

**IN THE DISTRICT COURT
AT HAMILTON**

**I TE KŌTI-Ā-ROHE
KI KIRIKIROA**

**CRI-2025-057-000175
[2026] NZDC 8410**

WAIKATO REGIONAL COUNCIL
Prosecutor

v

YUBRAJ SUBEDI
Defendant

Hearing: 30 March 2026 via VMR
Appearances: A McConachy for the Prosecutor
P Lang for the Defendant
Judgment: 22 April 2026

SENTENCING DECISION OF JUDGE MJL DICKEY

Introduction

[1] The defendant, Mr Yubraj Subedi, appeared for sentencing for one charge of permitting the discharge of a contaminant (namely farm animal effluent) from a stormwater diversion onto land in circumstances where it may enter groundwater, contravening ss 15(1)(b), 338(1)(a) and 340(1)(a) of the Resource Management Act 1991 (**RMA**).

[2] In a decision dated 31 October 2025,¹ I gave a Sentence Indication Decision that, for the reasons set out in full in that decision, I would convict Mr Subedi and impose a starting point of \$70,000 if he were to plead guilty to the charge.

Financial capacity

[3] The Sentence Indication was originally rejected due to Mr Subedi's financial position, particularly his inability to pay a fine as per the Sentence Indication. On 26 March 2026, Mr Lang advised the Court that Mr Subedi's employment situation had changed over the past 12 months, and his financial position will now allow him to pay a fine over time. The Sentence Indication has now been accepted and Waikato Regional Council (**WRC**) has agreed it is appropriate that Mr Subedi be sentenced in accordance with the Sentence Indication.

[4] Accordingly, I adopt the starting point of \$70,000 for the charge and convict Mr Subedi. As set out in the Sentence Indication, I allow a discount of 20 per cent for his guilty plea and a further 10 per cent discount to recognise his lack of a prior relevant criminal history.

[5] The only matter that remains in dispute relates to the time that should be allowed for Mr Subedi to pay the fine. For WRC, Ms McConachy suggested that the fine should be paid over three years, while Mr Subedi seeks to pay the fine over five years.

Statutory framework

[6] Section 81 of the Summary Proceedings Act 1957 (**SPA**) provides:

81 Time to pay or payment by instalments

(1) If a fine is payable, the court may—

(a) make an order doing either or both of the following:

(i) allowing a greater time than 28 days for payment:

(ii) allowing payment to be made by instalments; or

¹ *Waikato Regional Council v Subedi* [2025] NZDC 25212.

(b) direct the Registrar to determine whether to enter into an arrangement with the defendant allowing greater time to pay or to pay by instalments, or both, under section 86.

[7] Mr Subedi has stated financial reasons for seeking an order under s 81 of the SPA. Accounting advice sought by Mr Subedi confirmed that he will be able to pay the fine if he has “a reasonable period” within which to make a series of payments. Following this advice, Mr Subedi has requested that a period of five years be allowed to pay the fine.

[8] The final penalty outcome is a fine of \$49,000. Considering the parties’ submissions and Mr Subedi’s current financial position, I determine that the fine should be paid in instalments over a period of four years.

Outcome

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

[10] I have convicted the defendant. I impose a fine of \$49,000 to be paid in instalments over four years.

[11] 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.

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

[13] The suppression order prohibiting publication of the Sentence Indication Decision is removed. The Sentence Indication Decision is attached to this decision.

Judge MJL Dickey

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

Date of authentication | Rā motuhēhēnga: 22/04/2026

² *Moses v R* [2020] NZCA 296 at [46].

NOTE: PUBLICATION OF THE JUDGMENT OR OF THE REQUEST FOR A SENTENCING INDICATION IN ANY NEWS MEDIA OR ON THE INTERNET OR OTHER PUBLICLY ACCESSIBLE DATABASE IS PROHIBITED BY S 63 OF THE CRIMINAL PROCEDURE ACT 2011 UNTIL THE DEFENDANT HAS BEEN SENTENCED OR THE CHARGE DISMISSED. SEE

<http://www.legislation.govt.nz/act/public/2011/0081/latest/DLM3865734.html>

**IN THE DISTRICT COURT
AT HAMILTON**

**I TE KŌTI-Ā-ROHE
KI KIRIKIROA**

**CRI-2025-057-000175
[2025] NZDC 25212**

**WAIKATO REGIONAL COUNCIL
Prosecutor**

v

**YUBRAJ SUBEDI
Defendant**

Hearing: 4 August 2025 – via VMR
Appearances: A McConachy for the Council
P Lang for the Defendant
Judgment: 31 October 2025

SENTENCE INDICATION OF JUDGE MJL DICKEY

Introduction

[1] Mr Yubraj Subedi has requested a sentence indication in relation to one charge that on 4 June 2024 he permitted the discharge of dairy effluent from a stormwater diversion onto land in circumstances where it may enter groundwater.

