IN THE DISTRICT COURT
AT HUNTLY

I TE KŌTI-Ā-ROHE
KI RĀHUI PŌKEKA

CRI-2024-077-000857
[2026] NZDC 1265

WAIKATO REGIONAL COUNCIL
Prosecutor

v

PUKEKO PLACE FARMS LIMITED
Defendant

Hearing:	28 May 2025
Last Case Event:	22 October 2025
Appearances:	K Bucher for the Prosecutor T Fu and A Sherlock for the Defendant
Judgment:	23 January 2026

SENTENCING DECISION OF JUDGE S M TEPANIA

Introduction

[1] Pukeko Place Farms Limited (**Pukeko Farms**) has pleaded guilty to one charge under each of ss 15(1)(b), 338(1)(a) and 340(1)(a) of the Resource Management Act 1991 (**RMA**) by permitting unlawful discharge of dairy effluent onto land in circumstances in which it may reach ground water.

[2] The maximum penalty under s 339(1)(b) is a fine of $600,000.

[3] For the Council Mr Bucher sought a starting point in the range of $85,000 to $90,000, while Ms Fu for the defendant submitted that a starting point between $60,000 to $65,000 is appropriate.

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

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

Background[1]

[6] The prosecution relates to the unlawful discharge of dairy effluent from an effluent storage facility on a commercial dairy farm identified by Miraka supply number 123, situated at 310 Matarawa Road, Kinleith, in May 2024 (**the property**).

[7] The 240-cow, 97-ha dairy farm is owned by the trustees of M Newton & M McLean Trust Partnership (**the Trust**) and supplies milk to Miraka Dairy.

[8] The certificate of title lists the registered property owners as Mark James Newton, Michelle Kathleen McLean and Cullum James Boyce as to a 1/2 share and Mr Newton, Ms McLean and Rachel Maree Jackson as to a 1/2 share.

[9] The trust employs Pukeko Farms, the defendant, to manage the property.

[10] The New Zealand Companies Register records the directors and shareholders of Pukeko Farms as Mr Newton and Sarah Teresa Manders.

[11] Pukeko Farms employs Jamie Ryan Ormsby as the Farm Contract Milker. Mr Ormsby is responsible for the day-to-day management of the farming operation, including effluent management.

[12] Infrastructure on the farm consists of a herringbone dairy shed and yard, supplementary farm buildings and two decommissioned earthen effluent storage

[1] Summary of Facts, at [12] – [19].

ponds. An unsealed third earthen pond is located next to the dairy shed but does not receive effluent from the yard, only runoff water via an open pipe from the farm race.

[13] The Matarawa Stream flows through the property which feeds into Lake Moananui on the western edge of the Tokoroa township.

Farm dairy effluent system and management[2]

[14] Farm animal effluent generated at the dairy shed yard is directed into a 25,000-litre sump, this being the sole effluent holding facility on the property. Historically, effluent was directed to the two effluent ponds for additional storage; however, these were decommissioned in 2018.

[15] The sump operates on a float switch and runs automatically, pumping effluent to either a single pod irrigator or a travelling swing arm irrigator.

[16] The sump reaches capacity after 2-3 milkings; therefore, irrigation is required to be carried out daily, regardless of the weather conditions, to avoid over-flows.

[17] Rainwater from the dairy shed yard also flows into the sump unless diverted through a stormwater diversion.

Relevant legislation & rules[3]

[18] The farm falls within the boundaries of the Waikato Region and is therefore bound by the terms and conditions of the Waikato Regional Plan (the **Plan**).

[19] The farm operates its dairy effluent system under the Permitted Activity Rules of the Plan. These Rules have been well publicised and are easily accessible, for example through the WRC website, and are a core compliance requirement for a dairy farming business.

[2] Summary of Facts, at [20] – [23].
[3] Summary of Facts, [24 – [28].

[20] Rule 3.5.5.1 of the Plan allows for discharges of farm animal effluent onto land subject to certain conditions. Conditions relevant to this summary include:[4]

(a) No discharge of effluent to water shall occur from any effluent holding facilities.

(b) Storage facilities and associated facilities shall be installed to ensure compliance with condition (a).

(c) All effluent treatment or storage facilities (e.g., sumps or ponds) shall be sealed so as to restrict seepage of effluent. The permeability of the sealing layer shall not exceed 1x109 metres per second.

