

**IN THE DISTRICT COURT
AT HAMILTON**

**I TE KŌTI-Ā-ROHE
KI KIRIKIROA**

**CRI-2025-077-000393
[2026] NZDC 10790**

WAIKATO REGIONAL COUNCIL
Prosecutor

v

DAVID MARK CHRISTENSEN
Defendant

Hearing: 30 March 2026 via VMR
Appearances: A McConachy & K Bucher for the Prosecutor
M Hutcheson & M Henaghan for the Defendant
Judgment: 20 May 2026

SENTENCING DECISION OF JUDGE MJL DICKEY

Introduction

- [1] Mr David Christensen (**Mr Christensen**) has pleaded guilty to two charges:
- (a) A breach of s 15(1)(b) of the Resource Management Act 1991 (**RMA**) for permitting the unlawful discharge of contaminants (dairy farm effluent) from a sump on or about 3 September 2024, where the discharge may have entered groundwater; and
 - (b) a breach of s 15(1)(b) of the RMA for permitting the unlawful discharge of contaminants (dairy farm effluent) from a travelling irrigator on or about 3 September 2024, where the discharge may have entered groundwater.

[2] The maximum penalty for each charge is a fine not exceeding \$300,000 or a prison term of no more than two years.

[3] For Waikato Regional Council (**WRC**), Ms McConachy sought a starting point in the range of \$110,000, while Mr Hutcheson for the defendant submitted that a starting point of \$50,000 to \$55,000 is appropriate.

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

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

Background¹

[6] The 107-hectare property is situated at 125 Waotu Road, Putaruru (**the property**).

[7] The property is owned by Christensen Farms Limited (**CFL**) having been purchased in 2004. CFL is a registered company in New Zealand, and records Paul Christensen and Rosalie Christensen as the two company directors. The company has eight shareholders, including the defendant David Christensen.

[8] Mr Christensen leases the farm from CFL. At peak, the farm milks up to 285 cows twice a day and supplies Fonterra.

[9] Mr Christensen does not live on the farm, however he has overall responsibility for the day-to-day management of the farming operation, including managing the farm's effluent system.

[10] In September 2024, Mr Christensen employed a farm assistant on a casual basis to assist around the property when required. The farm assistant's role included effluent irrigation of farm animal (dairy) effluent for land disposal.

¹ SOF at [13], [15], [17] – [21].

Past interactions with WRC regarding the property²

[11] On 7 October 2007, a green stream complaint from a member of the public resulted in a WRC compliance inspection at the property. It was discovered that a recently installed stormwater diversion had been left open, resulting in a discharge flow path to the Opouaru Stream. Mr Christensen was sharemilking on the property and stated that the diversion had been left open in error. It was noted that the effluent pond had approximately 400mm freeboard, and Mr Christensen commented “the pond was getting emptied next week”.

[12] On 10 January 2012 there was another compliance inspection due to a further complaint. On this occasion the effluent pond was found to be again overflowing onto land in circumstances where it might have entered water, namely the Opouaru Stream. There was no evidence that effluent had contaminated the stream. Mr Christensen stated he had “emptied the pond the previous week”, and suggested “there may be a spring nearby that is contributing to the flow”. Mr Christensen was infringed for contravening s 15(1)(b) RMA and commented, “that money would be better spent on fixing up his pond system”. During this inspection the piled sand-trap scrapings were identified to Mr Christensen as being a breach of the Waikato Regional Plan (**WRP**) due to them being stockpiled on an unsealed surface.

[13] On 17 March 2017 WRC undertook a compliance inspection at the property. On this occasion Paul Christensen (the defendant’s father) met with the compliance staff. There were discussions about the sealing standard of the effluent pond and dairy shed effluent storage. The pond was ‘very high’, with evidence of a potential recent overflow due to the ground surface being ‘very damp in the corner’. It was noted there was a stockpile of sand-trap and sump scrapings on an unsealed surface that needed to be remedied. Following the inspection a letter was sent to CFL which required either documentation confirming the effluent pond is sealed; or that a ‘leakage test’ be undertaken and those results provided to WRC within 12-months.

[14] On 30 March 2022 WRC undertook a further compliance inspection at the property. The pond level was again very high. Paul Christensen assisted in the

² SOF at [23] – [27].

inspection. He commented that “the pond was booked in to be emptied next week”. A letter was emailed to CFL after the inspection which required evidence that the effluent pond was sealed or the results of a leakage test provided within 12 months.