[2] The maximum penalty for the offending is a fine of \$300,000 or a prison term of no more than two years. Ms McConachy for the prosecutor submitted that an appropriate starting point is \$80,000, while Mr Lang for the defendant submitted a starting point of between \$40,000-\$45,000 is appropriate.

[3] A summary of facts (**SOF**) was agreed for the purposes of the sentence indication.

Background

Contract milker for Sunrise Dam Limited

[4] In May 2023 Mr Yubraj Subedi was employed as a contract milker by Sunrise Dam Limited, the owner of 102 Aitken Road, Tuakau. Mr Feather is the sole director of Sunrise Dam Limited.

[5] Under the contract milker's agreement the Farm's owner is responsible for the provision and maintenance of the dairy effluent infrastructure system. Mr Subedi managed the day to day operation of that system with the assistance of two others – his second-in-charge and a junior farm worker.

Abatement notice

[6] An Abatement Notice was served on Sunrise Dam Limited and Mr Feather on 22 June 2022. The Notice addressed the unlawful discharge of effluent from the solids pond at the Farm (**2022 Abatement Notice**).

The Farm

[7] The Farm comprises 180 hectares, with the Waikato River bordering the northern side of the property, and encompasses land on both sides of Aitken Road. A crossing point is used to move stock across Aitken Road, between the dairy shed and feed pad infrastructure and the northwestern sector of the Farm.

Effluent disposal

[8] The Farm operates its dairy effluent system under the permitted activity rules of the Waikato Regional Plan, having done so since 2004. Rule 3.5.5.1 of the Regional Plan allows for discharges of farm animal effluent onto land subject to certain conditions.

[9] The effluent management infrastructure 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. The two ponds actively used at the time of Council inspections are referred to as the Solids Pond and Primary Liquid Pond. The third pond is unused and referred to as the secondary liquid pond.¹

[10] Farm animal effluent generated at the dairy shed yard and eastern entry/exit race drains through a sand-trap located in the nearby paddock, to a small sump to be pumped to the Primary Liquid Pond. It is an unlined, clay pond and has a capacity of approximately 4,250m³. There are three inlets into this pond (from the Solids Pond, from the sump and from the dairy shed washdown water). It contains one pump that pumps effluent to the travelling irrigator for spreading.

[11] Farm animal effluent generated in the stock holding yards and feed pad is directed into the unlined earthen Solids Pond. This pond also collects effluent solids that are mechanically scraped directly off the end of the feed pad. The feed pad can be flood-washed with recycled liquid effluent. The Solids Pond has a capacity of approximately 730m³ and an unknown sealing standard. As the level of the Solids Pond rises, a transfer pipe allows liquid effluent to flow into the Primary Liquid Pond. If the Solids Pond decant pipe becomes blocked it would rapidly become full.

[12] Blockages of the transfer pipe can occur from time to time, and are fixed through a process of inserting a long section of flexible tubing into the decant pipe between the Ponds, and thrusting the pipe clear of solids to allow liquid to move to the Primary Liquid Pond. Unblocking the pipe between the Solids Pond and the Primary

¹ As of 31 October 2024 the secondary liquid pond adjacent to the primary liquid pond has been emptied and decommissioned.

Liquid Pond is an exercise that Mr Subedi usually undertook himself, with the assistance of another farm worker holding him to remove the risk of falling into the Solids Pond.

[13] The Farm has a stormwater diversion that allows clean water from the cowshed roof and stock holding yards to be directed away from the effluent system. The inlet of the diversion is located within a catchpit which is covered with a steel grate that sits flush with the yard surface between the two sections of feed pad. When not in operation, a gate valve within the catchpit is manually pulled open to enable stormwater to discharge onto the adjacent paddock. When the stormwater valve is closed, the catchpit fills from the yard wash, debris and effluent to become level with the grate, resulting in the grate valve being obscured. In this scenario any stormwater, effluent and wash water will instead flow down the remainder of the feed pad and into the Solids Pond.