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

(h) The discharger shall provide information to show how the requirements of conditions a) to g) are being met, if requested by the Waikato Regional Council.

[21] Section 15(1) RMA stipulates that no person may discharge any contaminant onto or into land in circumstances which may result in that contaminant (or any other contaminant emanating as a result of natural process from that contaminant) entering water – 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.

[22] Farm animal effluent is a contaminant pursuant to Section 2 of the RMA. Water is also defined in Section 2 as meaning water in all its physical forms whether flowing or not and over or under the ground.

[23] There are no national environmental standards, other regulations, resource consents or rules in the plan that expressly allow for the discharge of a contaminant

[4] Refer Summary of Facts, Appendix A– copy of Rule 3.5.5.1, Waikato Regional Plan.

described in this summary onto or into land in circumstances which may result in that contaminant entering water.

The offending[5]

[24] The charges relate to the unlawful discharge of farm animal (dairy) effluent onto land, where it may enter water, from a sump on or about 2 May 2024.

[25] At about 11am on Thursday the 2nd day of May 2024, WRC compliance monitoring staff arrived at the defendant's farm at 310 Matarawa Road, to complete a compliance monitoring inspection associated with the farm's dairy effluent system.

[26] The weather conditions were fine with rain having fallen overnight.

[27] The staff met with Mr Ormsby who confirmed he was responsible for managing the effluent system.

[28] An inspection of the dairy shed yard and sump did not locate any issues or signs of overflows.

[29] WRC staff noted the stormwater diversion was closed, indicating that rainwater collected in the yard overnight had been directed into the sump and subsequently pumped to the irrigator.

[30] WRC staff then conducted an inspection of the pod irrigator located in a nearby paddock, approximately 30 metres south of the Matarawa Stream.

[31] Staff observed ponding of farm animal effluent in a shallow depression in the paddock. The ponded area was estimated by WRC staff to be approximately 40 metres long, 5 metres wide and variable in depth, with the deepest point being approximately 20 centimetres. The length and width of the ponded area were measured by "stepping out".

[32] No runoff was observed to be entering any waterways at that time.

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[5] Summary of Facts, at [29] – [43] and Appendix B.

[33] Mr Ormsby claimed that the ponding was caused by rainwater.

[34] He further stated that he had to irrigate in the rain overnight to avoid the sump overflowing, and that he had intended to move the irrigator the previous day but hadn't.

[35] Rainfall data has since been obtained for the period 21 March – 2 May 2024 from three rainfall monitoring sites near the farm. The data from the three sites confirmed that there was sporadic rainfall over the month, with rainfall of 10mm, 3.5mm and 8.5mm recorded on Wednesday 1 May 2024.

[36] WRC staff obtained two water samples, the first from the ponded area in the paddock and the second from the unsealed earthen pond.

[37] These samples were subsequently analysed by Hill Laboratories with the ponding found to contain Faecal Coliforms and Escherichia Coli (**E Coli**) levels of 4,200,000, indicating that the ponding in the paddock was not caused by rainfall but rather over-irrigation of farm animal effluent.

[38] The sample obtained from the unsealed earthen pond contained Faecal Coliforms and E Coli levels of 18,000 and 17,000 respectively, indicating that the pond was receiving effluent runoff from the farm race.

Explanation[6]

[39] Mr Newton was formally interviewed as the representative for the defendant.

[40] In explanation he stated that the two effluent ponds on the property were decommissioned in 2018, because they were leaking and no longer viable due to their location, and were not replaced. They looked at storage two years ago and were in the process of getting bladders or clip-tanks.

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[6] Summary of Facts, at [46] – [50].

[41] He acknowledged that the only effluent storage facility on the property was the sump and that they must irrigate daily regardless of the weather, claiming that they did so "carefully" and were selective in deciding where to irrigate.

[42] In relation to the ponding, Mr Newton said he thought Mr Ormsby had just been caught out with overnight rain, and the nature of the paddock where the ponding was located. He said that the ponding had occurred in a natural depression in that paddock.

[43] When shown sample results, he accepted the ponding was effluent.

Sentencing Framework

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

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

Prosecutor's submissions

[46] Mr Bucher submitted that it is particularly important that sentencing in this case holds the defendant accountable for the harm done to the environment and therefore the community. The sentence must denounce offending of this type and provide meaningful deterrence.[8]

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

[8] Sentencing Act 2002, s 7(1)(a), (e) and (f).

