

IN THE DISTRICT COURT
HELD AT OPOTIKI

CRN 2047004474-76

BETWEEN PAUL MALCOLM DELL
(an officer of the BAY OF
PLENTY REGIONAL
COUNCIL)

Informant

AND PRO PACIFIC LIMITED

Defendant

CRN 2047004011-13

BETWEEN PAUL MALCOLM DELL
(an officer of the BAY OF
PLENTY REGIONAL
COUNCIL)

Informant

AND PHILLIP YOUNG

Defendant

APPEARANCES

Mr P Cooney for the informant
Mr P Young for himself and Pro Pacific Limited

HEARING on 22 and 23 December 1992 and 3 February 1993

DECISION OF JUDGE R. J. BOLLARD

delivered orally on 3 February 1992

Six informations are before the Court, four citing Pro Pacific Limited as defendant (which I will refer to as "Pro Pacific" or "the company"), and two addressed to the company's managing director, Mr Phillip Young. The first two informations faced by the company allege that section 15(1)(b) of the Resource Management Act 1991 ("the Act") was contravened between 19 May 1992 and 29 May 1992 and between 18 June 1992 and 25 June 1992 - in each case giving rise to an offence under section 338(1)(a) of the Act. The further two informations directed to the company allege that section 15(1)(d) of the Act was contravened during the same two periods, again in each case giving rise to an offence under section 338(1)(a). The remaining informations allege that Mr Young, as managing director of Pro Pacific, authorised, permitted or consented to the alleged contravention of section 15(1)(b) and section 15(1)(d) by the company between 18 June 1992 and 25 June 1992, Mr Young's liability allegedly arising under section 340(3) of the Act.

The charges relate to two incidents in May and June last, regarding disposal of offal waste from the company's abattoir premises at Gows Road, Opotiki. Evidence as to the first incident was led by counsel for the prosecution from Mr A C Bruere, an Environmental Consents Officer for the Bay of Plenty Regional Council ("the Council"). He has been employed in this position for two years. Prior to this he was a junior lecturer in agricultural engineering at Massey University. He holds a Master's Degree in agricultural science in the field of waste water treatment technology.

Mr Bruere gave evidence-in-chief in the terms which I will relate shortly as to the May incident. His evidence as to that incident was not materially affected by cross-examination - and, indeed, stands uncontradicted in substance. Having seen and observed Mr Bruere in the giving of his evidence, I regard him as a credible witness and accept what he had to say as follows (paragraph numbers omitted) :

"On the morning of 20 May 1992, I received a complaint that the Pro Pacific Abattoir had dug some large trenches behind the abattoir and was dumping what appeared to be offal in the holes.

I inspected the site in the afternoon and asked Peter Hamilton (Plant Manager) what had occurred. He explained that there had been some difficulty disposing of some offal and blood to the rendering facilities and so he decided to dig holes and dispose of some waste on a temporary basis to the holes. This dumping occurred the day before inspection (19 May 1992).

He stated that about 500 litres of blood and three-quarters of a skip bin of offal had been dumped in the holes. The hole containing offal had been filled. The hole containing blood was still open and there was one other hole which did not have any waste dumped into it. The holes were 1 metre wide by 3.5 metres long and about 2 metres deep. I advised Peter Hamilton to fill in the holes, discontinue disposal of blood or offal on site and write to the Regional Council explaining what happened and why. I also explained that this disposal activity had no authorisation and if this disposal method was required by the abattoir then the abattoir must apply for a consent from

the Regional Council for this specific activity. I took photos of the disposal holes and collected a sample of the liquid from one hole. The liquid looked like blood and water and had a bad odour. The effluent sample is stored in the Regional Council lab freezer.

On the morning of 28 May 1992, I received a complaint that Pro Pacific Abattoir at Opotiki had been seen dumping offal and blood into holes behind the abattoir. This was the same location of blood and offal dumping inspected on 20 May 1992.

Peter McLaren, a Senior Field Officer with the Regional Council, and I went to the abattoir site to inspect the problems. We met with Peter Hamilton and explained that we had received this complaint. He admitted to dumping a bin of offal and some blood into the holes behind the abattoir. I explained that he had no authorisation to do this and reiterated that he should stop dumping, fill in the holes and write to Regional Council explaining the reasons for this dumping.

Peter McLaren and I explained that continuation of this activity would attract an abatement notice and possibly lead to prosecution. We again advised the Plant Manager that if this disposal option was required by the abattoir, then they must apply for a consent from the Regional Council for this specific activity. At this stage, Mr Hamilton indicated that he had discussed the possibility of further dumping on another property with the landowner and that he would make an application if they required this option in the future.

We then went out to inspect the holes. One hole contained a mass of guts, offal and sheep heads and the other contained a red substance that looked like blood and water mixture. We took photos of the site and collected a sample of the blood for analysis if required.