[14] For clean stormwater to be diverted, the catchpit must be completely clean of effluent. Also, the pipe opening within the catchpit must be cleared of solids in order for the valve to be closed, and effectively stop, any subsequent flow of contaminated water. Due to its location, it is not possible to see the valve when the catchpit is full of effluent.

[15] A surface water drain runs along the length of Aitken Road, adjacent to the feed pad, feed bunkers and effluent storage ponds, directing surface water run-off to the Waikato River approximately 1km downstream. This roadside drain is culverted underneath the farm entrance and stock crossing.

Circumstances of the alleged offending

[16] In late May 2024 Mr Subedi took time off.

[17] On 27 May 2024 Mr Subedi received a call from one of the workers advising that the Solids Pond was at a very high level and, if the rain continued² or if there was

² Rainfall data for the period 1-31 May 2024 from the Whangamarino Weather station (16.5km east of the farm) showed 95.5mm of rainfall, with a total of 36mm falling between 24-29 May. SOF at [43].

a washdown of the hard surfaces around the dairy shed and feed pad, there was a serious risk of the Pond overflowing.

[18] During the previous week there had been no irrigation of effluent from the effluent pond system because the irrigator was not working and had not been repaired and returned.

[19] The Solids Pond had risen to a high level because there was a blockage between that pond and the Primary Liquids Pond. There was a piece of solid ground available to stand on to clear the pipe, but Mr Subedi was not willing to allow someone else to clear that blockage in his absence.

[20] Mr Subedi was aware that the clean water diversion system could be operated to reduce the amount of water flowing from the milking shed's standoff pad to the Solids Pond. Rather than allow the Solids Pond to overflow and discharge to a drain that leads to the Waikato River, Mr Subedi directed that the diversion should be opened until the rain stopped. He knew that the diversion leads to the paddock alongside the milking shed, and that the paddock would prevent any runoff from the diversion from reaching surface water.

[21] The diversion was opened, reducing the amount of water and effluent that ran to the Solids Pond, and was left open until the rain ended.

[22] The morning milking had been done at the time Mr Subedi gave the direction to open the diversion, so the effluent on the standoff pad had been diluted by the washwater and rain. However, there was effluent directed to the pasture that would have ponded before soaking away.

[23] What was unknown to the employees on the Farm, and to the Farm's owner, was that the slide plate that opens and closes the diversion had not returned far enough to fully close the diversion. An opening at the bottom of the discharge pipe remained active until the discovery of a low level discharge, from the diversion system to pasture, when Council officers inspected the Farm on 4 June 2024.

[24] It was not possible to tell whether the diversion side plate was fully closed or not by looking at the diversion pit, because the top of the plate sits below the level of effluent in that collection pit. The discharge of effluent through the diversion system was not noticed until 4 June, because there was no ponding in the paddock visible from the milking shed.

Council inspection

[25] On 4 June 2024 Council compliance monitoring staff arrived at the Farm to complete a routine compliance monitoring inspection of the farm effluent system and compliance with the 2022 Abatement Notice.

[26] When inspecting the Solids Pond they observed that the pond wall was eroding away under the feed pad. The Pond contained a high proportion of thick effluent solids and there was very little visible freeboard. Staff then inspected the Primary Liquid Pond, which had approximately 1-1.5 metres of freeboard available for effluent storage. They observed there was thick layer of solids at the northern end of this pond.

[27] After inspecting the dairy shed and pond infrastructure, the officers inspected the stormwater diversion outfall from the yard. Although liquid effluent was not visibly ponded at this location, the ground was very soft underfoot. It was evident a significant amount of farm animal effluent had been discharged to land from this outfall. Liquid effluent and solids travelled downhill for approximately 35-40 metres across a paddock. The maximum width of the discharge area was estimated as covering 20 metres, with a depth varying between 1-10cm throughout.

[28] Samples of the liquid effluent were taken at various locations – stormwater diversion outfall (A); in the main area where ponding was deepest (B); and at the far end of the runoff a single sample was taken (C). The Council was later informed that the stormwater diversion was opened in the afternoon on 27 May, about when the cows were milking. It was raining. The gate valve was improperly closed about 5pm, which allowed effluent and contaminated wastewater to continue to discharge through the stormwater pipe.

Sentencing Framework

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

[30] The High Court in *Thurston v Manawatu-Wanganui Regional Council (Thurston)* provides a useful summary of the approach to be taken to sentencing.³ This includes the offender's culpability; any infrastructural or other precautions taken to prevent discharges; the vulnerability or ecological importance of the affected environment; the extent of the environmental damage, including any lasting or irreversible harm and whether it was of a continuing nature or occurred over an extended period of time; deterrence; the offender's capacity to pay a fine; disregard for abatement notices or Council requirements; and cooperation with enforcement authorities and guilty pleas.