[47] He further submitted that the other relevant principles of sentencing in this case are the need for the Court to consider the gravity of the offending, the defendant's degree of culpability, the seriousness of this type of offence as indicated by the maximum penalty, the general desirability of consistency in sentencing levels, and the effect of the offending on the community.[9]

Defendant's submissions

[48] Ms Fu agreed that the proper approach to sentencing is as set out in *Thurston*. While she generally agreed with the Prosecutor's submission regarding the purposes and principles of sentencing under the Sentencing Act 2002, she submitted that additional important principles include the desirability of maintaining consistency in sentencing decisions, accounting for circumstances which would make a sentence disproportionately severe, and accounting for a sentence with a partly or wholly rehabilitative purpose.[10] The Court must impose the least restrictive outcome that is appropriate in the circumstances.[11]

Aggravating and mitigating factors

Environmental impact[12]

[49] 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. Ponding and irrigation onto saturated soils leads to effluent bypassing the soil matrix and flowing preferentially down macropore's (cracks and worm holes in the soil). Macropore flow results in untreated effluent moving below the plant rooting zone in the soil without complete treatment.[13]

[50] The contaminant levels in dairy shed effluent are many times higher than those at which adverse effects can occur in rivers and streams. As a result, unless an input

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9 Sentencing Act 2002, s 8(a), (b), (e) and (f).
10 Sentencing Act 2002, subs 8(e), (h) and (i).
11 Section 8(g).
12 Summary of Facts, at [44] – [45]; Appendix C - Land Treatment of Farm Dairy Effluent (Robert Dragten dated 11 April 2018) & Appendix D– Potential Adverse Effects – Dairy shed effluent in Rivers in the Waikato Region (William Vant, authored 25 July).
13 Refer Summary of Facts, Appendix C - Land Treatment of Farm Dairy Effluent (Robert Dragten dated 11 April 2018).

of effluent is very highly diluted after it enters a river, it can cause a variety of adverse effects there.[14]

Prosecutor's submissions

[51] Mr Bucher submitted that the serious environmental effects of the discharge of dairy effluent to groundwater are well known to the Court, with the courts having accepted that any contamination that goes into the wider environment – no matter how small – adds to the overall cumulative effects on the environment. He observed that 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."[15]

Defendant' submissions

[52] Ms Fu noted that there is no allegation that the incident had any acute effect on the environment; however, she accepted that the application of effluent can have a cumulative effect on the surrounding environment and groundwater.

[53] Ms Fu submitted that this was a one-off incident of ponding on a pasture, with run-off into a drainage pond located by the cowshed which received run off from the farm race. Subsequent to the incident, a drop test was performed on the drainage pond which confirmed that there was no seepage from the pond, and that the ditch was suitable to be used as an effluent storage area.

[54] Ms Fu submitted that the effect on the environment is at a low level given that there is no evidence that the effluent entered the local Matarawa Stream, nor that the environment was especially sensitive.

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[14] Refer Summary of Facts, Appendix D– Potential Adverse Effects – Dairy shed effluent in Rivers in the Waikato Region (William Vant, authored 25 July).

[15] See for example *Manawatū-Whanganui Regional Council v Manawatū District Council* [2024] NZDC 3930 at [7]; *Northland Regional Council v Roberts DC* Whangarei CRN 12088500369, 371-376, 18 September 2013 at [18]; *West Coast Regional Council v Potae and Ven Der Poel Limited* CRI-2009-009-017910 DC Greymouth 20 April 2010 at [49]; *Thurston and Tawera Land Company Limited v Manawatū-Wanganui Regional Council* CRI-2009-454-25, CRI-2009-454,27, CRI-2009,454-24, 27 August 2010 at [51].

Conclusion on environmental effects

[55] I accept that there is no evidence that the effluent entered the local Matarawa Stream, nor that the environment was especially sensitive. No runoff was observed to be entering any waterways at that time.

[56] I note that the Faecal Coliforms and E Coli levels indicated that the ponding in the paddock was not caused by rainfall but rather over-irrigation of farm animal effluent. The total area of ponded dairy effluent was estimated to be approximately 200m^2, with a depth of up to 20cm at its deepest point. The Faecal Coliforms and E Coli levels of the unsealed earthen pond also indicated that the pond was receiving effluent runoff from the farm race.

