IN THE DISTRICT COURT
AT HAMILTON

I TE KŌTI-Ā-ROHE
KI KIRIKIRIROA

CRI-2025-072-000079
[2025] NZDC 27002

WAIKATO REGIONAL COUNCIL
Prosecutor

v

TIHIROA FARMS LIMITED
Defendant

Hearing:	29 September 2025 via VMR
Appearances:	K Bucher for the Prosecutor P Lang for the Defendant
Judgment:	21 November 2025

SENTENCING DECISION OF JUDGE MJL DICKEY

The charge

[1] Tihiroa Farms Limited (**TFL**) has pleaded guilty to one charge of discharging a contaminant (animal effluent) from a stationary irrigator onto land, and via overland flow into a tributary of the Waipa River, on 30 September 2024, contrary to ss 338(1)(a), 15(1)(b) and 340(1)(a) of the RMA.

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

[3] For the Council Mr Bucher sought a starting point of $80,000, while Mr Lang for TFL submitted that a starting point of $40,000 is appropriate.

[4] A summary of facts was agreed for the purposes of sentencing.[1]

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

The effluent system

[6] TFL is a 50/50 Sharemilker operating a 220-hectare dairy farm at Te Kawa Road, Tihiroa. It has two directors, Bruce Collinson-Smith and his wife Carol Collinson-Smith.

[7] TFL operates its dairy effluent management system under the permitted activity rule of the Waikato Regional Plan and does not require a resource consent. Rule 3.5.5.1 of the Plan has conditions that must be complied with, including:

> *(f) Effluent shall not enter surface water by way of overland flow, or pond on the land surface following the application.*

[8] Farm animal effluent generated at the dairy shed is directed to a weeping wall bunker. A stormwater diversion prior to the bunker diverts clean stormwater from the stock holding yard. The weeping wall serves as a solids separation and solids storage facility.

[9] Liquid effluent drains from the end of the weeping wall into a synthetically lined effluent storage pond. From the lined pond effluent is pumped to a stationary gun irrigator for land disposal.

[10] Mr Bruce Collinson-Smith makes all decisions regarding the farm and infrastructure. He does not live on the farm but he aims to be on the farm most days to be available to oversee operations.

[11] TFL employs a Farm Manager. He is responsible for the day-to-day farming operations, which includes supervising farm staff and managing the farm's effluent system. At the time of the offending he was in the process of training his 2IC to

[1] Summary of Facts dated 14 August 2025.

manage the effluent system, while retaining overall responsibility for the effluent application by checking the irrigator set-up and operation.

Circumstances of the offending

[12] On 30 September 2024 Waikato Regional Council (**WRC**) staff attended the farm to inspect the effluent management infrastructure. Mr Collinson-Smith was not there when the officers arrived. No issues were noted.

[13] The officers then inspected the stationary gun irrigator, which applies effluent from the effluent storage pond to land. The irrigator was in a paddock to the south of the dairy shed. The officers observed a residual discharge of farm animal effluent from the stationary gun irrigator. Effluent had ponded on the paddock surface surrounding the stationary irrigator and was also running off in a northerly direction.

[14] The officers also observed a further discharge from a split in the irrigator's drag hose. Effluent was ponding on the paddock surface in the surrounding area and running off overland in a north-east direction towards a depression in the paddock, where it met the discharge from the irrigator.

[15] The combined effluent flowed along the depression in a north-east direction towards the Ongaruhe Stream, where it discharged through a paddock culvert pipe directly into the Stream. The culvert outfall and discharge point location into the Stream is approximately 160m from the confluence with the Waipa River. The force of effluent coming from the outfall of the pipe caused foaming on the water's surface.

[16] Mr Collinson-Smith arrived at the farm, met with the officers in the paddock and was shown the irrigator and the discharge. Directed by the officers to cease the unlawful discharge, Mr Collinson-Smith constructed a soil bund at the base of the depression above the culvert.