Effects on the environment

[31] The SOF records:⁴

Farm animal effluent contains a range of contaminants such as pathogenic (disease causing) micro-organisms, nitrogen, ammonia and phosphorus, that have an adverse effect on both surface water and groundwater quality through the leaching process. The samples taken and analysed confirmed high levels of these contaminants.

Ponding and the saturation of soil with farm animal effluent creates hydraulic conditions that pose a high risk of a direct loss of untreated or partially treated effluent to groundwater. It can lead to effluent bypassing the soil matrix and flowing preferentially down macropores (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.

[32] Attached to the SOF was an expert report from Mr Robert Dragten regarding land treatment of farm dairy effluent. He stated:⁵

Microbes and nitrate within drinking water for humans or stock have potential health implications. Microbes that can cause disease such as campylobacter and cryptosporidium in water supplies are a serious health concern for both humans and animals. Nitrates and microbes in drinking water can be a serious concern for human and animal health, and high levels of nitrate and microbial

³ *Thurston v Manawatu Wanganui Regional Council* HC Palmerston North CRI-2009-454-24, 27 August 2010 at [41].

⁴ SOF at [71] – [72].

⁵ SOF at Appendix C, Robert James Dragten *Land Treatment of Farm Dairy Effluent*, dated 11 April 2018 at [16] – [17].

contamination have been linked to a disease called methaemaglobinaemia or “blue baby syndrome” in humans.

The over-application of dairy effluent can result in contaminants from that effluent, or contaminants that would otherwise have been taken up by plants, entering groundwater. Groundwater provides the “base flow” for surface waterways during periods between rainfall. Contaminants that enter groundwater may therefore eventually enter surface water, particularly so for nutrients such as nitrogen.

[33] Also attached to the SOF was an expert report from Mr William Vant regarding potential adverse effects of dairy shed effluent in rivers in the Waikato Region. He states:⁶

It is clear that the contaminant levels in dairy shed effluent (and sewage) are many times higher than those at which adverse effects can occur in rivers and streams. As a result, unless an input of effluent is very highly diluted after it enters a river, it can cause a variety of adverse effects there.

[34] Ms McConachy submitted the discharge occurred near a surface water drain flowing into the Waikato River, a sensitive receiving environment. The Waikato River is of ecological and cultural significance and already faces water quality pressures from cumulative contaminant loads. Any discharge in such a vulnerable and already “overloaded” area increases the long-term environmental degradation.

[35] Ms McConachy submitted that the discharge spread over a significant area, and contained high levels of faecal contamination. Laboratory tests confirmed severe effluent characteristics including *E. coli* levels of 350,000 cfu/100mL, BOD of 4,300 mg/L, and total nitrogen and suspended solids at levels likely to cause ecological harm. She highlighted the expert report of Mr Dragten and the risk posed to groundwater.

[36] Ms McConachy submitted the discharge continued for an unknown, but plainly prolonged, period. It commenced when the valve was opened, on about 27 May 2024, and continued until the valve was correctly closed. She submitted the extent of surface ponding, and the severity of the contamination evidenced by the sampling results,

⁶ SOF at Appendix D, William Nesbit Vant *Potential adverse effects of dairy shed effluent in rivers in the Waikato Region*, dated 25 July 2016 at [5].

indicate that this was not a momentary discharge but, rather, a discharge that persisted over some time.

[37] Mr Lang submitted that no effluent or water containing effluent reached surface water as a result of the discharge from the diversion system. The nearest surface water was a farm drain that is well separated from the nearest part of any ponded effluent.

[38] Mr Lang accepted that the discharges to pasture would have increased the prospect of contaminants leaching through to groundwater, but beyond that submitted that the extent of environmental harm is unknown.

[39] Mr Lang submitted that, with the low rate of escape of effluent from the diversion pipe, most of the run-off from the dairy shed and the feed pad after closure of the diverter would have gone in the usual way through the pond system.

Finding on effects

[40] Analysis of the liquid effluent confirmed high levels of contamination consistent with farm animal effluent.

[41] While no effluent, or water containing effluent, reached surface water as a result of the discharge from the diversion system, a significant amount of farm animal effluent had been discharged to land, travelling 35-40m across a paddock. It was 20m wide with a depth of between 1-10cm throughout.

