

**IN THE DISTRICT COURT  
AT HAMILTON**

**I TE KŌTI-Ā-ROHE  
KI KIRIKIROA**

**CRI-2025-057-000175  
[2026] NZDC 9353**

**WAIKATO REGIONAL COUNCIL**

v

**SUNRISE DAM LIMITED**

Hearing: 30 March 2026 via VMR  
Appearances: A McConachy for the Prosecutor  
T Conder & J Hollis for the Defendant  
Judgment: 15 May 2026

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**NOTES OF JUDGE MJL DICKEY ON SENTENCING**

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**Introduction**

[1] Sunrise Dam Limited (**SDL**) has pleaded guilty to one charge laid under s 15(1)(b) of the Resource Management Act 1991 (**RMA**) relating to the discharge of a contaminant, namely leachate, from a stock feed bunker to land in circumstances where the contaminant may have entered water, between 4 June and 10 July 2024.<sup>1</sup>

[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 \$70,000. For SDL, Mr Conder and Ms Hollis submitted that an appropriate starting point is the amount

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<sup>1</sup> CRN 25057500032.

of an infringement fee, \$1,200. But, if a ‘conviction offence’ was appropriate, a lower starting point in the range of \$10,000 to \$25,000 is appropriate.

[4] A Summary of Facts (**SOF**) was agreed for the purposes of sentencing.

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

### **Background<sup>2</sup>**

[6] The dairy farm is located at 102 Aitken Road, which is situated 15km southwest of Tuakau. The effective area of the farm comprises 180 hectares, with the Waikato River bordering the northern side of the property.

[7] SDL was first incorporated on 3 August 2004 and has one director, Mr Todd Feather. He does not reside on the farm but is responsible for the overall farming strategy and execution, as well as the financial decisions for SDL. Mr Feather has owned the farm for 10 years and is on the farm most days.

[8] Infrastructure on the farm consists of a circular stock holding yard adjacent to the main dairy shed, a feed pad (in two parts), a sand trap, sump and three earthen effluent storage ponds. On the west side of the tanker entrance there are two large bunkers used to store stock feed including palm kernel, maize silage and seasonal vegetables.

### **Legal and planning framework<sup>3</sup>**

[9] The discharge of contaminants (namely liquid leachate) from the stock feed storage bunkers into water, or onto or into land in circumstances which may result in a contaminant entering water, is a discretionary activity under the Waikato Regional Plan and requires resource consent. No resource consent has been obtained to authorise this activity.

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<sup>2</sup> SOF at [12] – [15], [17], [19], [21] – [22].

<sup>3</sup> SOF at [28] – [29], [31] – [32].

[10] Section 15(1) of the RMA states that no person may discharge any:

...

- (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.

[11] Leachate is defined in the Regional Plan as: “the liquid effluent produced by the action of water percolating through waste or organic material, containing dissolved and/or suspended liquids and/or solids and/or gases.” Leachate generated from the stock feed is a contaminant.

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

#### **Circumstances of the offending<sup>4</sup>**

##### ***4 June 2024***

[13] At approximately 12pm on 4 June 2024 Waikato Regional Council (**WRC**) compliance monitoring staff arrived at the farm to complete a routine compliance monitoring inspection of the farm effluent system and compliance with an existing abatement notice.

[14] Staff met with Mr Feather, who confirmed he is generally on the farm every day although SDL employed a contract milker who was responsible for managing day-to-day operations.

[15] WRC staff inspected the roadside surface water drain adjacent to the effluent storage ponds. They observed the presence of a blue/grey liquid and a grey fungus.

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<sup>4</sup> SOF at [43] – [44], [53] – [59], [62] – [65], [69].

[16] Staff followed this drain upstream where it is culverted under the combined farm entrance and stock crossing point. At this location an overland flow path was evident, tracking from the corner of the stock feed bunker to the roadside drain immediately upstream of this culvert. Also present were the outlet ends of two buried Novacoil pipes. The larger Novacoil pipe was positioned midway along this flow path where liquid had ponded. The second smaller pipe was higher up and nearer to the feed bunker.

[17] The origins of these Novacoil pipes were not established at the time. These were later explained as draining stormwater run-off from behind the feed bunkers and calf-rearing sheds.

[18] The leachate that was ponding in this flow path had a pungent rotten odour that was likened to rotting onions. The liquid in the surrounding area had a blue/grey tinge and was coated in a fat- or oil-type film.

[19] There was no facility to contain any leachate or contaminated stormwater runoff from the feed bunkers.

[20] The surface water drain upstream of the culverted farm entrance and concreted culvert contained clear, colourless water and did not have any fungal material present.