[15] On 3 September 2024, neither evidence of sealing nor the results of a pond leakage test had been provided to WRC by CFL. The pond has subsequently been assessed as appropriately sealed.

Effluent system³

[16] Farm animal effluent generated at the dairy shed drains to a sand trap and is directed via gravity to a small inground effluent sump. The 1m³ capacity sump is located behind a large implement shed and is not visible from the dairy shed.

[17] Due to its limited size, the effluent sump fills and must be pumped to the pond every milking.

[18] The sump has an electric motor-driven effluent pump that operates off a float switch which is triggered or activated when liquid inside the sump reaches pre-determined levels, turning the pump on and off.

[19] Effluent from the sump is pumped through a pipe to an inground, earthen effluent storage pond.

[20] The effluent storage pond is unlined. A PTO-driven effluent pump is mounted at one side of the pond on a floating pontoon. On the day of inspection a tractor was coupled to its PTO driveshaft.

[21] In November 2024, at the direction of WRC, a pond drop test was undertaken to establish the pond’s sealing standard. That assessment concluded that it was ‘unlikely the cowshed pond has any significant seepage’, with the results falling within the test’s margin of error.

³ SOF at [28] – [39].

[22] Effluent for irrigation is pumped from the pond through a series of pipelines, hydrants and drag hoses to a travelling irrigator for land disposal.

[23] The irrigation block is approximately 16 – 19 hectares in area.

[24] With the exception of the installation of the stormwater diversion and sump pump between the yard and the pond, the primary effluent system infrastructure on the property remained unchanged from the farm's purchase by CFL through to 3 September 2024.

[25] Following the offending, CFL installed an alarm system to the effluent sump to alert of any pending overflows in the event the float switch or pump faults.⁴

[26] A Dairy Effluent Warrant of Fitness report dated 12 May 2025, completed by AgFirst a certified assessor, summarised that the dairy effluent 'infrastructure is suitable with some good management', and that 'it meets the required standard'.⁵

[27] Through the above-described infrastructure the farm and all effluent is managed year-round in an attempt to conform to the permitted activity rules of the WRP.

Relevant Legislation & Rules⁶

[28] Under rule 3.5.5.1 of the WRP, the discharge of farm animal effluent onto land is a Permitted Activity subject to the following conditions:

- (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

⁴ Affidavit of David Mark Christensen sworn 24 March 2026 at [5.2].

⁵ Affidavit of Mr Christensen at [5.3] - [5.4].

⁶ SOF at [41] – [44].

sealed so as to restrict seepage of effluent. The permeability of the sealing layer shall not exceed 1×10^{-9} metres per second.

- (d) the maximum loading rate of effluent onto any part of the irrigated land shall not exceed 25 millimetres depth per application.
- (e) effluent shall not enter surface water by way of overland flow, or pond on the land surface following the application.

[29] Section 15(1) of the Resource Management Act 1991 stipulates that:

No person may discharge any—

- (a) contaminant or water into water; or
- (b) contaminant onto or into land in circumstances which may result in that contaminant (or any other contaminant emanating as a result of natural processes from that contaminant) entering water...

unless the 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.

[30] Farm animal effluent is a contaminant pursuant to s 2 of the RMA.

Circumstances of the offending⁷

[31] At about 9:30am on 3 September 2024 WRC Compliance Monitoring staff arrived at the property to complete a compliance monitoring inspection associated with the management of dairy effluent.

[32] While inspecting the dairy effluent system they found that the effluent sump located behind the implement shed was full and had overflowed, resulting in a discharge of farm animal effluent that had ponded on the adjacent paddock surface.

[33] The drier effluent solids situated in the location of the effluent flow path immediately below the sump suggested that an overflow event may have occurred prior to 3 September 2024.

⁷ SOF at [45] – [55].

[34] The area of effluent ponded upon the paddock surface from the sump discharge was approximately 20 metres in length with a width of up to 10 metres.

[35] The discharge and ponding of farm animal effluent from the sump is a breach of the WRP permitted activity rule 3.5.5.1 and s 15(1)(b) of the RMA and is therefore unlawful.

[36] Council officers discovered that the effluent pond was full with no freeboard. The farm assistant explained that Mr Christensen relied on him to keep an eye on the effluent pond, and that when it gets a bit high he will go and do something about it.

[37] The compliance officer recorded the following further comments from discussions with the farm assistant: irrigation was required or the pond would overflow; that it cannot be allowed to overflow due to the proximity of the stream; that the irrigator was not run at its fastest speed because in doing so the tractor used too much diesel.