[57] While the actual amount of the discharge cannot be quantified, the fact of the discharge has been admitted. I accept that the adverse environmental effects of the offending in this case are at a low level noting, however, that the application of effluent can have a cumulative effect on the surrounding environment and groundwater, and that temporary, potential and cumulative effects can all be taken into account under the RMA.[16]

Culpability

Prosecutor's submissions

[58] The prosecutor submitted that the offending came about due to the defendant's highly careless management of effluent. The two effluent storage ponds had been decommissioned in 2018. However, no steps were taken by the defendant to increase available effluent storage.

[59] The lack of appropriate effluent storage meant that the farm was entirely reliant on irrigation, even in adverse weather conditions. This was particularly problematic given that the sump pump worked off an automated float switch and would start whenever the sump reached a certain level.

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[16] Section 3, RMA.

[60] Mr Bucher submitted that the poor state of effluent infrastructure on the farm was causative of the offending, with inadequate effluent storage capacity on farm resulting in the defendant being heavily reliant on the spreading of effluent to pasture – even in adverse weather. There was, therefore, a significant risk of effluent ponding. The offending was entirely foreseeable.

[61] The prosecutor considered that the Court would be well aware that the management of a farm's dairy effluent system is an ever-present farming consideration. It is incumbent on farmers to make sure their effluent systems are fit for purpose, which includes ensuring that there is sufficient effluent storage capacity to ensure there are no unlawful effluent discharges. Mr Bucher submitted that it is reasonable to expect farm owners and managers to recognise the need to actively monitor effluent and infrastructure, including effluent storage facilities, on their farms.

Profit or benefit gained

[62] Mr Bucher acknowledged that the defendant did not profit directly from the offending. Nevertheless, he submitted that the defendant has indirectly benefitted from not expending money on upgrading its effluent infrastructure or installing adequate storage.

[63] Mr Bucher referred me to *Thurston*, where Miller J held:[17]

> [47] The offender's gains, as this case illustrates, include the avoided costs of preventing pollution. Polluters may also gamble, as Mr Thurston did, on regulators failing to identify and successfully prosecute them. In such cases deterrence may justify fines that exceed any gains that the offender hoped to make from any one incident. In an environmental context, it has been suggested, using the example of a postponed investment in water cleaning equipment, that:
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> > Criminal law is the only legal instrument available to force a potential polluter to make this investment, he will only do so (and thus avoid the crime) if the fine that will eventually be imposed multiplied by the probability of detection and conviction is higher than the money he can save by not investing in the equipment.

[17] At [47].

[64] He submitted that an important aspect of sentencing is to ensure that it is economically unattractive to offend in this way. Despite being aware that the ponds had been decommissioned, the defendant avoided being put to the significant cost of ensuring that there was appropriate storage available. This has come at the cost of the environment. The resulting penalty must, therefore, have sufficient sting that it is not simply seen as a licence fee to incentivise defendants to avoid incurring necessary effluent related expenses.

Defendant's submissions

[65] Ms Fu submitted that Pukeko Farms' culpability is better assessed as careless, leaning closer to inadvertency. The direct cause of the incident in this case was human error: Mr Ormsby failing to move the irrigator in time and over-irrigating the paddock.[18] While Mr Ormsby indicated that overnight irrigation had been necessary to avoid sump overflow, this appears to relate to stormwater from overnight rain that had been directed to the sump (instead of the diverter being used).[19] There is no evidence of effluent overflow from the sump.[20]

[66] Ms Fu accepted that the infrastructure for effluent storage (being the 25,000L sump and automatic float switch) was less than ideal and required careful irrigation management and spreading across the farm.[21]

[67] However, she submitted that the lack of other incidents in nearly 20 years indicated that the storage situation was not inherently high-risk given that production had remained at the same scale. She noted that whilst both ponds were officially decommissioned in 2018 following a council inspection, one pond had not been used for effluent storage since approximately 2006.

[68] Ms Fu submitted that the offending is best characterised as naïve and careless, with little room for human error or emergency circumstances.

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[18] Summary of Facts, at [39].
[19] At [33].
[20] At [32].
[21] At [48].

Profit or benefit gained

[69] Ms Fu submitted that Pukeko Farms made no profit from the offending, however accepted there was some indirect benefit in the sense that those funds which could have gone toward upgrading the infrastructure on the property were able to be redirected.

[70] At the time of the offending (and until 2023) Pukeko Farms was also responsible for managing another dairy farm, Miraka supply number 122. Although there had been an intention to replace the decommissioned storage ponds, a decision was made to invest the limited funds across both farms in upgrading the infrastructure at Miraka 122 because it had fewer facilities and a more pressing need due to the winter milking occurring there.