[21] There are no regional rules or national standards that allow for the discharge of leachate associated with the stock feed bunker. The discharge is in breach of s 15(1)(b) of the RMA and was therefore unlawful.

### ***10 July 2024***

[22] On 10 July 2024 a follow up inspection was conducted at the property. Mr Feather was contacted prior to staff attending, however he advised that both he and the contract milker were unavailable to meet but could speak to WRC staff following the visit.

[23] WRC staff inspected the farm drains and roadside drain along Aitken Road. The roadside drain still had a blue/grey colouration and unpleasant smell. Due to the

time between the complaint being received and the inspection, staff were unable to see any significant contamination from farm animal effluent.

[24] WRC staff continued their inspection, moving up the farm drain to inspect the stock feed bunkers. The area below and surrounding a black Novacoil pipe and a path leading from the corner of the stock feed bunker were covered in a white substance.

[25] The unlawful discharge of contaminants associated with the stock feed bunker into the surface water drain on 10 July 2024 contravened the RMA.

### **Explanation<sup>5</sup>**

[26] Mr Feather was formally interviewed in his role as the farm owner and director of SDL.

[27] When interviewed he acknowledged the leachate that was coming from the stockfeed bunker, but did not acknowledge that this was a contaminant. He did not provide an explanation as to why there was no infrastructure in place to manage the leachate, and why it had been allowed to discharge to the roadside drain.

### **Compliance history<sup>6</sup>**

[28] The property has been the subject of compliance inspections by WRC since 2018, while SDL has been the landowner. The issues largely relate to the management of effluent disposal and storage.

[29] At the hearing an issue arose as to whether the Council had raised the leachate issue with Mr Feather prior to its inspection on 4 June 2024. The Prosecutor referred to a Formal Warning issued in 2022 as well as a file note from a Council investigator. A copy of the Formal Warning dated 24 August 2022, the letter accompanying it also dated 24 August 2022, and the file note of 22 June 2022 were later provided to the Court.

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<sup>5</sup> SOF at [81], [85].

<sup>6</sup> SOF at [88].

[30] I find that the Formal Warning did not refer to any issue involving leachate discharge from the feed pad and associated silage or feed bunkers. However, the letter accompanying the Formal Warning referred to the need for leachate controls to be considered. Further, the Officer's file note of 22 June 2022 recorded a conversation with Mr Feather about leachate controls.

### **Sentencing Framework**

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

[32] The High Court in *Thurston v Manawatu-Wanganui Regional Council (Thurston)* provides a useful summary of the approach to be taken to sentencing.<sup>7</sup> 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**

[33] The SOF records:

41. A surface water drain runs along the length of Aitken Road, adjacent to the ... feed bunkers ..., directing surface water run-off to the Waikato River approximately 1km downstream. The roadside drain is culverted underneath the farm entrance and stock crossing.

...

**4 June 2024**

...

60. Samples were taken of the liquid within th[e] flow path below the corner of the stock feed bunker. Another sample was taken from the roadside drain on the downstream side of the culvert.

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<sup>7</sup> *Thurston v Manawatu Wanganui Regional Council* HC Palmerston North CRI-2009-454-24, 27 August 2010 at [41].

61. Sample results shown in Figure 1, confirmed high levels of contaminants such as nitrogen, and phosphorous and high biochemical oxygen demand. The samples also show an elevated level of E.Coli and Faecal Coliforms.

...

**10 July 2024**

...

66. Samples were taken of the liquid at the edge of the stock feed bunkers (Sample A), the ponded discharge near the corner (Sample B) and 15 metres upstream of the discharge point into the roadside drain (Sample C).
67. WRC staff continued with an inspection of the remainder of the farm prior to taking the downstream sample as cows were being shifted across the road. On returning to take the sample, it was evident where effluent had made its way into the roadside drain. A sample was taken (Sample F) within the roadside drain 40 metres downstream of the stock crossing point which appeared to now contain farm animal effluent.
68. Figure 2 below shows sample results taken on 10 July. This confirmed the presence of contaminants such as nitrogen, phosphorus and faecal coliforms when compared with the upstream sample (c) and are consistent with contaminants associated with leachate and farm animal effluent.
- ...
72. WRC Water Scientist Dean Sandwell provided an expert opinion on the samples taken of the discharge from the stock feed area. With respect to Sample F, taken downstream in the roadside drain on 10 July, he concludes that *“if Sample F (drain) is habitat for aquatic life (not assessed) then the concentration of ammonia is at toxicity levels, and the high BOD would consume dissolved oxygen resulting in anoxic (no oxygen) conditions, resulting in significant stress and likely mortality effects on any aquatic life inhabiting the farm drain.”*
73. The contaminant levels identified in the leachate runoff have similar characteristics and elevated levels of contaminants as what is seen in dairy shed effluent. The sample results show levels of BOD, Total Nitrogen, and E.Coli which are many times higher than what would be expected in rivers and streams. As a result, these contaminants can cause a variety of adverse effects on water quality downstream.