[38] The paddocks in the area of the irrigator were saturated. The farm assistant suggested the other available paddocks for irrigation were either more saturated or were already at peak nitrogen levels.

[39] When inspecting the travelling irrigator, WRC staff identified that farm animal effluent had ponded around the irrigator. There were several areas of ponding that were approximately 3 metres by 2 metres and around 50 millimetres deep.

[40] Rain data obtained from a NIWA (the National Institute of Water and Atmospheric Research) weather station situated approximately 1.5 kilometres from the property recorded 52mm of rain in the week leading up to 3 September 2024, with 19.5mm falling two-days prior to this inspection.

[41] The ponding of farm animal (dairy) effluent onto land following application is a breach of the WRP permitted activity rule 3.5.5.1 and s 15(1)(b) of the RMA and is therefore unlawful.

Explanation⁸

[42] On 12 November 2024, Mr Christensen was formally interviewed. During the interview he acknowledged that he was responsible for the management of farm animal (dairy) effluent, and that the effluent pond had not been de-sludged in three years.

[43] He advised that he relied on the farm assistant to do tasks around the farm, including the effluent irrigation. Mr Christensen accepted he had overall responsibility for management of effluent on the farm, stating that he would get onto it when he knew that he needed to.

[44] In explanation for the discharge of effluent from the sump, he stated that the float switch had failed to activate the pump and at that time he was unaware of the discharge due to the sump being behind the implement shed.

[45] He knew that ponding was not allowed under the WRP and acknowledged that during winter the paddocks were low lying and waterlogged.

Sentencing Framework

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

[47] The High Court in *Thurston v Manawatu-Wanganui Regional Council (Thurston)* provides a useful summary of the approach to be taken to sentencing.⁹ 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.

⁸ SOF at [60] – [63].

⁹ *Thurston v Manawatu Wanganui Regional Council* HC Palmerston North CRI-2009-454-24, 27 August 2010 at [41].

Environmental effects

[48] The Opouaru Stream meanders through the property. The effluent pond and effluent sump are respectively 70 metres and 140 metres away from this stream. From this vicinity, the Opouaru Stream flows approximately 1.2 kilometres where it confluences the Pokaiwhenua Stream. Both these streams are trout spawning and indigenous fishery class waterways under the Waikato Regional Plan and flows directly into the Waikato River at Arapuni.¹⁰

[49] Samples were taken and analysed by Hill Laboratories which confirmed that high levels of contaminants consistent with farm animal (dairy) effluent were present.¹¹

Sample Type: Aqueous			
Sample Name:		Sample A - F77909 03-Sep-2024 10:22 am	Sample B - F77909 03-Sep-2024 10:29 am
Lab Number:		3663317.1	3663317.2
Individual Tests			
pH	pH Units	7.7	7.5
Total Suspended Solids	g/m ³	450	5,900
Total Nitrogen	g/m ³	91	350
Total Ammoniacal-N	g/m ³	55	149
Nitrate-N + Nitrite-N	g/m ³	< 0.02	< 0.10 #2
Total Kjeldahl Nitrogen (TKN)	g/m ³	91	350
Dissolved Reactive Phosphorus	g/m ³	0.07	16.6
Total Phosphorus	g/m ³	18.1	70
Carbonaceous Biochemical Oxygen Demand (cBOD ₅)	g O ₂ /m ³	86	1,680
Faecal Coliforms and E. coli profile			
Faecal Coliforms	cfu / 100mL	720,000 #1	65,000,000 #1
Escherichia coli	cfu / 100mL	720,000 #1	62,000,000 #1

[50] The SOF records:¹²

Ponding and the saturation of soil with farm animal effluent creates hydraulic conditions that pose a high risk of direct loss of contaminants to groundwater.

Irrigation and effluent ponding on saturated soils leads to the effluent and associated contaminants bypassing the soil matrix and flowing preferentially down macropores (cracks and worm holes in the soil). Macropore flow results in contaminants moving below the plant root zone where they may migrate to groundwater.¹³

¹⁰ SOF at [16].

¹¹ SOF at [56] – [57]. Samples A were taken from the ponding in the location of the irrigator and samples B of the discharge from the effluent sump.

¹² SOF at [58] – [59].

¹³ Land Treatment of Farm Animal Effluent (Robert Dragten dated 11 April 2018), in SOF at Annexure A.