[71] The defendant contended that the redirection of funds to improving effluent systems on another farm is not an excuse but provides an important context.

Conclusion on culpability

[72] It is clear that Pukeko Farms and the Trust are not at arm's length, given that Mr Newton is both a director and shareholder of Pukeko Farms and a registered owner and trustee of the property. I am, therefore, unclear as to the extent to which Pukeko Farms could have influenced approval of expenditure, though that matter was not raised with me.

[73] Be that as it may, I find Pukeko Farms highly culpable, and that the failure to ensure its effluent systems were fit for purpose and that there was sufficient effluent storage capacity to prevent unlawful effluent discharges was highly careless. I do note Ms Fu's acceptance that there was some indirect benefit.

[74] There was a clear need to have proper infrastructure in place to minimise the risk of failure, and with insufficient storage the contract milker was left to operate between a rock and a hard place with an operating system provided to him that required "constant vigilance".

[75] As the adverse effects of the discharge of effluent are well known, the steps that need to be taken to ensure that illegal discharges do not occur are important. I accept that it is well-known that irrigators need to be regularly checked, and the absence of any fail-safes further increases the need for regular supervision. The system relied on close supervision of the irrigator's operation, and after rainfall was clearly and obviously essential. The defendant should have been alive to the risks and the potential for problems to arise.

[76] I do not accept the defendant's contention that it was "naive and careless" and instead agree with the prosecutor that the offending can be characterised as highly careless, an accident waiting to happen – particularly given the weather conditions in the Waikato. Further, there was a clear lack of responsibility shown by the defendant by essentially allowing Miraka 123 to operate with inadequate infrastructure for financial reasons. That also tends towards a real want of care. I note that that investment in suitable infrastructure had finally occurred by April 2025.

Starting point

Prosecutor's submissions

[77] Mr Bucher noted that the different levels of seriousness set out in *Waikato Regional Council v GA & BG Chick Ltd* (***Chick***) provide some guidance to assessing and distinguishing between different levels of offending relating to unlawful discharges of dairy farm effluent.[22] He submitted that while the *Chick* levels remain relevant in terms of assessing the seriousness of the offending, however, the corresponding level of penalty must now be higher than the levels suggested in that

[22] *Waikato Regional Council v GA & BG Chick Ltd* (2007) 14 ELRNZ 291 – 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.

case, with this approach having been confirmed by the Courts on numerous occasions.[23]

[78] Mr Bucher submitted that the defendant's culpability falls within level 2 of *Chick,*[24] and that level 2 of *Chick* has been described as attracting starting points in the range of $40,000 to $80,000,[25] or $50,000 to $100,000.[26]

[79] He observed that recent sentencing decisions have cited the increasing concern about the incidence of dairy effluent offending and the need for deterrence, both particular and general.[27] In particular, the Prosecutor emphasised comments made by the Court in *Nagra Farms:*[28]

> 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.

[80] Mr Bucher also noted that in *Crouch,*[29] Judge Dickey adopted the observations in *Nagra Farms* that "starting points for dairy effluent offending need to be elevated to better relate to the maximum penalty available", and in *Cazjal Farms*, Judge Kirkpatrick also recognised the Court signalling some upward movement of starting points as dairy farm offending continues to come before the Court.[30]

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[23] See for example: *Thurston and Tawera Land Company Limited v Manawatū-Wanganui Regional Council* HC Palmerston North, CRI 2009-454-24, 27 August 2010; *Waikato Regional Council v Cazjal Farms & Ors* [2023] NZDC 10973 at [18].
[24] *Waikato Regional Council v GA & BG Chick Ltd* (2007) 14 ELRNZ 29.
[25] *Taranaki Regional Council v Vernon* [2018] NZDC 14037; *Tasman District Council v Langford* [2018] NZDC 10793; *Waikato Regional Council v Torr* [2023] NZDC 28135, at [18].
[26] *Waikato Regional Council v Brunt* [2021] NZDC 1714, at [11].
[27] *Watt v Southland RC* [2012] NZHC 3062, *Yates v Taranaki RC*, HC New Plymouth, CRI 2010-443-008, 14 May 2010.
[28] *Waikato Regional Farms v Nagra Farms Limited* [2019] NZDC 2382 at [79] – [80].
[29] *Waikato Regional Council v Crouch* [2019] NZDC 11517 at [72].
[30] *Waikato Regional Council v Cazjal Farms & Ors* [2023] NZDC 10973 at [62].