***Prosecutor’s submissions***

[34] Ms McConachy highlighted that the discharge of leachate occurred above a surface water drain that flowed to the Waikato River. The Waikato River is a well-recognised and significant receiving body.

[35] Ms McConachy also highlighted that the sample results taken from the relevant discharges confirmed the presence of contaminants such as nitrogen, phosphorus and faecal coliforms – consistent with contaminants associated with leachate.

[36] Ms McConachy submitted that the leachate discharged into a roadside surface water drain. The water within the drain was observed to contain a blue/grey liquid and a grey fungus. In contrast, the surface water drains upstream of the discharge point contained clear, colourless water and contained no fungal material. The discharge of leachate introduced contaminants into the drain sufficient to materially affect the aquatic habitat and encourage the growth of fungus.

[37] Moreover, she submitted there was a significant overland flow of leachate as well as a significant area of ponded leachate around the discharge point of the large Novacoil pipe. The Court will be aware that overland flow and ponding of contaminants creates hydraulic conditions which pose a high risk to groundwater. Ponding often leads to effluent bypassing the soil matrix and flowing preferentially down macropores (cracks and worm holes in the soil) and moving below the plant rooting zone in the soil.

[38] In cases where no specific lasting harm can be identified, an allowance for harm may be made on the assumption that any given offence contributes to the cumulative effect of pollution generally.<sup>8</sup>

### ***Defendant's submissions***

[39] Mr Conder submitted the harm caused by the offending is at the lowest end of the scale.

[40] He submitted that the photographic evidence shows a narrow, trickling path of leachate from the bunker, and a small area of ponding, at the wettest time of the year. The actual scale of the discharge is extremely small.

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<sup>8</sup> *Bay of Plenty Regional Council v Whitikau Holdings Limited* [2018] NZDC 3850.

[41] Mr Conder submitted that no evidence has been provided that there has been an impact on Waikato River directly attributable to the leachate, either in an individual or a cumulative sense. Further, no evidence of any effect on groundwater from the discharge from the feed bunker has been provided. Mr Conder submitted the roadside drain has not been assessed for habitat for aquatic life, and there is no evidence to indicate that a significant effect on aquatic life has occurred. No comparative samples have been provided.

[42] Mr Conder noted that, in sentencing SDL, the Court is required to take the inference most favourable to SDL on the agreed and uncontested facts. It is for the prosecution to prove any matter of aggravation or disprove any mitigating fact relevant to the offence beyond a reasonable doubt.<sup>9</sup> Mr Conder submitted the aggravating factors cited by the Prosecutor are not made out on the evidence provided.

[43] Mr Conder submitted that the evidence as to the harm of the discharge is limited to an impact on the chemistry of a small extent of the roadside drain. While the occurrence is regrettable it is at the very low end of seriousness of environmental harm, and therefore the need for economic reallocation to achieve the purposes of the RMA is also at the very low end.

### *Conclusion on environmental effects*

[44] There is no doubt that the contaminant levels identified in the leachate runoff have similar characteristics and elevated levels of contaminants as can be seen in dairy effluent. The sample results show levels of Biochemical Oxygen Demand (**BOD**), Total Nitrogen and E.Coli many times higher than would be expected in rivers and streams. While there is no evidence of environmental harm in this case, that is not to say that such discharges have no potential for an accumulation of adverse effects in the environment. I find, however, that in this case the environmental effects of the offending are low.

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<sup>9</sup> Sentencing Act 2002, s 24(2)(c).

## **Culpability**

### ***Prosecutor's submissions***

[45] Ms McConachy submitted that the leachate discharge from the bunker was a natural consequence of not having containment mechanisms. The leachate had flowed from the bunker long enough to carve a small channel in the ground that is clearly visible in photographs. Additionally, the presence of blue/grey liquid and the growth of grey fungus downstream of the discharge point indicates that additional nutrients were present over an extended period.

[46] Ms McConachy submitted that the leachate offending was inevitable given the poor infrastructure. There was no facility to contain any leachate or contaminated stormwater runoff from the feed bunkers. In that respect, the leachate discharge was a foreseeable consequence of a deliberate decision by SDL not to expend money on upgrading the infrastructure on the property.

[47] Mr Feather acknowledged the leachate was coming from the stock feed bunker, but denied the leachate was a contaminant. Ms McConachy submitted that demonstrates a highly cavalier attitude to his environmental obligations. It appears that the director of SDL considered that the discharge was minor or insignificant.