Explanation

[17] Mr Collinson-Smith was interviewed. He confirmed there is no effluent management plan or formal written procedures in place for the management of effluent

on the farm. All staff training is done via hands-on training and verbal communication, and irrigation records are kept in the dairy diary.

[18] Mr Collinson-Smith did not have any explanation for the cause of the ponding and run-off of effluent, but believed that the ground conditions may have been too wet for irrigation. He advised WRC staff that the area in the paddock is a natural low point which usually flows with water fed from a spring head.

[19] The Farm Manager was interviewed. He confirmed that he had been employed by TFL for 18 months and was responsible for the day-to-day farming operations, which includes supervising farm staff and managing the farm's effluent system. He stated he had a basic understanding of the Regional Plan's permitted activity rules and where effluent can and cannot go, however was not aware of the rule's specific conditions.

[20] The Farm Manager advised he had noted the split in the irrigation drag hose on 29 September 2024 and had advised Mr Collinson-Smith the following morning so he could order a new drag hose.

[21] The Farm Manager also confirmed he had directed his 2IC to move and set up the irrigator on 30 September 2024, stating they needed to irrigate due to the effluent storage pond being full and he did not want it to overtop.

[22] The Farm Manager did not have an explanation for the cause of the over irrigation, stating that the paddock may have been too wet and, in hindsight, the irrigator could have been set up further away from the swale.

[23] The 2IC was also interviewed. He confirmed he had set-up the irrigator at the direction of the Farm Manager on the morning of 30 September 2024. He noted the depression in the paddock, however believed the irrigator was going to be far enough away and not be affected. He advised this is a usual paddock and location for the irrigator to be positioned. He checked on the irrigator 10-15 minutes after he started irrigating and noted the split in the irrigation hose, however did not note any issues with run-off.

Sentencing Framework

[24] I adopt the two-step sentencing process following *Moses v R.*[2]

[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.[3] 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.

Environmental effects

[27] Samples taken of the effluent discharge and of the discharge into the Ongaruhe Stream all confirmed high levels of contamination consistent with farm animal effluent.

[28] The Summary of Facts records:

> [44] 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 plan rooting zone in the soil without complete treatment.
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> [45] Dr Mafalda Baptiste, a Water Quality Scientist employed by the WRC, has analysed the sets of sample results, and has completed a detailed Assessment of Environmental Effects based on these results. The assessment includes reference to the contaminant levels of the various samples analysed and an assessment of both the environmental and ecological effects of the discharge on the waterway.

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[2] *Moses v R* [2020] NZCA 296 at [46].
[3] *Thurston v Manawatu Wanganui Regional Council* HC Palmerston North CRI-2009-454-24, -25, -27, 27 August 2010 at [41].

> [46] In summary, this assessment concludes the dairy effluent discharge is further degrading the water quality in the Ongaruhe Stream, and subsequently in the Waipa River. The discharge of dairy effluent will have a cumulative effect on the degradation of the waterways in the Waikato Region.

Prosecutor's submissions

[29] Mr Bucher submitted the discharge occurred in a sensitive receiving environment. The farm is in close proximity to the Waipa River. Significant efforts have been made by the WRC to encourage individual dairy farmers to achieve compliance with environmental regulations relating to dairy effluent management in the Waikato Region.

[30] Mr Bucher highlighted that the discharge was of such volume that it caused foaming where it directly entered surface water. He also highlighted that testing of multiple sites on the property showed significantly elevated contamination, both on land and in water quality downstream of the discharge point. He referred to the expert assessment as set out above.

[31] He submitted the adverse environmental effects of the discharge of dairy effluent 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".[4]

Defendant's submissions

[32] Mr Lang observed that, as would be expected with a discharge of effluent to land, the concentration of contaminants was high in the samples taken from the overland flow.