[81] Mr Bucher referred to the following cases as being comparable to this case: *Waikato Regional Council v Te Korunui Farms* (***Te Korunui Farms***);[31] *Waikato Regional Council v Cazjal Farms & Ors* (***Cazjal Farms***),[32] upheld in *Walling v Waikato Regional Council* (***Walling***);[33] *Waikato Regional Council v ANP Farms* (***ANP***

[31] *Waikato Regional Council v Te Korunui Farms* [2023] NZDC 4181 - two charges relating to discharges of dairy effluent to water. Effluent ponds full to capacity, sand trap at a farm underpass was full. Moderate adverse effects. Localised acute effects in 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.

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

[33] *Walling v Waikato Regional Council* [2023] NZHC 3437 - Mr Walling (the individual defendant in Cazjal Farm) appealed his sentence to the High Court. On appeal, the Court found that the starting point of $100,000 was appropriate and the appeal was dismissed. It found that the offending was serious, noting that the contaminant entered water and that the affected waterways were significant for recreation, to neighbours, and to iwi. The environmental effects were 'notable', and the defendant knew the risks associated with his actions but did not address them. The Court also observed that it is important to ensure that fines in this context are significantly large to avoid pollution becoming a cost of business, highlighting the importance of the sentencing principles of deterrence and denunciation.

Farms);[34] *Manawatū-Whanganui Regional Council v Phillips*;[35] and *Waikato Regional Council v John Lockwood* (***Lockwood***).[36]

[82] Mr Bucher submitted that those cases show a minimum starting point of $70,000 for offending related to discharge from irrigators; a point contested by Ms Fu.

[83] Mr Bucher submitted the present offending shares similarities with the offending in *Te Korunui Farms*, where a starting point of $80,000 was imposed in respect of a discharge from an effluent storage pond; however, is more serious given that the offending was caused by the substandard effluent infrastructure on farm. He further submitted that here there is a direct link between the substandard infrastructure and the offending with the defendant having benefited financially by not undertaking effluent infrastructure upgrades.

[84] Mr Bucher also noted that the offending shares some similarities to the first unlawful discharge in *Lockwood* where a hydrant had broken causing significant ponding. In that case, the gravity of the offending and the culpability of the defendant were assessed as moderately serious, with the Court noting that, while not deliberate, the causes of the discharges demonstrated at least a reluctance and possibly a real want of care to address the infrastructure deficiencies on a timely basis. A starting point of

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

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

[36] *Waikato Regional Council v Lockwood* [2020] NZDC 24932 - two charges of discharging dairy effluent to land. The gravity of the offending and culpability of the defendant 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.

$75,000 was imposed in respect of that discharge. Notably, the defendant in that case was an individual and therefore subject to a lower fine than the defendant in this case.

[85] Taking into account the aggravating features of the offending, the defendant's level of culpability and the cases cited, Mr Bucher submitted that a starting point in the region of $85,000 to $90,000 is warranted.

Defendant's submissions

[86] Ms Fu accepted that the corresponding penalties for the bands in *Chick* are now higher than the fines set out in the *Chick* decision itself, with the Courts having recognised an increase in the starting point as being appropriate.

[87] Ms Fu referred me to the following cases as being more comparable to the present offending: *Bay of Plenty Regional Council v Nomar Farms Ltd* (***Nomar Farms***);[37] and *Waikato Regional Council v Torr* (***Torr***).[38]

[88] Ms Fu accepted that the offending in this instance most appropriately falls within Band 2 of Chick, noting that this was a one-off action resulting from carelessness, with little to moderate effect on the environment.

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[37] *Bay of Plenty Regional Council v Nomar Farms Ltd* [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.