[48] Ms McConachy acknowledged there was no direct profit from the offending. However, she submitted SDL profited by not expending money on the management of discharges from the feed bunkers to ensure that the infrastructure on the farm was fit for purpose.<sup>10</sup>

[49] Ms McConachy submitted the property has been the subject of multiple inspections by WRC, seven of which have identified concerns regarding the effluent system. Previous enforcement actions (including repeated requests for an improvement plan, a formal warning and an Abatement Notice) put SDL on notice regarding its environmental obligations and the risks of further non-compliance on the property.

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<sup>10</sup> *Thurston v Manawatu Wanganui Regional Council* HC Palmerston North CRI-2009-454-24, 27 August 2010 at [47].

[50] SDL, through Mr Feather, admitted that the infrastructure needed to be upgraded yet failed to do so. Ms McConachy submitted that this omission left the system vulnerable to offending of this nature. She submitted that the previous enforcement action should have been at the forefront of SDL's consideration, and should have served as impetus to make appropriate upgrades.

[51] Ms McConachy submitted that the fact there was no facility to contain any leachate or contaminated stormwater runoff from the feed bunkers shifted the risk of an unlawful discharge at that location from foreseeable to inevitable. In that respect the offending was highly careless, and SDL's attitude can be best described as cavalier.

### ***Defendant's submissions***

[52] Mr Conder submitted that the offending should be understood as the consequence of misunderstanding rather than deliberate intentional acts.

[53] SDL does not dispute that a discharge of leachate occurred from the stock food bunker, nor that this is a contaminant. Mr Conder submitted that at the time Mr Feather made the statement that the leachate was not a contaminant he did not understand the scope of what was able to be considered a 'contaminant' under the RMA. To his mind, the material in the stock feed bunker was food, much of it human grade. While technically a contaminant in RMA terms, the term as commonly used does not apply. As he said in his interview, if the material had been a contaminant in the conventional sense it would make his cows sick. This was a lack of explanation by the interviewer as to the context in which the word 'contaminant' was being used, rather than a signifier of Mr Feather disregarding his environmental obligations.

[54] Mr Feather did not appreciate that the discharge from the feed bunker was classed as an RMA contaminant until after February 2025, when the charge was brought and he had a chance to seek professional advice. Mr Conder submitted that, regardless, Mr Feather proceeded to take action to remedy the leachate discharge as soon as it was brought to his attention in June 2024 by making arrangements for the installation of a leachate catch/drainage system at the feed bunkers. The system has since been installed and is operational.

[55] Mr Conder observed that there are many activities occurring on surrounding farms which may have impacts on the roadside drain. At the wettest time of the year it is not unreasonable to consider that contaminants may be flushed from these other surrounding activities into the drains. Mr Conder submitted that, as Mr Feather is not an environmental effects expert, and considering his previous understanding that any liquid coming out of the bunker was food grade and benign, it is unfair for the Prosecutor to expect him to have attributed the presence of fungus in the roadside drain to a discharge from the feed bunker.

[56] Mr Conder submitted that issues with leachate from the feed bunker were never raised as part of previous inspections. This issue was first raised as a result of the June 2024 inspection. Mr Conder stated it is difficult to see how Mr Feather could be expected to have understood that the issues raised with the effluent system through previous inspections meant that there was also an issue he needed to address with the feed bunker, which is an entirely unrelated and unconnected piece of farm infrastructure.

[57] Mr Conder submitted that the Prosecutor's submissions regarding the compliance of the effluent system are entirely irrelevant to the offence.

[58] Mr Conder acknowledged that there was no infrastructure in place to capture leachate at the time of the offence. He submitted this was not because Mr Feather was cavalier, nor because he did not want to spend the money, but because at that time he did not understand there to be any issue with what he thought was food grade liquid coming out of the bunker. Mr Feather was not aware that the liquid coming out of the bunker would constitute an offence when the offence occurred.

[59] Mr Conder acknowledged the charge cannot be defended on the basis that Mr Feather did not know what he was doing was wrong. However, neither were his actions those of a cynical dairy farmer who was determined to profit while avoiding the cost of installing infrastructure upgrades. Mr Conder submitted this goes to show Mr Feather's lack of intentionality to the offending.

[60] Mr Conder submitted this is confirmed by Mr Feather's statement and maintained position that the liquid was not a contaminant, as well as his quick action to install catchment infrastructure at the feed bunker once an issue was raised.