Prosecutor's submissions

[51] 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. Ms McConachy submitted that the discharges occurred in a sensitive receiving environment.

[52] Ms McConachy observed that the Courts have accepted that even small volumes of contamination entering waterways contribute to cumulative degradation of the environment. The cumulative effect of repeated small-scale discharges has been described in sentencing decisions as “insidious” and akin to “death by a thousand cuts”.¹⁴

Defendant's submissions

[53] Mr Hutcheson submitted that there is no evidence of any impact to groundwater or to surface waterways, and the defendant is entitled to the benefit of any uncertainty.¹⁵

[54] Mr Hutcheson accepted that there is a risk, and that the Courts are concerned with the cumulative effect of any discharges, including any risks to groundwater, however minor the risks may be. He accepted that an allowance can be made for harm on the assumption that any given offence contributes to the cumulative effects of pollution generally.

Conclusion on environmental effects

[55] I categorise the environmental effects as low to moderate. While there is no evidence of actual adverse impacts in this location from the discharges, there is no doubt that such discharges contribute to adverse effects on the environment.

¹⁴ For example, *Northland Regional Council v Roberts* DC Whangarei CRN 12088500369, 18 September 2013 at [18]; *West Coast Regional Council v Potae and Ven Der Poel Ltd* DC Greymouth CRI-2009-009-017910, 20 April 2010 at [49]; *Thurston and Tawera Land Company Ltd v Manawatu-Wanganui Regional Council* CRI-2009-454-25, 27 August 2010 at [51].

¹⁵ *Manawatu-Wanganui Regional Council v Huka View Dairies Limited* [2021] DCR 18.

Culpability

Prosecutor's submissions

[56] Ms McConachy submitted that the offending was highly careless. It demonstrates a cavalier approach to effluent management, particularly after previous warnings about the management of effluent on the property.

[57] In respect of the discharge from the sump, she submitted that the offending was entirely foreseeable given the lack of freeboard available at the storage pond. Effluent storage is an ever-present farming consideration. When pond levels are not properly managed there is a heightened risk that offending of this kind will occur.

[58] Ms McConachy submitted that Mr Christensen had been the subject of prior enforcement action, and was squarely on notice regarding the risks and his environmental obligations. He acknowledged that the effluent pond had not been de-sludged for three years. Ms McConachy submitted that Mr Christensen's failure to appropriately manage the pond's storage levels represents a significant departure from the standard that is required. The offending was foreseeable.

[59] Ms McConachy acknowledged that there was no direct profit from the offending, but submitted that as the leaseholder of the farm, and a director and shareholder of the landowner, Mr Christensen has profited from not expending money on effluent upgrades, and by not taking proactive steps to ensure that the effluent pond does not reach capacity.

Defendant's submissions

[60] Mr Hutcheson submitted the offending was at most careless, because Mr Christensen:

- (a) was not aware of the sump overflow caused by the float switch failing to trigger. Once he learned of this issue he commenced repairs. He has since installed an alarm system to alert him to any pending overflows;¹⁶

¹⁶ Affidavit of Mr Christensen at [3].

- (b) did not realise that the paddock where ponding occurred was as saturated as it was. In hindsight, he realises that he should have been more cautious;¹⁷ and
- (c) was preoccupied with significant personal pressures at the time.¹⁸

[61] It was accepted that Mr Christensen had prior interactions with WRC relating to farm dairy effluent management, but Mr Hutcheson submitted that this is the first time he has been before the Court on charges under the RMA and the prior history relates to sporadic enforcement action over a period spanning nearly 20 years. Mr Hutcheson also noted that it was Mr Christensen's father who met with WRC officers in two of the previous visits.

[62] Mr Hutcheson submitted that Mr Christensen was co-operative with WRC during its investigation, and has been open and communicative with WRC regarding the improvements he has made.

[63] Mr Hutcheson submitted that some account should be taken of the personal pressures Mr Christensen was under at the time of the offending, which included relationship and health matters. Mr Christensen acknowledged, however, that those circumstances do not excuse the offending.

Conclusion on culpability

[64] Ms McConachy submitted the offending is highly careless because of the farm's previous compliance history, and that Mr Christensen should have been alert to the difficulties. There were measures that could have been put in place to address matters and avoid the offending. For his part, Mr Hutchenson placed Mr Christensen's culpability as lower: that he was careless, submitting that he was not aware of the sump overflow or that paddocks in the vicinity of the irrigator were saturated with effluent.