[42] Over-irrigation of dairy effluent can result in a high risk of direct loss of contaminants leaching through to groundwater. Such discharges have known potential adverse effects on groundwater. Those contaminants may, therefore, eventually enter surface water, particularly so for nutrients such as nitrogen.

[43] I would find that the adverse effects of the discharge on the groundwater are likely to have been between low and moderate. It is important that the implications of over-application of dairy effluent to land not be minimised because the effluent did not directly enter water. While a direct discharge to water is serious, so are discharges

to land – especially if there is over-application resulting in bogging or the effluent sitting in a paddock for some time. That is why the permitted activity rules in the Regional Plan are so directive in terms of what is permitted for application of effluent to land.

Culpability

Prosecutor's submissions

[44] Ms McConachy accepted that the offending was not deliberate. However, Mr Subedi knew there was effluent present on the stock holding yard. He was aware that activating the stormwater diversion would result in effluent discharging through it. She submitted he must, therefore, have been aware of the significant risk of effluent ponding in the paddock.

[45] Ms McConachy submitted that Mr Subedi's decision to open the diversion, without adequate supervision or follow-up, was the operative cause of the discharge. The offending was entirely foreseeable and could have been avoided. She submitted Mr Subedi's actions demonstrated a cavalier attitude towards effluent compliance.

Defendant's submissions

[46] Mr Lang submitted Mr Subedi was frank with Council officers, admitting that he suggested the opening of the diversion – but that was not with the intention of producing a situation that breached the District Plan permitted activity rules. The action was taken with the intention of minimising any harm that might come from the situation at the Farm as reported to him.

[47] Mr Lang submitted Mr Subedi was not reckless about the outcome of his actions. He knew that some effluent would be directed to the paddock, but he also knew the milking was over, the cows were off the pad, and there had been rainfall on the yard before the diversion was opened. The hard stand areas would already have been partially cleaned before the diversion was opened. His actions were intended to minimise harm in a difficult situation while he was away from the Farm. He genuinely

believed that the action taken was the best option available – for the environment and for the safety of his employees.

Finding on culpability

[48] The Farm’s owner is responsible for the provision and maintenance of the dairy effluent infrastructure system. Mr Subedi was responsible for day-to-day management.

[49] I received no submissions about the adequacy of the infrastructure system, but observe that a system relying (in part) for its efficient operation on regular clearance of the pipe between the Solids Pond and Primary Liquid Pond is both vulnerable to human error, and dependent on ‘hands on’ cleaning.

[50] The level of the Solids Pond and rainfall contributed, in my view, to the decision to open the stormwater diversion. Other contributing factors were Mr Subedi’s absence from the Farm, that the irrigator had broken down in the week prior to Mr Subedi going away, and the on-site workers’ ignorance of what needed to be done and how to properly close the diversion.

[51] The prosecutor emphasised that Mr Subedi knew what opening the diversion would mean, submitting, therefore, that the alleged offending was entirely foreseeable and could have been avoided. She characterised Mr Subedi’s attitude as ‘cavalier’. That was not accepted by Mr Lang. He submitted that Mr Subedi’s actions were intended to minimise the harm while he was away.

[52] I find that a combination of circumstances led to the offending, and that most of those circumstances were in Mr Subedi’s power to have addressed before he went away:

- (a) the height of the Ponds – in light of the broken-down irrigator the Pond height could have been lowered by hiring a replacement irrigator or contracting for the removal of some of the effluent; and
- (b) training the on-farm workers in how to properly open and close the drainage hatch.

[53] As to the need to regularly clear out the pipe between the Solids Pond and the Primary Liquid Pond, this situation needs to be remedied so it is not dependant on someone having to put themselves at risk to remove blockages. That is a matter for the Farm's owner.

[54] I would find that Mr Subedi was highly careless, but not cavalier.

Starting point

Prosecutor's submissions

[55] Different levels of seriousness relating to unlawful discharges of dairy farm effluent, set out in *Waikato Regional Council v GA & BG Chick Ltd (Chick)*,⁷ provide some guidance to assessing and distinguishing between different levels of offending. The *Chick* levels remain relevant in terms of assessing the seriousness of the offending. However, the corresponding level of penalty must now be higher than the levels suggested in that case. This approach has been confirmed by the Courts on numerous occasions.⁸

[56] Ms McConachy highlighted that in several recent sentencing decisions the Court has cited increasing concern about the incidence of dairy effluent offending and the need for deterrence.⁹

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

⁸ *Thurston; Waikato Regional Council v Cazjal Farm Ltd* [2023] NZDC 10973 at [18] (*Cazjal Farm*).