[38] *Waikato Regional Council v Torr* [2023] NZDC 28135 - discharge of farm animal effluent onto land in circumstances where it may enter water and breach of an abatement notice. There were five or six application areas up to 40 or 50 metres in diameter. The Court noted that the generic adverse effects of discharges of dairy effluent are well recognised, and there would have been at least a potentially cumulative adverse effect on groundwater. The Court said that on the most generous interpretation of the facts of Torr's management of the irrigation process, it had been so inadequate as to fall somewhere between careless and reckless, and it displayed a serious want of care. There was at least a moderately high degree of culpability. The offending fell somewhere in the cusp between level 2 and 3 of *Chick*. Regarding the abatement notice offence the Court stated that while the abatement notice had been extremely wide in its scope in that it simply prohibited Torr from unlawfully discharging effluent to land, Torr had not appealed that notice nor challenged its validity. He had been aware at the time that he was operating under that notice. Further, the Court disagreed that Torr was being punished "twice". The offence of breaching an abatement notice was not the unlawful discharge itself, but rather the breaching of the notice. A starting point of $50,000 was adopted for the s 15(1)(b) offence and $20,000 for the breach of abatement notice.

[89] Regarding the prosecutor's reliance on *Te Korunui* and *Lockwood*, Ms Fu accepted that as in those cases, there was some vulnerability inherent in the effluent management system, although not to the same extent.

[90] Ms Fu submitted that the offending in this case was less serious than in *Te Korunui*, distinguishing aggravating features of *Te Korunui* including a direct discharge to a waterway and multiple instances of failure to repair key elements of infrastructure (i.e. the pump), as well as failure by the on-site staff to perform farm maintenance (i.e. cleaning out the sump) for a number of months.

[91] Ms Fu submitted the case is distinguishable from *Lockwood*, which again involved failure to fix broken equipment being directly causative of the offending, as well as multiple instances of deep ponding across different paddocks, evidence showing previous instances of overapplication, and subsequent failure to remediate effluent ponding after the defendant was notified. She noted that these factors are not present in the current case; however, it was accepted that whilst the cause of the discharge was the effluent system, improvements could be made to capacity.

[92] In counsel's submission, the facts of this case are closer to *Nomar Farms* and *ANP Farms*[39], being errors of overapplication from irrigators. Like *Nomar Farms*, this was in effect a one-off mistake made by the person on site whereby overapplication from an irrigator occurred. Both also featured similar effects on the environment, although *Nomar Farms* also involved a discharge to surface water.

[93] On that basis, and noting that this matter does not require consideration of multiple charges and/or an uplift for an abatement notice as in some of the cited authorities, Ms Fu submitted an appropriate starting point is in the realm of $60,000 to $65,000.

Conclusion on starting point

[94] I have found that the adverse environmental effects of the offending in this case are at a low level, noting however that the total area of ponded dairy effluent was

[39] *Waikato Regional Council v ANP Farms Limited* [2024] NZDC 13550.

estimated to be approximately 200m^2 with a depth of up to 20cm at its deepest point, and that the application of effluent can have a cumulative effect on the surrounding environment and groundwater.

[95] I have considered the cases to which I was referred and the sometimes-subtle factual distinctions between them. I note the range of starting points from $40,000 at the low end to $100,000 at the upper end and the Court's direction of travel on these matters. I place the offending somewhere in the middle to higher end of Level 2 of *Chick*. None of those cases is entirely on all fours. However, having reviewed all of the cases cited, I am satisfied that an appropriate starting point in circumstances where the manager of the farm was highly careless, had failed to meet its responsibilities to manage the discharge of effluent, to address the infrastructure deficiencies in a timely manner and to ensure its effluent systems were fit for purpose, while noting the low level of environmental harm, is $75,000.

Aggravating and mitigating factors personal to the defendant

[96] There are no aggravating features personal to the defendant and the prosecutor does not seek an uplift.

[97] Both parties agreed that the defendant entered a guilty plea at the first reasonable opportunity and that a discount of up to 25 percent is available to reflect this. I agree a 25 percent discount is warranted.

[98] The prosecutor also accepted that there is no history of enforcement action being taken by the Council against the defendant and that the defendant may be entitled to credit to reflect its prior good character, suggesting that a discount of five percent might be seen as being within range.

[99] Ms Fu submitted that Pukeko Farms has had no prior convictions or history of significant incidents over its near 20-year history, has always been cooperative and communicative with Council on prior inspections, and complied with directives such as decommissioning the ponds in 2018. Further, that Pukeko Farms had been cooperative throughout the investigative and prosecution process as well as the associated enforcement processes undertaken by Council in concurrence with this

prosecution. Ms Fu noted that on being notified of this discharge, Pukeko Farms immediately hired a farm consultant to action the necessary changes and arranged for a drop test to be carried out on the drainage pond that received the runoff from the farm race.