***Conclusion on culpability***

[61] Much was made of the claim that Mr Feather did not know the substance was leachate and that as soon as he found out he did something about it. The Prosecutor disputed that. The Prosecutor sought and was granted leave to provide a copy of a Formal Warning dated 25 May 2022 (and related documents) issued to Mr Feather. I addressed this knowledge question earlier. Mr Feather was warned about the leachate issue in a conversation with a Council officer in June 2022, and in the letter which accompanied the Formal Warning. The Formal Warning itself, however, did not refer to the leachate issue. I find that Mr Feather was made aware of a problem with leachate and should have taken steps in 2022 to do something about it.

[62] Further, the fact remains that there was no collection/drainage system installed to deal with leachate from the feed bunkers. Mr Feather said that until he was made aware of it, at the Council's visit in June 2024, he did not realise he was committing an offence. By 6 September 2024 Mr Feather had the necessary infrastructure on site and ready to be installed. The system is now in place and operational.

[63] I note that most of the compliance problems on the farm related to effluent management and storage, and it is perhaps understandable that Mr Feather did not apply the same level of caution to or have the same level of awareness about problems that could emanate from feed storage. That said, an offence was committed. I find that SDL's culpability for this offending is low.

## Starting point

### *Prosecutor's submissions*

[64] I was referred to the following cases as providing helpful guidance with regard to an appropriate starting point: *Waikato Regional Council v Bennett Fertilisers Limited (Bennet Fertilisers)*;<sup>11</sup> *Manawatū-Whanganui Regional Council v Dykstra (Dykstra)*;<sup>12</sup> *Manawatū-Whanganui Regional Council v Bartosh (Bartosh)*;<sup>13</sup> *R v Rotorua District Council (Rotorua District Council)*;<sup>14</sup> *Waikato Regional Council v Pukeko Place Farms Ltd (Pukeko Place)*.<sup>15</sup>

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<sup>11</sup> *Waikato Regional Council v Bennett Fertilisers Limited* [2019] NZDC 4770 – one charge that it permitted the discharge of leachate onto land where it may enter water. Offending was serious on two distinct grounds: it received the chicken manure, which it knew or ought to have known required containment, onto a site that was not ready to receive it; and then it failed to put adequate measures in place to control the leachate, even after repeated inspections and warnings. Offending was at least careless. Starting point \$60,000.

<sup>12</sup> *Manawatū-Whanganui Regional Council v Dykstra* [2023] NZDC 22624 – two charges for the discharge of leachate generated by a commercial composting business onto land in circumstances where it may enter water. Two charges for breach of an abatement notice. Significant effects from high concentrated levels of ammonia in an unnamed tributary. A significant portion of aquatic life would have been killed or moved out of the affected water. An increase in the total nitrogen and phosphorous loads that entered Lake Omanu. Culpability was high. The failure to have systems in place to adequately contain contaminant runoff generated by rain, even accepting that it was heavier than usual, in those circumstances was described as negligent. Global starting point in respect of the two discharge offences of \$70,000 and for the two abatement notice charges \$40,000.

<sup>13</sup> *Manawatū-Whanganui Regional Council v Bartosh* [2023] NZDC 29285 – sentencing of Paranui Organics (2006) Ltd and its sole director, Mr Bartosh. Several charges arising from the operation of POL's composting business. The materials being composted included both green waste and some animal products. The offending involved two separate events. The second event involved the discharge of a contaminant, namely leachate, onto land in circumstances where it had the potential to enter water between July and August 2022. Leachate had ponded during heavy rainfall, breached a bund and ultimately entered a creek. Concentrations of contaminants in the affected creek significantly exceeded the levels at which adverse effects on habitats and fish life would be seen. Recognised that offending contributed to cumulative degradation. Defendants' explanation that this had occurred during heavy rainfall was not meaningful because the potential for heavy rainfall above average levels was 'a fact of life'. The failure to have adequate systems in place to contain contaminant run-off during heavy rainfall was negligent, and culpability was high. Starting point of \$70,000 was adopted for POL's leachate discharge offence.

<sup>14</sup> *R v Rotorua District Council* [2021] NZDC 20921 – one charge of discharging contaminants (leachate) to land in circumstances where it may enter water. A significant discharge over a period of time repeated previous events. The systemic failure to address escape of leachate from the landfill areas of certain cells was the major contributing cause of the discharge. The level of rain may have exacerbated the discharge, but this is tempered by the greater dilution due to the extra rain. Serious offending of a systemic nature in circumstances where the Council was aware of the ongoing danger of leachate discharge on a highly sensitive environment, yet allowed the circumstances in which leachate would discharge in rainfall events to continue. Victim impact statements identified the depth of hurt and betrayal felt by tangata whenua. Accepted that the taking of household water from the streams would in part have been affected. This was another source of pollution to waterways; cumulative on other effects and discharges. The effect on the environment was diffuse and cumulative. The Court stated the offending should have sounded a far more strident warning to the Council, given its involvement in seeking to avoid continuing impacts upon both the river and the lake. The effects were in the moderate category. Culpability was in the moderate-high to high level. Starting point of \$100,000.