[33] He identified that due to the dilution of the Ongaruhe Stream, the concentration of contaminants was significantly reduced in the sample taken approximately 20m downstream of the discharge point. Taking faecal coliforms as an example, there was

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[4] See for example Manawatu-Whanganui Regional Council v Manawatu District Council [2024] NZDC 3930 at [7]; Northland Regional Council v Roberts DC Whangarei CRN 12088500369, 18 September 2013 at [18]; West Coast Regional Council v Potae DC Greymouth CRI-2009-009-017910, 20 April 2010 at [49]; Thurston at [51].

approximately an 80:1 concentration difference between the discharge concentration and the concentration 20m downstream.

[34] Mr Lang submitted the sample from the Waipa River upstream and downstream of the discharge show little difference in concentrations of contaminants.

[35] He submitted the environmental effects report provides largely general information about dairy effluent contamination of waterways. It is undeniable that the discharge to land and subsequently to the two waterbodies had adverse impacts on water quality and the ecosystem in those waterbodies, but the sample analyses and environmental effects report do not disclose a particularly high level of environmental harm in this case. The Ongaruhe Stream water quality was more significantly affected than the Waipa River, along a relatively short length of approximately 160m.

Conclusions on environmental effects

[36] It is clear that, on the day of the offending, the amount of effluent discharged overland through a paddock culvert pipe and into the Ongaruhe Stream was of some volume and travelling at some speed, as is evidenced by its arrival at the stream causing foaming on the water's surface. It is also clear that relevant samples taken showed significantly elevated levels of contamination. I am satisfied from the Scientific Reports attached to the Summary of Facts that this discharge would have contributed to the degradation of the Region's waterways.

Culpability

Prosecutor's submissions

[37] Mr Bucher submitted the offending reflects a high level of carelessness.

[38] When spoken to by WRC staff, Mr Collinson-Smith said he believed that the ground conditions may have been too wet for irrigation. However, the rainfall data was less than 10mls in the seven days prior to the inspection. The significant ponding and runoff caused by a split in the irrigation hose went unnoticed for a number of hours. Mr Bucher submitted that reflects careless effluent management rather than adverse weather conditions.

[39] He highlighted that there was no formal effluent management plan on the farm and there were no formal written procedures in place relating to effluent management or supervision of the irrigator. Moreover, there was limited freeboard available within the effluent storage pond at the time of the inspection. This meant that the farm was heavily reliant on irrigation. In those circumstances, Mr Bucher submitted that it was entirely foreseeable that there would be a discharge of this nature.

[40] Mr Bucher acknowledged that TFL did not profit directly from the offending. However, he submitted TFL derived an indirect benefit by avoiding the financial costs associated with upgrading or extending the capacity of the effluent management system, or ensuring that there were robust effluent management systems in place.[5]

[41] Mr Bucher submitted that the fine imposed must ensure that it is economically unattractive to offend in this way. TFL's failure to responsibly irrigate effluent came at the cost of the environment. The resulting penalty must therefore have 'sufficient sting'[6] to ensure that regulatory compliance is not treated as optional, or deferred, and to deter others in the industry from similar offending.

Defendant's submissions

[42] Mr Lang submitted that although TFL, as the sharemilker, is liable vicariously for the actions of employees, its level of culpability as sharemilker is low in this case for the following reasons:

(a) the infrastructure provided by the farm owner and the sharemilker for operation by the other participants was appropriate for the farm and the farming operation in all respects, including scale, technology and operability;

(b) the level of the effluent storage pond was not a factor that played a material part in the overland flow of effluent – that was due to poor placement of the irrigator;

[5] Referred to *Thurston* at [47].
[6] *Environmental Defense Society Inc v New Zealand King Salmon Co Ltd* [2013] NZSC 101.

(c) there is little if anything further that the sharemilker could have been expected to do on the day of the offending to prevent the overland flow of effluent from occurring;

(d) TFL is the participant in the farming operation that is least responsible for the error that was made in irrigating effluent on the day of the offence;

(e) it has become vicariously liable due to the acts or omissions of the other participants in this case; and

(f) the fact that WRC has chosen not to continue with enforcement action against either of the other two participants does not raise the level of culpability of the sharemilker.