[65] Since at least 2007, Mr Christensen should have been aware of the need to ensure the level of the effluent pond was safely maintained to avoid the risk of

¹⁷ Affidavit of Mr Christensen at [4].

¹⁸ Affidavit of Mr Christensen at [6] – [10].

overflow or give rise to the need to irrigate more than was desirable. Certainly, on the occasions the WRC inspected the property over the years there was risk of overflow or an overflow had occurred.

[66] Requests by WRC to provide it with evidence that the pond was sealed were not responded to. In addition, there was also evidence of illegal storage of sand trap scrapings on an unsealed surface.

[67] The offending on 3 September 2024 related to two areas – the sump overflow resulting in effluent ponding in an adjacent paddock. I accept that a faulty pump switch was to blame, but there was evidence that an overflow event may have occurred prior to 3 September. Mr Christensen has since installed an alarm system to alert him to any overflows.

[68] On this discharge I find that Mr Christensen was careless, in the sense that an alarm system should have been installed some time ago. He knew of the system's vulnerability and should have undertaken this straightforward measure.

[69] There was also a discharge from the travelling irrigator that occurred on the same day and left the surrounding paddocks saturated with effluent. I find Mr Christensen highly careless in respect of that offending. The pond and the travelling irrigator are interrelated. There were obvious issues with the pond levels getting too high in past years. Insufficient attention to emptying the pond would lead to pressure to irrigate when the levels got too high.

[70] That is what happened here. The effluent pond was full. Irrigation was required or the pond would overflow. Other available paddocks were either more saturated or were already at peak nitrogen levels.

[71] A prudent operator would have ensured the pond was emptied in a timely manner. That did not occur. I acknowledge the personal issues Mr Christensen was facing at the time of the offending, however the problems that led to the offending on 3 September did not start at this time – the offending was the result of a system that was vulnerable to management errors.

Starting point

Prosecutor's submissions

[72] Ms McConachy noted that Parliament has increased the maximum fine for such offending. If committed today, each of the charges would carry a maximum penalty of a fine of \$1,000,000. While accepting that Mr Christensen is entitled to the benefit of the lesser penalty, Ms McConachy submitted that Parliament has clearly indicated that environmental offending ought to attract a condign sentencing approach.

[73] Ms McConachy noted that several sentencing decisions have cited increasing concerns about the incidence of dairy effluent offending and the need for deterrence, both particular and general.¹⁹

[74] I was referred to the following cases as being of assistance in assessing an appropriate starting point: *Waikato Regional Council v Te Korunui Farms Limited (Te Korunui Farms)*;²⁰ *Waikato Regional Council v Cazjal Farm Limited (Cazjal*

¹⁹ *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 Nagra Farms Limited* [2019] NZDC 2382 at [79] – [80]; *Waikato Regional Council v Crouch* [2019] NZDC 11517 at [72]; *Waikato Regional Council v Cazjal Farm Limited* [2023] NZDC 10973 at [62].

²⁰ *Waikato Regional Council v Te Korunui Farms Limited* [2023] NZDC 4181 – two charges relating to discharges of dairy effluent to water. Effluent ponds full to capacity, sand trap at a farm underpass was full. The adverse effects were moderate. Localised acute effects in the tributary below the ponds. The defendant was highly careless; the system was vulnerable to human error or lack of oversight, arrangements ought to have been made to pump down the ponds, the defendant ought to have known there was an issue. Starting point of \$120,000; \$80,000 for the pond overflow and \$40,000 for the discharge from the underpass.

Farm);²¹ *Waikato Regional Council v Donald (Donald)*;²² *Waikato Regional Council v Lockwood (Lockwood)*;²³ *Waikato Regional Council v Apex Farming Limited (Apex Farming)*;²⁴ and *Waikato Regional Council v Pukeko Place Farms Limited (Pukeko Place)*.²⁵

[75] Ms McConachy maintained that the defendant’s culpability falls towards the upper end of Level 2 as set out in *Waikato Regional Council v GA and BG Chick*

²¹ *Waikato Regional Council v Cazjal Farm Limited* [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, who owned the farm. The effects were moderate; elevated levels of contaminants. Such discharges have a cumulative effect on waterways. Cazjal Farm and Mr Walling had to provide infrastructure, had oversight of the farm and had the ability to influence farming operations. They were on notice that there were issues with management of farm effluent. They failed to meet their ownership and governance responsibilities, including in relation to information sharing and induction/training. The system had been upgraded but there were problems which contributed to the discharges. Upper Level 2 of *Chick*, on the cusp of Level 3. Starting point of \$120,000; \$100,000 for the discharges, \$20,000 for the abatement notice offence. Upheld in *Walling v Waikato Regional Council* [2023] NZHC 3437.