⁹ *Watt v Southland Regional Council* [2012] NZHC 3062; *Yates v Taranaki Regional Council* HC New Plymouth CRI-201-443-008, 14 May 2010; *Waikato Regional Council v Nagra Farms Ltd* [2019] NZDC 2382 at [79] – [80]; *Waikato Regional Council v Crouch* [2019] NZDC 11517 at [72].

[57] Ms McConachy referred to the following cases: *Waikato Regional Council v Thompson (Thompson)*;¹⁰ *Waikato Regional Council v Madeley (Madeley)*;¹¹ *Waikato Regional Council v Apex Farming Ltd (Apex Farming)*;¹² *Waikato Regional Council v ANP Farms Ltd (ANP Farms)*;¹³ *Waikato Regional Council v Te Korunui Farms Limited (Te Korunui Farms)*;¹⁴ and *Manawatu Regional Council v Phillips (Phillips)*.¹⁵

[58] Ms McConachy submitted that Mr Subedi's conduct falls in the mid-range of Level 2 under *Chick*. He decided to direct that the stormwater diversion valve be opened during a period of elevated risk. He failed to ensure that the valve had been properly closed. Moreover, he failed to provide his employees with sufficient training

¹⁰ *Waikato Regional Council v Thompson* [2025] NZDC 9798 – one charge of discharging farm animal effluent into water. The discharge had adverse effects on the stream, cumulatively contributing to poor water quality. The offending arose indirectly from equipment that had failed and needed repair, and more directly from incorrect use and monitoring of an irrigator. Defendant was careless in his operation of the irrigator. Starting point of \$75,000.

¹¹ *Waikato Regional Council v Madeley* [2025] NZDC 9800 – one charge of discharging farm animal effluent from a travelling irrigator leading to ponding and runoff into a surface drain. Discharge would have caused adverse effects. Effluent was visible in the drain for approximately 120m. The defendant did not place sufficient importance on the safe disposal of effluent; highly careless because he knew there was an issue and did nothing to address it. Starting point of \$70,000.

¹² *Waikato Regional Council v Apex Farming Ltd* [2025] NZDC 13837 – one charge of discharging farm animal effluent from an effluent storage pond onto land. Environmental effects of the offending were low but AFL was careless in its management of the effluent system. Lower end of Level 2 of *Chick*. Starting point of \$70,000.

¹³ *Waikato Regional Council v ANP Farms Ltd* [2025] NZDC 13550 – two charges of permitting the discharge of farm animal effluent onto land from an irrigator, where it may enter water. One charge of breaching an abatement notice. The first charge related to a large area of ponded effluent found adjacent to an irrigator. An abatement notice was issued. Approximately six months later, several areas of ponding were located along the irrigator's run. The ground along the run was saturated underfoot and there was ponding throughout the area of application. Effects on the environment were moderately serious. Defendant found to have acted carelessly in respect of the first discharge and highly carelessly in respect of the second. Overall starting point of \$135,000, taking into account totality; \$50,000 for the first instance of offending, \$65,000 for the second instance of offending and \$20,000 for the breach of abatement notice.

¹⁴ *Waikato Regional Council v Te Korunui Farms Limited* [2023] NZDC 4181 – two charges of discharging farm animal effluent to land where it may enter water from an effluent storage pond and a underpass sand trap. Evidence of localised acute effects in the tributary below the pond. The discharges would have contributed to adverse cumulative effects. The Court found the adverse effects were moderate. The Court found the defendant was highly careless in its approach to effluent management on the farm. Starting point of \$120,000; \$80,000 for the pond overflow and \$40,000 for the discharge from the underpass.

¹⁵ *Manawatu Regional Council v Phillips* [2024] NZDC 28633 – one charge of discharging dairy effluent to land in circumstances where it may enter water. The discharge was into a catchment or a river. The Court found there was a lack of adequate effluent storage available during extended periods of rainfall or wet weather. The defendant was aware of this and on notice nearly six years prior to the offending. The discharge was deliberate. The offending was on the cusp of Levels 2 and 3 of *Chick*. Starting point of \$90,000.

in respect of effluent management. The offending was, therefore, foreseeable and avoidable. His reactions reflect a significant departure from good operational practice.