[43] Mr Lang submitted that in the absence of high rainfall or adverse weather conditions, the only aspect of effluent management that was careless was the placement of the irrigator too close to the depression in the paddock which was a contributing factor to the offending, along with the split in the irrigation hose which had not been reported to TFL's principal.

[44] Mr Lang submitted there is no carelessness on the part of TFL in the circumstances, and no foreseeability for TFL. There is no way TFL could have anticipated that a second employee would locate the irrigator so close to the depression in the paddock that effluent would pond and flow overland.

[45] Mr Lang submitted the absence of documents such as an effluent management plan was not a material cause of the error made in irrigator placement on the day of the offending.

[46] He noted the Farm Manager had been on the property for 18 months and had the assistance of a second employee, who was working under the direct supervision of the Manager. The Farm Manager had demonstrated appropriate knowledge and decision making in operating the effluent management system during that 18 month period.

[47] Mr Lang identified various health issues of employees at the farm in the second half of 2024 that impacted on efficient operations from time to time. Mr Lang

submitted the combination of these health issues had an impact on farming operations but did not directly cause the issues with irrigation decisions on 30 September 2024.

Conclusions on culpability

[48] I accept that the farm's physical effluent management infrastructure is adequate. The absence of documentation, such as an effluent management plan and staff training records among others, is a concern. Mr Lang argued that the absence of plans was not a material cause of the error in placement of the irrigator. I disagree. The lack of an effluent management plan and staff training records speaks to a certain level of casualness in the approach to effluent management. As the Court has previously observed, the disposal of farm effluent has many risks and it is important to ensure that all necessary steps are taken to guard against unlawful discharge.

[49] While I accept that in this case the defendant is somewhat removed from the events of 30 September 2024 as it employs a Farm Manager to manage operations, its lack of documented systems may have contributed to the offending.

[50] It would have been helpful if there were documents that outlined how the system is to be operated and where irrigators could safely operate. That said, I accept that the employee was supervised, albeit perhaps not well enough on that day. In those circumstances I find the company to have low culpability for the offending.

Starting point

Prosecutor's submissions

[51] Mr Bucher submitted that the different levels of seriousness set out in *Waikato Regional Council v GA & BG Chick Ltd* (***Chick***)[7] provide some guidance to assessing and distinguishing between different levels of offending relating to unlawful

[7] *Waikato Regional Council v A & B G Chick* (2007) 14 ELRNZ 291 (DC) – *Level 1 – least serious* – 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. Reflects little or no effect on the environment. *Level 2 – moderately serious* –unintentional but careless discharges usually of a recurring nature over a period of time, or of incidents arising from malfunction of different parts of the system. Often manifested by a reluctance to address the need for a safe system of effluent disposal, resulting in delays in taking restorative action. Reflects little or at most a moderate effect on the environment. *Level 3 – more than moderately serious* –the more serious offending. Offending that is deliberate, or if not deliberate occasioned by a real want of care. Often associated with large plural discharges over time or one large one-off event. Often exposes a disregard for the effects on the environment.

discharges of dairy farm effluent. He noted that while the *Chick* levels remain relevant in terms of assessing seriousness of the offending, 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.[8] Mr Bucher submitted that the offending falls within Level 2 of *Chick*.

[52] He observed that recent sentencing decisions have cited increasing concern about the incidence of dairy effluent offending and the need for deterrence, both particular and general. He referred to comments made by the Court in *Waikato Regional Council v Nagra Farms Limited*:[9]

> [79] 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.

[53] In *Cazjal Farm,* Judge Kirkpatrick said:[10]

> [62] The Court has been signalling in a number of cases that there might be some upward movement of starting points as dairy farm offending continues to come before the Court…

[54] Mr Bucher referred to the following cases as being of assistance in setting an appropriate starting point: *Waikato Regional Council v Thompson* (***Thompson***);[11] *Waikato Regional Council v Madeley* (***Madeley***);[12] *Manawatu-Whanganui Regional*

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[8] See for example, *Thurston; Waikato Regional Council v Cazjal Farm Limited* [2023] NZDC 10973 at [18] (***Cazjal Farm)***.