²² *Waikato Regional Council v Donald* [2021] NZDC 5514 – two charges related to offending at each of the farms. Neither involved the discharge to surface water. At one farm effluent had discharged from ponds into a drain for approximately 100m before discharging into a paddock and ponding. At the second farm effluent discharged to groundwater from a series of stationary irrigators and two underpass sumps. The Court categorised the case as being at the top of Level 2 or the lower area of Level 3 of *Chick* and set the following starting points: \$75,000 for the first discharge given it represented a systemic issue, \$60,000 for the second discharge, giving a total starting point of \$135,000. To account for the fact that Mr Donald was the director of the General Manager, not the owner or manager of either farm; and was responsible for the governance and management rather than the operations, the starting point was reduced by one third, leaving a starting point of \$90,000.

²³ *Waikato Regional Council v Lockwood* [2020] NZDC 24932 – two charges of discharging dairy effluent to land. The gravity of the offending and the culpability of the defendant were assessed as moderately serious. The Court found that, while not deliberate, the causes of the discharges demonstrated at least a reluctance and possibly a real want of care to address infrastructure deficiencies on a timely basis. It also noted that the ponding was not dealt with promptly. Starting point of \$75,000 for the first offending and \$55,000 for the subsequent offending, resulting in an overall starting point of \$115,000.

²⁴ *Waikato Regional Council v Apex Farming Limited* [2025] NZDC 13837 – one charge relating to discharge from an effluent storage pond to land. Environmental effects 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.

²⁵ *Waikato Regional Council v Pukeko Place Farms Limited* [2025] NZDC 1265 – one charge of permitting unlawful discharge of dairy effluent onto land in circumstances in which it may reach ground water. The Court found that the effluent ponding resulted from over-irrigation, not rainfall, and that the farm’s infrastructure was inadequate, relying solely on a sump for effluent storage after decommissioning two ponds in 2018. The parties agreed the offending fell within Level 2 of *Chick*, reflecting moderately serious, careless offending with little to moderate environmental impact. The Court accepted the defendant’s culpability as highly careless, noting the lack of proper infrastructure and indirect benefit from not upgrading effluent storage. Starting point of \$75,000.

Limited (Chick).²⁶ She submitted that the offending was foreseeable and was caused by Mr Christensen's carelessness as well as the poor state of the effluent infrastructure on the farm. Further, that the offending involves two unrelated discharges at different locations on the farm.

[76] Ms McConachy submitted the offending shares similarities with *Lockwood* and *Pukeko Place*. She submitted that the discharge from the sump is the most serious instance of offending given the scale of the ponding observed. Considering the aggravating features of the offending, Mr Christensen's overall culpability, and the guidance provided in the cases cited, Ms McConachy proposed that the appropriate starting point in respect of the sump discharge should be in the region of \$70,000. That reflects the foreseeability of the offending as well as the scale of the ponded effluent. The proposed starting point is slightly lower than that imposed in *Lockwood* for very similar offending, to reflect that the total ponded area in this case was slightly less.

[77] Ms McConachy acknowledged that the second instance of ponding (from the travelling irrigator) did not occupy the same total area. However, when inspecting the travelling irrigator WRC staff identified several areas of effluent ponding on the paddock in the vicinity of the irrigator that were approximately three metres by two metres in size and around 50 millimetres deep.

[78] Had that offending been considered in isolation, Ms McConachy submitted that the starting point for the ponding from the travelling irrigator would also have

²⁶ *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.

been in the region of \$60,000 - \$70,000. That would leave an overall starting point in the range of \$130,000 - \$140,000.

[79] The Council accepted that there is a need to take account of the totality principle. Recognising that the second instance of offending is smaller than the total area of ponding in *Lockwood*, and that both instances of offending occurred on the same day, Ms McConachy submitted that an uplift of \$40,000 is appropriate to reflect the second instance of offending. That is the same uplift as was imposed in *Te Korunui Farms*, where the effluent discharge was from an underpass rather than a direct source.