[59] Ms McConachy submitted that:

- (a) The cases *Thompson* (\$75,000 starting point) and *Madeley* (\$70,000 starting point) both involved defendants who had similar roles to Mr Subedi. In each case there was a discharge that caused ponding and overland effluent flow. Like Mr Subedi, both of those defendants exhibited a careless or cavalier attitude toward effluent management. However, Ms McConachy submitted that the present offending is more serious, in that the defendant *knew* that there was a risk of an unlawful effluent discharge and consciously ran that risk;
- (b) The offending in *Phillips* was more serious than the offending in the present case. While both cases involved a “one-off” discharge, *Phillips* involved a deliberate discharge of a significant volume of effluent directly into a regionally significant body of water and led to a starting point of \$90,000; and
- (c) \$70,000 appears to be the minimum available starting point for a discharge of effluent to land in circumstances where there is significant ponding and overland effluent flow. In *Te Korunui Farms*, a starting point of \$120,000 was imposed on a company in respect of two discharges to water.

[60] Ms McConachy reiterated that the offending is moderately serious, involving a significant discharge of effluent that has caused ecological harm. It was not repeated offending, but the discharge was avoidable and was the result of poor decision making and a cavalier attitude toward effluent management.

[61] Ms McConachy submitted the cases of *Thompson* and *Madeley* are, perhaps, the most analogous. However, both these cases involved passive failures. In contrast, Mr Subedi made an active decision to open the diversion valve knowing the risks associated with that decision. As such, she submitted a higher starting point than

adopted in those cases is required. Ms McConachy submitted an appropriate starting point is a fine of \$80,000.

Defendant's submissions

[62] Mr Lang submitted the cases cited by the prosecutor are of some assistance to the extent that they consistently point to a starting point in this case that is lower than the proposed \$80,000.

[63] He submitted *Thompson and Madeley* are more serious than the present case. Discharges to surface water are generally treated in a more serious way than discharges to land that could lead to contaminants entering groundwater. In *Thompson, Madeley* and *Apex Farming* there were discharges to surface water.

[64] Mr Lang submitted *ANP Farms* does not provide assistance, as one offence led to the issue of an Abatement Notice which was subsequently breached. That is different to the present case.

[65] Mr Lang submitted that *Te Korunui Farms* provides little, if any, assistance. It involved multiple offences by the one defendant from two different aspects of the effluent management system.

[66] Mr Lang submitted this case is significantly less serious than *Phillips* which involved a discharge of 7,000 gallons of effluent into a drain that would ultimately discharge to the Manawatu River. It was a deliberate and direct discharge.

[67] Mr Lang submitted Mr Subedi's conduct falls within the lower part of Level 2 under *Chick*. There was an attempt to avoid a more significant environmental outcome, though it was accepted by Mr Subedi that earlier training of staff in the operation of the diversion would have been of assistance in preventing the low level ongoing discharge since the first discharge event. With the irrigator unavailable during the week prior to the discharge, and the difficulties in managing the pond system, Mr Subedi chose what he considered to be the best option to minimise the consequences in a tight situation while he was absent from the Farm.

[68] Mr Lang referred me to the following cases: *Bay of Plenty Regional Council v Nomar Farms Limited (Nomar Farms)*¹⁶ and *Bay of Plenty Regional Council v Nettleingham (Nettleingham)*.¹⁷

[69] Mr Lang submitted the circumstances of the offending and the environmental effects in *Nomar Farms* (\$65,000 starting point) were more serious than the present case. He submitted the offending in *Nettleingham* (\$40,000 starting point) lacked the ongoing aspect that is present in this case, but there was a discharge to surface water that led to a sensitive environment. Overall, the gravity of offending and defendant culpability in *Nettleingham* and in the present case are comparable.

[70] Mr Lang submitted a starting point that is consistent with other cases would be in the range of \$40,000 - \$45,000.

Conclusion on starting point

[71] Certain of the cases to which I was referred assisted me; *Madeley* and *Nomar Farms*. I record, however, that *Madeley* did not involve a discharge to surface water as said by Mr Lang; it was a discharge to land and into a farm surface drain.

[72] I respectfully distinguish *Nettleingham* from the present case because the scale of the offending was less than here, given the size of the herd being milked. While the level of culpability was similar to other farmers who fail to properly manage an effluent system, the issue there arose from the improper operation of the system. Here, a decision was made to divert effluent through the stormwater system in order to avoid

¹⁶ *Bay of Plenty Regional Council v Nomar Farms Limited* [2025] NZDC 5540 – one charge of discharging dairy effluent onto land in circumstances where it may enter water. Adverse environmental effects were minor. A degree of carelessness in ensuring proper supervision of the irrigator. The contravention of an abatement notice is inherently serious and is an aggravating factor. Overall, the offending was highly careless. Middle to higher end of Level 2 of *Chick*. Starting point \$65,000.