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

[10] *Cazjal Farm* at [62].

[11] *Waikato Regional Council v Thompson* [2025] NZDC 9798 – one charge of discharging farm animal effluent into water.

[12] *Waikato Regional Council v Madeley* [2025] NZDC 9800 – one charge of discharging farm animal effluent onto land from a travelling irrigator that had been stationary for approximately a week.

Council v Phillips (***Phillips***);[13] *Waikato Regional Council v Lockwood* (***Lockwood***);[14] *Waikato Regional Council v Te Korunui Farms* (***Te Korunui***);[15] *Waikato Regional Council v Arrick Limited* (***Arrick***);[16] and *Waikato Regional Council v Apex Farming Limited* (***Apex Farming***).[17]

[55] Mr Bucher submitted the most analogous cases are those of *Lockwood*, *Te Korunui* and *Arrick*. These cases involved discharges resulting from systemic failures, failure to upgrade, operating a vulnerable system at capacity, and a want of care towards system maintenance.

[56] Mr Bucher said that it is incumbent on farmers to ensure their effluent systems are fit for purpose, which includes making sure that equipment is sound, there are adequate effluent management policies in place, and that there is sufficient effluent storage. He submitted that it is reasonable to expect prudent farm owners to recognise the need to actively monitor effluent and infrastructure, including the effluent storage

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[13] *Manawatu-Whanganui Regional Council v Phillips* [2024] NZDC 28633 – one charge of discharging dairy effluent to land in circumstances where it may enter water.

[14] *Waikato Regional Council v Lockwood* [2020] NZDC 24932 – two charges of discharging dairy effluent to land in circumstances where it may enter water. The defendant owned and managed the dairy operation and was on site full-time. Gravity of the offending and culpability 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. 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.

[15] *Waikato Regional Council v Te Korunui Farms* [2023] NZDC 4181 – two charges relating to two discharges of dairy effluent to water. The effluent ponds were full to capacity; with Pond 2 actively overflowing overland directly into a tributary stream. Further, a sand trap at a farm underpass was full of effluent and effluent solids. Effluent was spilling over onto the surrounding ground and into a drain. This drain discharged into a larger tributary of the Te Mata Stream. The Court found effluent management was lacking the requisite level of care. The defendant knew, or should have known, that the ponds were in danger of overtopping yet took no steps to rectify that. Full ponds combined with a malfunctioning irrigator meant that effluent discharged. For the underpass, the defendant should have been aware that the sand trap was full. The Court found the defendant was highly careless in its approach to effluent management. Global starting point $120,000: $80,000 for pond overflow and $40,000 for discharge from the underpass.

[16] *Waikato Regional Council v Arrick Limited* [2025] NZDC 12334 – one charge for discharging farm animal effluent onto land in circumstances where it may enter water. Overflow from a storage pond, at three separate locations. The Council had spoken to the defendant on numerous occasions about the pond. Environmental effects of the offending were low. The defendant was highly careless in its management of the effluent system. The Court placed the offending at the lower end of Level 2 of *Chick*. Starting point $75,000.

[17] *Waikato Regional Council v Apex Farming Limited* [2025] NZDC 13837 – one charge relating to discharge from an effluent storage pond to land. Environmental effects of the offending were low but the defendant was careless in its management of the effluent system. The Court placed the offending at the lower end of Level 2 of *Chick*. Starting point $70,000.

facilities on a farm. It is also reasonable to expect that there are formal effluent management plans in place to reduce the risk of unlawful discharges.