[80] Allowing for totality, Ms McConachy submitted the appropriate starting points are \$40,000 in respect of the discharge from the irrigator, and \$70,000 in respect of the discharge from the sump. That would give an overall starting point of \$110,000. Ms McConachy noted that such a starting point is consistent with the starting points adopted in other cases involving multiple discharges such as *Lockwood*, *Te Korunui Farms*, *Cazjal Farm*, and *Donald*. The starting point reflects the fact that there are two separate discharges, as well as the level of carelessness exhibited by Mr Christensen.

Defendant's submissions

[81] Mr Hutcheson submitted that the offending falls within the lower end of Level 2 of *Chick*.

[82] He submitted that Mr Christensen's culpability is lower than that in *Te Korunui Farms*. There is no discharge of effluent into a waterway. The discharges were caused by unknown mechanical failure (sump) and mistaken irrigation on a saturated paddock (irrigator). That is to be compared to *Te Korunui Farms*, where discharges to waterways occurred and where it would have been obvious to the defendant that both discharges were imminent.

[83] Mr Hutcheson submitted that the offending in *Cazjal Farm* is not comparable. *Cazjal Farm* involved three separate instances of offending over six months and related to the same issue (travelling irrigators). In each case the defendant was on notice to improve, given the Council conducted an inspection after each discharge.

Cazjal Farm also involved discharges to waterways. Further, *Cazjal's* enforcement history, and the existence of formal warnings and an abatement notice, place the culpability higher than Mr Christensen.

[84] Mr Hutcheson submitted that Mr Christensen's culpability is far less than that in *Donald*, particularly where the risks associated with its systems had previously been identified in a 2017 warrant of fitness, including overflow risks and over-application from irrigators. *Donald* involved charges concerning two farms with unique systems, as opposed to Mr Christensen where both charges relate to the same farm and system. He submitted that *Donald* also involved a significantly worse scale of effluent discharge across both farm locations. The scale of discharge and persistence of the discharge on re-inspection reflects a materially more serious level of offending.

[85] He submitted that Mr Christensen's culpability is less than that in *Lockwood*. Mr Lockwood knowingly allowed discharges to continue, and ponding to remain on the farm, which is not comparable to Mr Christensen's actions. Mr Hutcheson noted the charges in *Lockwood* concerned offending nearly a year apart, whereas Mr Christensen's two charges concern offending at the same time.

[86] He submitted that Mr Christensen's offending is less serious than that in *Apex Farming*. In *Apex Farming*, the effluent system was found to be vulnerable and inadequately managed, including a failure to clear debris, the absence of an effluent management plan, and insufficient staff oversight. He submitted that Mr Christensen's effluent management system, while not perfect, was not as bad as that in *Apex Farming*.

[87] Mr Hutcheson submitted that the offending in *Pukeko Place* is more serious than Mr Christensen's offending. There is no suggestion that Mr Christensen had insufficient storage capacity available on the farm as was the case in *Pukeko Place*, which was a key factor in the Court finding that the defendant was highly careless, being heavily reliant on the spreading of effluent to pasture even in adverse weather. There was, therefore, a significant risk of effluent ponding that the Court found to be "entirely foreseeable". He submitted that Mr Christensen's offending, in comparison,

was caused by unforeseen mechanical failure and inadvertent application of effluent onto saturated land.

[88] Mr Hutcheson submitted *Bay of Plenty Regional Council v Nomar Farms Limited (Nomar Farms)*²⁷ and *Taranaki Regional Council v Langton (Langton)*²⁸ may assist the Court.

[89] He submitted that Mr Christensen's offending is similar but less severe than *Nomar Farms*, because:

- (a) the offending in both cases did not arise from any deliberate decision to ignore a known discharge, but rather an unintentional failure to observe a discharge occurring;
- (b) the discharges of effluent were of considerably less volume; and
- (c) Mr Christensen's offending was not in breach of an abatement notice.

[90] Mr Hutcheson submitted that Mr Christensen's offending is less serious than *Langton*:

- (a) he acknowledged the offending is comparable in that he faces two charges, relating to separate system failures on the farm in the same period of offending;

²⁷ *Bay of Plenty Regional Council v Nomar Farms Limited* [2025] NZDC 5540 – one charge of discharging dairy effluent onto land where it may enter water. Adverse environmental effects minor. A degree of carelessness in ensuring proper supervision of the irrigator; irrigators were not checked regularly. Contravention of abatement notice was inherently serious. Offending was highly careless; middle to higher end of Level 2 *Chick*. Starting point: \$65,000.

