrastructure because it was vulnerable to poor management, I do not accept that the physical infrastructure was lacking as such. What is clear, however, is that the system was poorly managed in the time leading up to the offending, and perhaps before that given Mr Singh's past interactions with the Council. Mr Singh admitted that the Pond likely needed emptying a week before the offending occurred. That no steps were taken to engage a pumping contractor is of concern. That financial issues may have led to poor decision-making is also of concern. It is essential that effluent disposal is properly managed. It was not, and the discharge was the result. With a system such as this, the need for close attention is

clear. There is no option for bringing down the Pond's level save through it being emptied by a contractor. That attention was lacking. Therefore, I find Arrick to have been highly careless in its management of proper effluent disposal at the farm.

Starting point

Prosecutor's submissions

[44] 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.¹¹

[45] She submitted the different levels of seriousness set out in *Waikato Regional Council v GA & BG Chick Ltd*¹² provide some guidance to assessing and distinguishing between different levels of offending relating to unlawful discharges of dairy farm effluent. The *Chick* levels remain relevant in terms of assessing the seriousness of the offending. However, the corresponding level of penalty must now be higher than the levels suggested in that case. This approach has been confirmed by the Courts on numerous occasions.¹³

¹¹ *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; *Waikato Regional Council v GA & BG Chick Limited* (2007) 14 ELRNZ 291 (DC) at [7]; *Heenan v Manukau City Council* HC Auckland CRI-2006-404-69, 10 August 2006 at [28].

¹² *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.

¹³ *Thurston v Manawatu-Wanganui Regional Council*; *Waikato Regional Council v Cazjal Farm Ltd* [2023] NZDC 10973 at [18].

[46] Ms McConachy submitted that the Court will be aware of several sentencing decisions that have cited the increasing concern about the incidence of dairy effluent offending and the need for deterrence, both particular and general.¹⁴ In particular, she referred to the comments made by the Court in *Waikato Regional Council v Nagra Farms Limited*.¹⁵

It is also, however, clear (and has been signalled by the Courts over at least the last 18 months) that the starting points typically adopted for dairy effluent offending need to be elevated to better relate to the maximum penalty available, and because there continue to be cases such as this one coming before the Court where there has been a failure to invest in appropriate infrastructure in a timely way, a failure to oversee and manage staff employed to run farming operations for owners, and a failure to proactively manage any infrastructural restrictions following heavy rainfall.

[47] I was referred to the following cases for assistance when assessing an appropriate starting point: *Waikato Regional Council v Te Korunui Farms (Te Korunui Farms)*;¹⁶ *Waikato Regional Council v Cazjal Farm Ltd (Cazjal Farm)*;¹⁷ *Waikato*

¹⁴ *Watt v Southland Regional Council* [2012] NZHC 3062; *Yates v Taranaki Regional Council* HC New Plymouth CRI-2010-443-008, 14 May 2010; *Waikato Regional Council v Crouch* [2019] NZDC 11517; *Waikato Regional Council v Cazjal Farm Ltd* [2023] NZDC 10973.

¹⁵ *Waikato Regional Council v Nagra Farms Limited* [2019] NZDC 2382 at [79].

¹⁶ *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. Adverse effects were moderate. Evidence of 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.

¹⁷ *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; confirmed 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.

Regional Council v ANP Farms (ANP Farms);¹⁸ *Manawatu-Whanganui Regional Council v Phillips (Phillips)*;¹⁹ *Waikato Regional Council v Lockwood (Lockwood)*.²⁰

[48] Ms McConachy submitted that Arrick Limited's culpability falls within the upper end of Level 2 of *Chick*. She submitted that this was serious offending, involving three separate discharges from a storage pond that was plainly over capacity. The company must have been aware of the discharges but did nothing to remedy the situation. In that respect, the company exhibited a blatant disregard for its environmental obligations.

[49] She submitted that the offending is significantly aggravated by the company's failure to ensure that the effluent infrastructure on the farm was fit for purpose. There was insufficient effluent storage capacity, and the only way to lower the Pond level was to engage an external contractor. This meant that the farm was heavily reliant on careful monitoring of the Pond to ensure that the level of freeboard was appropriately maintained. The poor state of the effluent infrastructure meant that offending of this kind was entirely foreseeable.