[57] Mr Bucher submitted the offending shares some similarities to the first unlawful discharge in *Lockwood*. There, a hydrant had broken causing significant ponding. In the present case, the split irrigation hose contributed to the offending. In *Lockwood* a starting point of $75,000 was imposed in respect of that discharge. Mr Bucher noted the defendant in that case was an individual and therefore subject to a lower fine than TFL. In *Lockwood* the Court considered that, while not deliberate, the defendant exhibited a real want of care in respect of effluent management. Mr Bucher submitted a similar observation could be made in the present case.

[58] Mr Bucher highlighted that in *Te Korunui* the Court found that the system was vulnerable to human error or lack of oversight, and that the defendant was highly careless in the approach to effluent management. A starting point of $80,000 was set for the first discharge, and $40,000 for the second.

[59] In *Arrick*, Mr Bucher observed the defendant company had been spoken to by Council staff on numerous occasions about the deficiencies in the effluent infrastructure. It 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 to upgrade or improve the effluent infrastructure.

[60] Mr Bucher submitted $70,000 appears to be the minimum available starting point for a discharge of effluent to land in circumstances where there is significant ponding and overland effluent flow.

[61] Mr Bucher submitted a higher starting point is warranted here to reflect TFL's culpability, the foreseeability of the offending, and its careless attitude towards effluent management. He submitted it is also relevant that this case involved a discharge of effluent directly into a waterway. Here the waterway was particularly sensitive, given the close proximity to the Waipa River. This is an aggravating factor not present in many of the cases cited above.

[62] Mr Bucher submitted that the sloping topography of the farm means that vigilant oversight and careful effluent management was required. That oversight and careful management was lacking and there have been significant environmental consequences as a result. The Courts have repeatedly discouraged this type of offending in both the specific and general sense.[18]

[63] Mr Bucher submitted that an appropriate starting point is $80,000.

Defendant's submissions

[64] Mr Lang submitted the cases referred to by the prosecutor will not assist the Court greatly in determining the starting point for this offending. While he addressed all the cases cited by Mr Bucher, I will only consider those on which both counsel placed some reliance.

[65] Mr Lang submitted there can be no suggestion that the circumstances of *Lockwood* were similar to that of the present case. In *Lockwood* the defendant was the owner and operator of the farm. He managed the dairy operation personally and was on site full time. There were two sequential site visits, with Council officers detecting substantial effluent on the first visit that had not been remediated in any way when the second visit followed approximately three weeks later. Approximately 10 months later another compliance inspection occurred and further effluent ponding was detected.

[66] Mr Lang submitted that in *Te Korunui* there were multiple deficiencies in effluent management and two distinct discharges to water, which were of a much more serious nature than the present case. He submitted the discharge from the underpass sump reaching water arguably provides some guidance in the present case, though the aggravating factor of multiple effluent storage facilities being left entirely full is not present in this case, and the actions that caused the discharge in the present case were those of employees that could not have been known to TFL.

[67] Mr Lang noted the effluent management system in *Arrick* was an unlined earthen effluent storage pond, with no effluent irrigation system being operated other

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[18] *Watt v Southland Regional Council* [2012] NZHC 3062; *Yates v Taranaki Regional Council* HC New Plymouth CRI-2010-443-008, 14 May 2010; *Cazjal Farm*.

than occasional pumping by an external contractor. The storage pond was overflowing in three different places and had cracks in the bank. The defendants knew there was a problem for at least a week but took no steps to address it. In *Arrick* the company had been put on notice that the state of the effluent storage pond created a serious risk of non-compliance, but no steps were taken to upgrade or improve the effluent infrastructure. He submitted that situation bears no resemblance to the situation in this case. Mr Lang submitted the starting point of $75,000 in *Arrick* indicates that a much lower starting point is appropriate for the present case.

[68] In respect of *Apex Farming*, Mr Lang observed the mismanagement of the effluent system and inadequate storage facility led to the starting point adopted. He submitted the failure to properly locate the irrigator in the present case is less serious offending, and TFL was not the operator of that equipment on the day. Mr Lang submitted *Apex Farming* indicates a starting point in the present case of around $40,000.