¹⁷ *Bay of Plenty Regional Council v Nettleingham* [2023] NZDC 3031 – two defendants each charged with one charge of discharging dairy effluent onto land in circumstances where it may enter water. The effect on the receiving environment, while expected to be short-term, was moderate to high. The discharge would have acted as a potential stressor on the larger receiving environment, with potential cumulative effects on the harbour. This case involved a relatively simple system for diverting stormwater and effluent that was not operated properly. It was of concern that a simple system caused the defendants trouble and that they could be careless in operating it. The scale of the milking operation on this farm meant that the consequences were less than that regularly seen in other cases before the Court. Lower end of Level 2 of *Chick*. Starting point of \$40,000 to be apportioned equally between the defendants.

the overtopping of the effluent storage ponds. There was an element of deliberateness to the offending. I place the offending at mid Level 2 of *Chick* because of the deliberate, albeit well meaning, decision to divert the effluent and because steps could have been taken before Mr Subedi went away to protect the system from failure.

[73] In all the circumstances of this case I would adopt a starting point of \$70,000.

Aggravating and mitigating factors

Good character, remorse, co-operation

[74] Mr Subedi has no prior convictions for RMA offending, nor any history of enforcement action being taken against him. Ms McConachy accepted that this appears to have been a one-off incident, rather than a pattern of disregard for regulatory obligations.

[75] Ms McConachy acknowledged that Mr Subedi cooperated with the Council's investigation. He participated in a formal interview and acknowledged his role in the decision to open the stormwater diversion. He confirmed that he had instructed his employee to open the valve, and accepted that no follow-up action was taken to confirm the valve was properly closed. His cooperation assisted in resolving the factual issues and avoided the need for further investigative steps.

[76] Ms McConachy accepted that as a contract milker, Mr Subedi did not own the Farm or control major infrastructure decisions. His authority was confined to day-to-day operations. She submitted that while this does not excuse the offending, it provides a relevant context for the lack of system upgrades. Mr Subedi was reliant on the systems provided by the Farm's owner. The discharge had ceased by the time of the Council's next inspection.

[77] Ms McConachy accepted that Mr Subedi may be entitled to a discount of up to ten per cent to reflect his remorse, cooperation and lack of prior relevant criminal history.

[78] Mr Lang noted there is no history of non-compliance by Mr Subedi. He submitted Mr Subedi has clearly been open and cooperative with Council officers who

were involved in the site visit, and the subsequent investigation process. Mr Lang submitted a discount of 10-15 per cent is appropriate.

[79] I would allow a discount of 10 per cent for lack of a prior relevant criminal history.

Guilty plea

[80] Ms McConachy submitted any guilty plea would be coming after a sentencing indication, and cannot therefore be seen as coming at the first reasonable opportunity. She submitted that 20 per cent credit will be available if the indication is accepted.¹⁸

[81] Mr Lang submitted that it is appropriate that a 25 per cent discount is allowed for early guilty plea, if one is entered following acceptance of the sentence indication. The election of the sentence indication process is not, in itself, a valid reason for reducing the 25 per cent deduction that would normally be available for an early guilty plea. There is no principled basis for reducing the usual credit for an early guilty plea.

[82] There has been discussion in recent cases about whether full credit for a guilty plea should be given following a sentence indication. I accept that the Court should not have a policy of reducing a discount for a guilty plea when a sentencing indication is sought. Some cases are more complex than others, and there may be circumstances when the full discount would be allowed. Such circumstances would include a relatively straightforward prosecution involving one or two charges and a simple factual matrix.

[83] Having said that, resources will have still been expended in hearing a request for a sentence indication, providing an indication, and then returning to Court for sentencing should that indication be accepted.

[84] It is therefore likely that if the sentence indication is accepted I would allow a discount of 20 per cent for a guilty plea.

¹⁸ See, for example, *Gregan Farms Ltd v Waikato Regional Council* [2023] NZHC 1017.

Outcome

[85] I adopt the two-step sentencing process following *Moses v R*.¹⁹

[86] I would impose a starting point of \$70,000 from which 30 per cent in discounts would be allowed.

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

[88] I would also order that the defendant pay court costs of \$143 and solicitor's fee of \$113.

Judge MJL Dickey

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

Date of authentication | Rā motuhēhēnga: 31/10/2025

¹⁹ *Moses v R* [2020] NZCA 296 at [46].