¹⁸ *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. Environmental effects 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.

¹⁹ *Manawatu-Whanganui Regional Council v Phillips* [2024] NZDC 28633 – one charge of discharging dairy effluent to land in circumstances where it may enter water. The discharge was into a catchment, or a river. 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 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.

²⁰ *Waikato Regional Council v Lockwood* [2020] NZDC 24932 – two charges of discharging dairy effluent to land. The defendant owned and managed the dairy operation and was on site full-time. 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. Taking all matters into account a starting point of \$75,000 was imposed for the first offending and \$55,000 for the subsequent offending, resulting in an overall starting point of \$115,000.

[50] Ms McConachy submitted, with reference to the cases cited above, that \$70,000 appears to be the minimum available starting point for a discharge of effluent from an effluent pond or irrigator, given the high concentration of effluent from those sources. The present offending shares similarities with the offending in *Te Korunui Farms* but is more serious than that case in that there were three separate discharges from the Pond. Moreover, the fact that the offending was caused in part by the substandard effluent infrastructure aggravates the present offending.

[51] Ms McConachy submitted that the offending also shares some similarities to the first unlawful discharge in *Lockwood*. There a hydrant had been broken for some weeks, causing significant ponding. A starting point of \$75,000 was imposed in respect of that discharge. Notably, the defendant was an individual and therefore subject to a lower fine than this defendant. Similarly, she submitted that the defendant in *Phillips* was an individual who was subject to a lower penalty. There, in respect of a single discharge, a starting point of \$90,000 was adopted.

[52] Ms McConachy submitted that, considering the aggravating features of the offending, Arrick Limited's level of culpability, and the guidance provided in the cases cited, an appropriate starting point is a fine in the region of \$90,000.

Defendant's submissions

[53] Ms Muggeridge submitted that the offending falls between Level 1 and Level 2 of *Chick*. She submitted that the offending is considerably less serious than claimed by the Council because:

- (a) it was a single incident and there is no evidence that discharges were a recurring issue;
- (b) while the infrastructure could be better, the Pond is pumped regularly. There was a significant rainfall event, however, resulting in the incident not being entirely foreseeable;
- (c) the Council later confirmed that Arrick Limited has a fully compliant system;

- (d) the company is in the process of upgrading the system;
- (e) while groundwater has the potential to receive effects, the effluent did not enter a drain, or river; and
- (f) despite the abatement notice, there has been no previous enforcement action, nor any non-compliance with the abatement notice.

[54] Ms Muggeridge submitted that the five cases referred to by Ms McConachy to reach a starting point at the higher end of Level 2 can be distinguished from this case.

[55] She submitted that the three most comparable cases of those highlighted by Ms McConachy are *Te Korunui Farms*, *Lockwood* and *Phillips*.

[56] In *Te Korunui Farms* there were two points of overflow, being the pond and sand trap, and effluent flowed into a drain running alongside the farm race which led to a stream. Ms Muggeridge submitted that the discharge in this case was a result of the Pond overflowing – that being only one system failure – and did not result in effluent entering a drain, or a tributary. She submitted that the present case is not an incident arising from the malfunction of different parts of the system as Level 2 *Chick* requires.

[57] In response to Ms McConachy's submission that this case is more serious than *Te Korunui Farms* as there were three separate discharges caused by 'the substandard effluent infrastructure', Ms Muggeridge noted that the Council inspected the Pond three months after the abatement notice was issued. While recommendations were suggested for improving the Pond, it was given the status of 'full compliance'.²¹ Ms Muggeridge submitted that substandard effluent infrastructure would not receive a 'full compliance' sign off by the Council. Since that advice Arrick Limited has been in regular contact with the Council about obtaining quotes to complete the Council's recommendations in good faith.

²¹ Letter from Waikato Regional Council to Arrick Farms, dated 28 May 2024.