[65] Ms McConachy accepted that the offending in this case is less serious than the offending in *Rotorua District Council*. That case features “a significant discharge over a period of time”, which was found to be “a repetition of earlier events of leachate which had occurred in previous years”.

[66] Ms McConachy submitted the offending is analogous to *Dykstra* and *Bartosh*. In each of those cases, there was a discharge of leachate into a waterway. In *Dykstra*, there were two separate discharges, while the offending in *Bartosh* occurred over a month. In both cases the defendant’s culpability was high, as the Court assessed that they must have been aware of the risks of a discharge. Ms McConachy submitted those comments apply equally in the present case. The offending is broadly equivalent to the offending in *Dykstra* and *Bartosh*.

[67] In both those cases a starting point of \$70,000 was adopted. Ms McConachy submitted a similar starting point is warranted in the present case given the similar aggravating features that apply. Furthermore, in this case the receiving waterway was the Waikato River, a waterway of particular significance, which aggravates the offending.

[68] Ms McConachy submitted that the recent sentencing decision of *Pukeko Place* reiterates that a starting point of \$70,000 is within the available range. While that case involved effluent, the offending occurred as a result of highly careless management of effluent infrastructure. After an effluent pond had been decommissioned no steps were taken were taken to remedy the infrastructural deficiencies in a timely manner, making the offending entirely foreseeable.

[69] Similarly, in the present case the offending occurred as a result of infrastructural deficiencies that were known to SDL. The lack of any mechanisms to contain the leachate or contaminated stormwater meant that offending of this kind was entirely foreseeable. Ms McConachy submitted that given the causative

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<sup>15</sup> *Waikato Regional Council v Pukeko Place Farms Ltd* [2026] NZDC 1265 – one charge of permitting unlawful discharge of dairy effluent onto land in circumstances in which it may reach ground water. Effluent ponding resulted from over-irrigation. Farm’s infrastructure was inadequate, relying solely on a sump for effluent storage following decommissioning of two ponds in 2018. Offending fell within Level 2 of *Chick*, reflecting moderately serious, careless offending with little to moderate environmental impact. Defendant’s culpability was highly careless. Starting point \$75,000.

infrastructural issues, as well as the other aggravating features identified, a starting point of \$70,000 is justified. Such a starting point reflects the overall level of culpability given SDL's inaction regarding expenditure on necessary upgrades, the non-existent infrastructure to contain leachate, proximity of the drain to the Waikato River, and the effect of the offending on the environment.

### *Defendant's submissions*

[70] Mr Conder submitted the offending is at the extreme low end. The offending should never have been prosecuted as a 'conviction offence', and an appropriate starting point is that of an infringement fee of \$1,200, reflecting the penalty which ought to have been imposed. In the alternative, he submitted that presuming a 'conviction offence' is appropriate a lower starting point in the range of \$10,000 to \$25,000 is appropriate. That is no more than imposed in the grape marc cases.

### Deterrence

[71] As to specific deterrence, Mr Conder submitted Mr Feather has already been deterred from like offending. He now understands the issue with contaminants potentially arising from stock feed storage and has installed appropriate infrastructure at the farm to deal with this. Accordingly, no specific deterrence will be achieved by this sentence.

[72] Mr Conder submitted general deterrence is problematic in this case. A punitive sentence for a like defendant would not have assisted Mr Feather in complying with his obligations. He was not aware that liquid from food grade stock feed would constitute a contaminant under the RMA making its discharge an offence. Despite any sentence the Court may impose, a person with those same limitations is unlikely to be assisted in weighing the reward or risk of non-compliance by a harsh sentence being imposed in this case. Accordingly, the deterrent principle is of limited relevance in this case.

[73] Mr Conder submitted it follows that, far from being a serious case warranting a particularly strong deterrent response, this principle is only lightly engaged in the present case.

Offending is at the infringement level

[74] Mr Conder submitted that the discharge from the stock feed bunker is minor in scale and effect. This is a case that never should have been taken to prosecution. Considering the low level of effect and the lack of culpability of SDL, he submitted the starting point for offending of this type should be more in line with that of an infringement. He submitted an appropriate starting point is that of an infringement fee of \$1,200.

Conventional starting point

[75] Ms Hollis made submissions regarding a conventional starting point in the event the Court is not minded to accept infringement as a starting point.