[100] In addition, as part of its commitment to compliance, Pukeko Farms has since invested significant amounts in upgrading the infrastructure on the farm. A farm consultant was engaged to assist on development of the effluent system, including exploration of different storage options and conducting an effluent system WOF. An above ground flexi-tank storage, piping and pump system was installed, and the drainage pond by the cowshed was confirmed to be suitable for usage as a storage area for effluent. Planning and installation of this additional infrastructure was completed just prior to the April 2025 inspection, and an effluent management plan had been drafted in preparation for the beginning of the milking season in August 2025. Evidence was provided to support those submissions.

[101] I am not minded to give credit for co-operation or environmental responsibility post-offending as it is expected that defendants will cooperate with the Council in its inspections and act promptly on recommendations. Further, demonstrating environmental responsibility and ensuring adequate effluent infrastructure on the farm is a reasonable expectation of farming best practice. The measures taken by the defendant as described above may have included the investment of significant amounts in upgrading the infrastructure, but credit should not be given for getting to the baseline of necessary infrastructure on farm. As Mr Bucher submitted, we would not be here had that investment occurred in 2018.

[102] I accept a discount of 5 percent for prior good character is warranted. No other defendant-specific mitigating factors were advanced.

Financial capacity

[103] Section 342A came into force on 20 August 2025 and applies to Pukeko Farms, notwithstanding the fact that its sentencing hearing took place prior to the provision coming into force.

[104] By memorandum dated 11 September 2025 the defendant sought leave to potentially file further submissions in respect of financial capacity as a result of the legislative changes to the RMA, including the addition of s 342A which removed the ability for insurers to indemnify the insured for RMA fines. Counsel advised that they were in the process of confirming instructions on whether the defendant's position in respect of financial capacity had significantly changed and requested that any pending judgment be held back from release whilst instructions were confirmed. The prosecutor subsequently advised the Court that it remained neutral in respect of the defendant's application.

[105] As a result, and in light of the Court's duty to take into account a defendant's financial capacity pursuant to ss 40 – 42 of the Sentencing Act 2002, I granted leave for the defendant to file further submissions (and supporting evidence) in respect of financial capacity and for the prosecutor to file submissions (and any necessary supporting evidence) in response.

[106] On 20 October 2025, the defendant filed supplementary submissions on financial capacity and confirmed that the defendant remains able to pay a fine without coverage, provided that payment is made by way of instalments over a three-year period if undue financial hardship is to be avoided. In the opinion of chartered accountant Callum Graham Passey (who provided affidavit evidence in support), an amount in the range in question ($40,000-$70,000) can be paid over a period of three years, involving 36 equal (monthly) instalments.

[107] Counsel submitted that the ordinary position on fines imposed is that they are to be paid within 28 days of being ordered.[40] However, an order may be made to allow a greater period for payment, and/or payment to by instalments.[41]

[108] Accordingly, Counsel requested that Pukeko Farms be allowed to make payments of any fine instalments over three years.

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[40] Criminal Procedure Act 2011, s 383(1) and Summary Proceedings Act 1957, s 80.
[41] Summary Proceeding Act 1857, s 81(1).

[109] By memorandum dated 22 October 2025, the prosecutor confirmed it accepted that the circumstances warrant such an order being made, that there is no indication that the defendant is unable to pay a fine, nor that payment by instalments would undermine any of the purposes or principles of sentencing.

[110] Accordingly, the prosecutor does not oppose an order that the fine imposed be payable by instalments over a three-year period. The prosecutor also advised that it does not seek to be heard further on this matter unless required by the Court.

[111] The Court will make the order as requested.

Outcome

[112] I have applied the two-stage approach to sentencing outlined in *Moses v R*[42] and as clarified in *Mo'unga v R.*[43]

[113] I have convicted the defendant and impose a fine of $52,500.

[114] Under s 81(1)(a) of the Summary Proceedings Act 1957, I direct that the fine imposed is payable by instalments over a three-year period.

[115] In terms of s 342(2) of the RMA, I order that 90% of the fine be paid to the Bay of Plenty Regional Council.

[116] I also order the defendant to pay court costs of $143 on each charge and solicitor fees of $113.

Judge S M Tepania
District Court Judge | Kaiwhakawā i te Kōti ā-Rohe
Date of authentication | Rā motuhēhēnga: 23/01/2026

[42] *Moses v R* [2020] NZCA 296, at [45] to [47].
[43] *Mo'unga v R* [2023] NZHC 1967, at [27] to [39].