[58] Ms Muggeridge also provided information about the funding arrangements that Arrick Limited has negotiated with its bank. She submitted that working through the costs of an upgrade to the system with the bank has been difficult, but the company has now managed to secure funding.

[59] Ms Muggeridge submitted that where *Lockwood* involved ponded effluent across one area 18m long and another 12m long with both areas of ponding going over the top of gumboots, the present offending did not cause ‘significant ponding’. She drew my attention to the comments of the Judge in *Lockwood* that:²²

Had this been a one-off incident, within the range described as level 1 in *Chick*, I would have been inclined towards the levels of the starting point sought by counsel for the defendant [being level 2]. The repeat offending takes this case out of that level.

[60] Ms Muggeridge submitted that given the hydrant was not fixed for five weeks and there was repeat offending (whereas Arrick Limited emptied the Pond promptly) *Lockwood* was more serious offending.

[61] Ms Muggeridge also submitted that *Phillips* is considerably more serious than this case. That offending was on the cusp between Levels 2 and 3 of *Chick*. In particular, the finding of the starting point was because of the deliberate nature of it (an effluent hose was placed in the drain); because the discharge was into a catchment or river subject to a formal community rehabilitation project; and because of the long-standing failure of the defendant to implement a safe system of effluent management (from 2012 – 2024).

[62] She submitted that those facts are distinguishable from this case as, while the overflow was careless it was not a deliberate act, the effluent did not enter a drain or river, and the Pond is managed through continuous pumping (if required).

²² *Lockwood*, at [49].

[63] Ms Muggeridge submitted the following two cases are comparable to this offending: *Waikato Regional Council v Vinka Farms Ltd (Vinka Farms)*,²³ and *Waikato Regional Council v Prout (Prout)*.²⁴ She submitted that both cases considered offending between Levels 1 and 2 of *Chick* and the lower end of Level 2. She submitted that the defendant's conduct was careless and not reckless. The system, when pumped as it has been for years, is a working system.

[64] In relation to the overflow from the Pond, a significant rainfall event took place during the period of offending and Ms Muggeridge submitted that the 56mm of rain explains why the Pond was at the level it was at the time of the Council's inspection. This underlines the importance of having adequate storage capacity to accommodate factors like rain which, she submitted, the defendant acknowledged and is working on.

[65] Ms Muggeridge submitted that when considering the facts of this offending a starting point of \$65,000 is appropriate. She submitted that the starting point of \$90,000 proposed by Ms McConachy does not align with other decisions.

Conclusion on starting point

[66] I was referred to a number of cases, said to assist in setting the starting point. Ms McConachy submitted that *Te Koronui Farms* and *Lockwood* shared similarities with this case. Ms Muggeridge distinguished those cases and advanced *Vinka Farms* and *Prout* as being comparable. I find similarities with *Te Koronui*, *Vinka Farms* and *Prout*. All involved systems that were vulnerable to poor management. *Te Koronui* involved two discharges, the others one discharge.

²³ *Waikato Regional Council v Vinka Farms Ltd* [2020] NZDC 2896 – one charge of discharging farm animal effluent onto land in circumstances where it may enter water. Dairy effluent was bypassing the collection point at the cowshed, running down through the adjoining paddock and discharging to an unnamed tributary. The Court noted the insidious and cumulative effects of such discharges. It observed that the farm had been poorly managed and for some time there was under-investment in aspects of it, but since a new farm manager came on board substantial improvements had been made. The conduct was characterised as at the upper end of careless and the lower end of reckless. Categorised as Level 2 of *Chick*. Starting point of \$70,000.

²⁴ *Waikato Regional Council v Prout* [2020] NZDC 10556 – one charge of discharging dairy effluent to land in circumstances where it may enter water. Cumulative adverse effects on the environment. In assessing culpability, the Court took into account the farm's lack of storage capacity, that the defendant was put on notice two years prior to the offending about the risk that posed, and the defendant's acknowledgement that the ground was saturated on the day of offending, had he had storage capacity he would not have irrigated that day. The defendant was undergoing medical treatment and may therefore not have been as focused on farm issues as he might otherwise have been. The defendant's culpability was categorised as careless. Starting point of \$50,000.