[76] She submitted that *Dykstra* should be viewed as significantly more serious than the present case. The environmental effects of the type of contaminant (ammonia) and the consequences of its discharge (lethal to aquatic life and contributing to lake degradation in an already vulnerable waterbody) are not analogous to that of the SDL discharge. Further, Mr Feather went about remedying the leachate discharge as soon as it was identified whereas in *Dykstra* the discharge was still occurring when reinspection occurred two months later.

[77] Ms Hollis submitted *Bartosh* should be viewed as significantly more serious than the present case. In *Bartosh*, the defendant was clearly on notice that leachate was a contaminant that needed to be collected and disposed of. The significant effect on waterways in *Bartosh* is not analogous to that which the evidence indicates has arisen from the SDL discharge.

[78] She submitted it is incorrect that the Court's assessment that the defendants in *Dykstra* and *Bartosh* must have been aware of the risks of a discharge applies equally to SDL. As recorded in the interview, Mr Feather did not appreciate the discharge was a contaminant but sought to immediately remedy it as directed anyway.

[79] Ms Hollis submitted that considering the content of the feed bunker consists of largely vegetative material, some analogy with the grape marc discharge cases may be

drawn – *Marlborough District Council v Sowman (Sowman)*<sup>16</sup> and *R v Yealands (Yealands)*.<sup>17</sup> She also referred to *Tasman District Council v Azwood Limited (Azwood)*.<sup>18</sup>

[80] She submitted this case should be assessed as being at the very low end of seriousness, being Level 1 of the *Waikato Regional Council v GA and BG Chick Limited*<sup>19</sup> bands. The environmental effects are limited, and SDL’s culpability is not nearly at the level suggested by the Prosecutor.

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<sup>16</sup> *Marlborough District Council v Sowman* [2018] NZDC 25063; [2018] NZDC 25069 – discharge of contaminants from grape marc and leachate from the grape marc. Contamination of three groundwater bores, rendering unusable the drinking water supply of six properties. Associated stress, nuisance, odour, staining of clothing. Moderately serious effect on the environment. Mr Sowman’s culpability found to be unintentional in the initial stages (from the time of receipt of grape marc until residents advised there was contamination of bore water) – Level 1 *Chick* – but reckless when he became aware of information and made commitments to the Council but failed to inform the viticulture manager – Level 2 *Chick*. Babich demonstrated a lack of reasonable care in its management and oversight of the grape marc pad and its operations. Starting point of \$22,000 for Mr Sowman, \$45,000 for Babich (Babich later discharged without conviction).

<sup>17</sup> *R v Yealands* [2018] NZDC 4115 – one charge relating to discharge of grape marc onto land for seven months. The discharge of grape marc leachate onto land adversely affected the stream. Emphasis was placed on the state of knowledge about grape marc leachate at the time. No evidence of any aquatic life having been killed. However the leachate affected the stream’s ecosystem. For more than six months Council observed that parts of the stream bed were covered in the brown and black algae known as sewage fungus. There were significant increases in BOD, manganese and zinc downstream of the site. The stream joined the Wairau Lagoon but there was no evidence of any measured effect of this offending on the lagoon. The effect of the offending was serious for some months. The defendant remediated the land; the effects of the contamination were resolved. Culpability was at the low – moderate end of the carelessness spectrum. Starting point of \$15,000.

<sup>18</sup> *Tasman District Council v Azwood Limited* [2024] NZDC 26546 – charges arising from discharges of contaminated water to land in relation to the commercial production of compost. Five discharge events caused seriously adverse effects. The Court observed a “casualness or naivety” in the defendants’ understanding of the level of management required, and that there had been a number of systemic failures. Culpability was tempered by the fact that construction of the pond had been allowed by resource consent in 2011, that the retrospective composting consent granted in 2022 was plainly inadequate, and that the defendants may have received some inaccurate engineering advice in 2015. Nevertheless, the defendants had a “real level of culpability”. A global starting point of \$175,000 adopted for the s 15(1)(b) offences (representing \$35,000 for each of the five discharge incidents).

<sup>19</sup> *Waikato Regional Council v GA and BG Chick Limited* (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.

[81] Ms Hollis submitted SDL's offending can be characterised as a one-off issue that resulted in minor environmental effect, which has now been remedied. Mr Feather was not aware that the discharge from the bunker was unlawful. A process to put infrastructure in place to capture the discharge commenced as soon as this was brought to Mr Feather's attention in June 2024.

[82] Accordingly, Ms Hollis submitted that SDL's culpability is less than in cases such as *Dykstra*, *Bartosh* and *Atwood*, where there were multiple discharges and/or the defendant could be expected to have a reasonably clear understanding of the applicable restrictions.