²⁸ *Taranaki Regional Council v Langton* [2026] NZDC 422 – two charges relating to the intermittent discharge of untreated dairy effluent onto land, and subsequent discharge in circumstances where it may enter groundwater. The farm had a history of non-compliance, with multiple abatement and infringement notices issued since 2009. The offending involved direct discharge from pipes rather than the irrigator, resulting in ponding, and a broken outlet pipe that remained unrepaired for about a week. Although there was no evidence that effluent entered water, the Court found the system to be 'ropey' and the operation lacking adequate controls and back-up plans. The Court also noted aggressive behaviour by Mr Langton towards council officers during inspections, including an incident requiring police intervention. The Court found there was no direct evidence of effluent entering water, and classified the offending as a serious systemic problem in the middle to upper range of Level 2 of *Chick*. Starting point of \$70,000.

- (b) his offending can be distinguished as he was not aware of the discharges until the Council's inspection. In *Langton*, the defendant had knowledge of the discharges and allowed them to continue for a period, reflecting a more conscious level of non-compliance; and
- (c) the scale of discharge in *Langton* was more severe. Notably there were several areas of ponding, and a larger flow path of effluent onto a neighbouring maize farm within close distance to a tributary.

[91] Mr Hutcheson submitted a starting point between \$50,000 to \$55,000 is appropriate in the circumstances.

Conclusion on starting point

[92] There is a disagreement between the parties as to whether the offending should be treated as 'one offence' (defendant's position) or two (prosecutor's position). I do not consider the charges to arise out of the same infrastructural deficiency. The sump discharge occurred because the float switch did not turn on. The irrigator discharge happened because the ground was saturated and should not have been irrigated, no doubt a consequence of the effluent pond being too high. However, they do arise from inadequate attention to effluent management; the sump should have been checked at each milking, and the effluent pond should have been pumped down regularly to avoid the need to irrigate at times when the paddocks were saturated.

[93] The sump discharge occurred because the float switch failed to activate. There is no evidence about how long it was faulty save that provided by drier effluent solids below the sump suggesting an overflow event may have occurred prior to 3 September 2024.

[94] The irrigator offending, too, may have occurred before 3 September 2024 – but is clearly a consequence of an overfull effluent pond that necessitated regular irrigation when the grounds were at their absorption limit.

[95] The Council characterised the sump offending as the more serious because the effluent discharge was more substantial. I disagree, having found Mr Christensen to be more culpable for the irrigator offence.

[96] I have found *Pukeko Place* and *Te Koronui* to be of assistance.

[97] The irrigator offending sits alongside other offending of its type – over-irrigation as a result of pressure created by either insufficient storage capacity or inadequate management of what capacity there was.

[98] The sump offending was a result of inadequate oversight. The sump should have been inspected at every milking.

[99] Given that the offending occurred on the same day, albeit on different parts of the farm and arising from different failures in the infrastructure or its management, it is appropriate to allow for totality. I therefore determine a starting point for the offending of \$80,000.

Aggravating and mitigating factors

Compliance history

[100] In February 2012 WRC issued an infringement notice to Mr Christensen for the unlawful discharge of farm animal (dairy) effluent to land. This incident related to a discharge of effluent from the effluent storage pond on the property. The farm assistant received a Formal Warning for contravening s 15(1)(b) in relation to the non-compliant effluent irrigation pertaining to this matter.²⁹

[101] Ms McConachy noted that as the defendant's history of poor compliance has been taken into account in setting the starting point, no uplift is sought. She submitted the defendant will not be entitled to any credit for prior good character.

[102] Mr Hutcheson submitted that a discount of 10 per cent is appropriate to recognise Mr Christensen's remorse and co-operation with the Council.

²⁹ SOF at [65] – [65].

[103] I consider a discount of five per cent to allow for good character is appropriate. The infringement notice was issued many years ago. I make no allowance for remorse and cooperation because that is to be expected and there is nothing I have heard that distinguishes this remorse and cooperation from other cases.

[104] The parties considered a 25 per cent discount is appropriate for the early guilty plea. I agree.

Outcome

[105] I adopt the two-step sentencing process following *Moses v R*.³⁰

[106] I have convicted the defendant. I impose a fine of \$56,000.00.

[107] 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.

[108] I also order that the defendant is to pay court costs of \$143 and solicitor's fee of \$113 for each charge.

Judge MJL Dickey
District Court Judge | Kaiwhakawā o te Kōti ā-Rohe
Date of authentication | Rā motuhēhēnga: 20/05/2026

³⁰*Moses v R* [2020] NZCA 296 at [46].