[69] Mr Lang submitted there have been no systemic failures and no suggestion of any failure to upgrade. He did acknowledge the pond was nearing capacity.

[70] Mr Lang submitted there is no factual foundation for the suggestion that TFL exhibited a real want of care in respect of effluent management. The effluent system was capable of appropriate operation without any unlawful discharges. There was no indication that TFL should have anticipated the defective placement of the irrigator on the date of the offending.

[71] Mr Lang referred to *Canterbury Regional Council v Badham Dairies Limited*[19] in which the discharge was the result of an irrigator failure that was noted by the defendant but no action taken until approximately two hours later, with the discharge

[19] *Canterbury Regional Council v Badham Dairies Limited* [2021] ELHNZ 256 – one charge of discharging dairy effluent to land in circumstances where it might enter water. A coupling had failed on a travelling irrigator, resulting in effluent discharge from the pipe and the ponding of effluent on the paddock. The effluent made its way into a stream. Discharge had occurred for an hour at the most before the pump was switched off. The Court accepted a submission that because effluent did enter the water there was harm done, although it was temporary, not quantifiable, and at the lowest end of the scale. Any discharge that made its way to the waterways had an immediate and negative effect on mana whenua. The Court found that the offending was at the very low end of carelessness. Starting point of $40,000.

continuing during that period. The decision noted the failure to act quickly when the situation became known to the defendant. In the present case the discharge did not come to TFL's attention until it had been discovered during the site inspection by WRC officers. Mr Lang submitted that a starting point of $40,000 is also appropriate in this case given the role of TFL, the limited duration of the discharge, and the resulting limited environmental effect of the discharge.

Conclusion on starting point

[72] Having considered the cases to which I was referred, I do not think that the offending is as serious as that in *Lockwood, Te Korunui* and *Arrick*. I find that the offending in this case sits at the lower end of Level 2 of *Chick.* While I am concerned about the discharge of effluent into the Ongaruhe Stream, and the effects of that on the environment, I have found the defendant's culpability to be low. The cases brought to my attention establish a range for this type of offending of between $40,000-$80,000. I adopt a starting point of $55,000, taking into account the circumstances of this case.

Aggravating and mitigating factors

[73] An infringement notice was issued to Mr Collinson-Smith following an unlawful discharge of farm animal effluent from an effluent storage pond into an unnamed tributary of the Ongaruhe Stream on 14 September 2017. There is no enforcement history relating to TFL.

[74] Mr Lang noted TFL had taken an exemplary approach to the situation when it was brought to Mr Collinson-Smith's attention. He was frank and cooperative at every stage.

[75] Mr Lang identified that at the suggestion of the sharemilker the farm owner has taken the following additional steps to make further improvement to the management of effluent on the farm:

(a) a new irrigator has been purchased and begun operation; and

(b) an effluent management plan has been adopted and is kept at the shed. It has been discussed with the employees to ensure they are aware of it and how it is to be followed.

[76] Mr Lang advised that the employee who placed the irrigator on the day of the offending has left the farm and has been replaced by another employee with 12 years dairy farming experience, including a position as assistant farm manager.

[77] Mr Bucher did not seek an uplift to the starting point. Mr Lang submitted a reduction of ten per cent is appropriate for good character and absence of previous convictions. Having regard to TFL's history – it has been in existence for nearly 20 years without any convictions – and considering its proactive response to the offending, I allow a discount of 10 per cent.

[78] Mr Bucher and Mr Lang consider TFL entered a guilty plea at an early opportunity and a discount of up to 25 per cent is therefore available. I agree.

Outcome

[79] I have convicted the defendant. Allowing discounts from the starting point of 35 per cent, I impose a fine of $35,750.00.

[80] 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.

[81] I also order that the defendant is to pay court costs of $143 and solicitor's fee of $113.

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Judge MJL Dickey
District Court Judge | Kaiwhakawā o te Kōti ā-Rohe
Date of authentication | Rā motuhēhēnga: 21/11/2025