[83] She submitted that a single-source issue event occurring over time and where the environmental impacts are limited should attract a starting point of no more than \$30,000 for a company, consistent with the findings in *Sowman* and *Yealands*. This is also in line with the starting point for each discharge offence in *Azwood* of \$35,000, noting that this quantum was further divided between the company and the two directors.

[84] Ms Hollis submitted even this is too high in the present case given the low level of effects and culpability. Ms Hollis submitted that an appropriate starting point would sit between \$10,000 and \$20,000 but would not exceed \$30,000.

### ***Conclusion on starting point***

[85] The parties are very far apart in terms of starting point. I do not consider the starting point should be as low as the Defendant suggests, but I also think the Prosecutor has proposed a starting point that is too high.

[86] I do not consider the offending is in the realms of an effluent discharge. While the *Bartosh*, *Dykstra* and *Rotorua District Council* cases the Prosecutor referred me to are informative, they concern offending that is quite different in scale and seriousness to the offending in this case.

[87] The defence submitted that the grape marc cases (*Yealands* and *Sowman*) may be of more assistance in setting a starting point for this offending. I have considered

those cases. I regard the offending in those cases as being more serious than the circumstances of this case. I also considered *Azwood*, which concerned discharges of contaminated water to land from the production of compost. The offending in that case was also more serious, involving five discharges with a global starting point of \$175,000.

[88] I place the offending at the lower end of Level 1 of *Chick*. The defendant was alerted to the leachate issue by a Council officer and by letter in 2022 but those alerts did not form part of the Formal Warning. Despite that, I have found that SDL's culpability is low. While spanning just over a month, the discharge of leachate was not a significant volume and its effects were not identified except in the broad sense of the effects such contaminants have on the environment. In the circumstances particular to this case, therefore, I find a starting point of \$25,000 is appropriate.

### **Aggravating and mitigating factors**

#### ***Good character***

[89] Ms McConachy submitted there is an extensive history of WRC engagement on SDL's property. Although an uplift was not sought, she submitted no credit should be applied for good character.

[90] Ms Hollis submitted that SDL's previous offending concerns the effluent management infrastructure. She stated it is difficult to see how SDL should have parsed from these matters that stock feed water from the bunker should be contained, particularly considering Mr Feather's understanding that this liquid was benign.

[91] Ms Hollis stated that Mr Feather takes his obligations seriously. At the earliest possible opportunity after the issue with the bunker was raised in June 2024, Mr Feather started arrangements for the installation of a leachate catch / drainage system at the feed bunkers. He advised the WRC's interviewer at their next meeting to discuss the issue (on 6 September 2024) that the infrastructure was on site and ready to be installed. The catchment system is now in place and operational. The installation was undertaken as part of a wider programme of upgrades to farm infrastructure

involving reconstruction of the ponds (solids and liquid) including lining with HDPE (impermeable) liner, and upgrades to the pumping system.

[92] Ms Hollis advised that the upgrades to the farm infrastructure has been expensive – approximately \$500,000 to \$600,000 – and Mr Feather has needed some time to get the funds together to provide for these upgrades. He has nonetheless sought to respond proactively to the various issues with the systems as soon as he could. An affidavit was produced from Mr Feather after the hearing deposing to expenditure of \$498,230.

[93] Ms Hollis submitted SDL has demonstrated good character in relation to the offence it has been charged with and should receive a five per cent discount accordingly.

[94] As there has been no prior prosecution for environmental offending. I find that a discount of five percent is appropriate.

### ***Guilty plea***

[95] Ms McConachy submitted that SDL did not plead guilty at the first reasonable opportunity, and therefore a discount of up to 20 per cent is available. The first appearance was on 28 May 2025. The matter was adjourned several times before guilty pleas were ultimately entered on 1 December 2025. Ms McConachy submitted it was open to SDL to plead guilty to the leachate charge at a much earlier stage. However, she acknowledged that no substantive steps were taken in that time.

[96] Ms Hollis submitted SDL entered its guilty plea following months of discussion with the Prosecutor. SDL pleaded guilty at a relatively early stage. Ms Hollis submitted there is no reason why SDL should not be allowed the full 25 per cent discount for early guilty pleas.

[97] I allow a discount of 25 percent for the entry of the guilty plea.

**Payment of fine**

[98] Ms McConachy did not oppose an order that the fine be paid off in instalments over a period of three years. Given that the fine imposed is considerably less than sought by the prosecutor I determine that the fine can be paid in instalments over one year.

**Outcome**

[99] I adopt the two-step sentencing process following *Moses v R*.<sup>20</sup>

[100] I have convicted the defendant. I impose a fine of \$17,500. The defendant is allowed 12 months to pay the fine in equal instalments over that time.

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

[102] 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: 15/05/2026

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<sup>20</sup> *Moses v R* [2020] NZCA 296 at [46].