[67] I have concluded the environmental effects of the offending are low. I have found the defendant to have been highly careless. A system such as that on the farm required close attention, which was clearly missing. While the physical infrastructure is of an adequate standard, the company now accepts the desirability of upgrading it. Management was poor in the time leading up to the offending, with poor decisions made. I therefore place the offending at the lower end of Level 2 of *Chick*. 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, I adopt a starting point of \$75,000, which I find to be within the range of starting points adopted in the above three decisions.

Aggravating and mitigating factors

Guilty plea

[68] Counsel agreed that a discount of 25 per cent should be given for the early guilty plea. I agree and allow a discount of 25 per cent.

Previous compliance history

[69] The Council has not taken any previous enforcement action. The company has not previously appeared before the Court.²⁵

[70] Ms McConachy submitted that Mr Singh, having been spoken to by Council staff on numerous occasions about the deficiencies in the company's effluent infrastructure, had squarely been put on notice that the state of the effluent storage pond created a significant risk of non-compliance but no steps were taken by Arrick Limited to upgrade or improve the effluent infrastructure. However, she acknowledged that Arrick Limited does not have any history of enforcement action. The Council did not seek an uplift to the starting point but submitted that the company cannot be entitled to any credit for prior good character.

²⁵ SOF, at [44] – [45].

[71] Ms Muggeridge noted that Arrick Limited has never been convicted or subject to enforcement action prior to the abatement notice. On that basis she sought a five percent discount for good character.

[72] I allow a five per cent discount for good character. While Arrick Limited was somewhat dilatory when it came to responding to simmering issues at the farm, and Mr Singh was spoken to about them, that does not mean that there should be no discount in all the circumstances.

Remedial actions undertaken by the defendant

[73] Ms Muggeridge sought a further five per cent discount for mitigating factors.

[74] She submitted that the Pond is and has always been regularly pumped. Following the inspection on 23 November 2023, the Pond was pumped by a contractor the next day.

[75] While Mr Singh acknowledges that financial constraints are by no means a defence, Ms Muggeridge submitted that there have always been genuine intentions to upgrade the effluent infrastructure. Mr Singh has consulted various companies for advice and options that would have advanced if funding had been available. Further, he accepts that it is best practice to inspect the Pond daily and clean the sand trap regularly.

[76] Since the abatement notice was issued, the company has sought pricing and otherwise attended to various matters, including discussing options for dairy effluent, pricing an infrastructure plan, DESC storage calculator and pricing, AgFirst – proposal and pricing for effluent, new track being laid to allow equipment installation when ready to the existing sump, and obtaining finance and commencing excavation for the lining of the Pond.

[77] Ms Muggeridge submitted that, overall, approximately \$25,000 has been spent on remedial works/improvements, with \$175,000 to be spent.

[78] Following the issue of the December 2023 abatement notice the Council undertook a re-inspection of the farm on 15 February 2024. A subsequent letter from the Council stated that the farm effluent system has “full compliance” but detailed action required that included:

- (a) providing an effluent improvement plan;
- (b) providing documentation that the Pond meets the sealing standard;
- (c) reduce the build-up of effluent solids in the sand trap; and
- (d) ensure that effluent is being irrigated within the limits and soil conditions.

[79] Ms Muggeridge expressed some concerns that, following that re-inspection, the Council still commenced a prosecution in relation to the November 2023 offending. She submitted that the positive re-inspection supported her assertion that the offending was a one-off incident. That may well be but the management of the system was, at the time of the offending, inadequate.

[80] I find that Arrick Limited is doing what it now accepts needs to be done. That is no reason to allow a discount. Any steps now being taken will assist in ensuring there is no repeat of this offending. I emphasise the role and importance of having a robust effluent management programme supported by adequate infrastructure and vigilant management.

Outcome

[81] I adopt the two-step sentencing process following *Moses v R*.²⁶

[82] I have convicted Arrick Limited and impose a fine of \$52,500.00.

[83] 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.

²⁶ *Moses v R* [2020] NZCA 296, at [46].

[84] I also order that Arrick 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