We then returned to the abattoir office to discuss the problem with Peter Hamilton. He stated that he would stop the activity, fill the holes in by tomorrow night (Friday) and write to the Regional Council explaining his actions in dumping this material.

On 29 May 1992, I faxed a letter to the Plant Manager at the abattoir outlining the following requirements :

All dump holes be filled with soil by 4.00 pm on Friday 29 May 1992.

Regional Council staff be given at least one hour's notice of time when holes will be filled so that staff may inspect the filling operation.

At least one metre depth of soil should be placed over the offal to prevent unearthing by animals.

A copy of this letter is (produced in evidence).

Later during 29 May 1992, I was notified by telephone, by Mr Peter Hamilton, that he would commence filling the blood and offal holes later in the afternoon. I arrived at the site prior to the filling operation commencing. I was accompanied onto the site by Mr Dave Reece, the Roading and Services Engineer, Opotiki District Council. We remained on site until all three holes had been completely covered by the Plant Manager."

A skip bin, so I was informed by Mr Young, contains measurements of 1m depth, 1.2m length and 1.2m width. At the time of the May and June incidents, sheep and pigs were being slaughtered at the company's abattoir according to Mr P A Grant, a Meat Inspector under the auspices of the Ministry of Agriculture and Fisheries, who testified that he was present at the abattoir in his inspectorial capacity between 20 May 1992 and 25 June 1992. Mr Grant also testified that the company's standard arrangement for disposal of offal was via transportation to a rendering plant in Thames. This was confirmed by other evidence, including evidence by Mr Young to the effect that it was decided to send the offal waste from the abattoir to Thames because that was thought a profitable course to take. I do not accept that officers of the Regional Council were at fault in not contacting the defendant to warn it as to the position at law under the Resource Management Act 1991 concerning the disposal of offal waste on its own land or elsewhere in the vicinity. Rather, as a responsible abattoir operator the company should have enquired of the Regional Council as to what consents would be required to dump its offal on land locally, once it decided through its Plant Manager to depart from its standard practice of sending all the waste to Thames.

On 24 June 1992 Mr Grant discovered that offal from a kill on the previous day was not destined for Thames because it was loaded in a full skip bin on the back of a utility vehicle - the vehicle being smaller in size than the normal transport truck destined for Thames. Mr Hamilton confessed about the matter to Mr Grant, indicating that the offal was destined for a site at Apanui Road, being the site referred to in the informations relating to the June charges. Mr Hamilton also stated to Mr Grant that he had previously arranged disposal of offal at the same site in Apanui Road on 19 June (which was a Friday). He did not advise Mr Grant of the earlier dumpings at the company's premises in May.

I do not regard Mr Hamilton's failure to tell Mr Grant of the May occurrences as throwing any doubt on Mr Bruere's evidence regarding those occurrences. Rather, I conclude that Mr Hamilton elected for whatever reason to inform Mr Grant only to the extent mentioned, thus leaving Mr Grant in a state of ignorance as to what had occurred in May. Before turning to the June aspect, I note that Mr Hamilton, in a letter dated 29 May 1992 following the discussion with Mr Bruere on the previous day, indicated that "Pro Pacific Limited will cease the practise of burying sheep paunches". The letter went on to record :

"Again, as I stated to you, the actual amount buried was minimal and only came about because :

- A. Very small kills
- B. The exorbitant cost of transporting small amounts of rendering material off plant

The two holes will be covered in by Friday night, 29 May 1992. No more holes will be dug on our property for the purposes of burying rendering material.

I apologize for any inconvenience that this problem may have caused both yourself and Regional Council."

Turning to the June occurrence, I find, in the light of Mr Bruere's evidence, as well as that of Mr Grant relating to what Mr Grant was told by Mr Hamilton, that offal from the abattoir was dumped at the Apanui Road site on 24 June. The amount dumped on this occasion was not entirely clear on the evidence. While Mr Bruere was able to be relatively precise as to the quantities in May (namely three-quarters of a skip bin and 500 litres of blood on 19 May and between three-quarters and a full skip bin of offal on 28 May) he was unable to indicate with the same specificity how much was dumped on 24 June.

Mr Grant testified that on the morning of 24 June he saw a full skip bin on the back of the utility which was what led him to speak to Mr Hamilton as earlier related. The skip bin was later conveyed via the utility shortly after 1.00 pm to the Apanui Road site. Another skip bin was also taken on the back of a trailer. Mr Bruere arrived at the site when the disposal operation was in progress. One bin of offal had been dumped but I am unable to say on the evidence which of the two bins was dumped before Mr Bruere intervened. However, from photographs produced in evidence of the dumped offal as taken by Mr Bruere, I am satisfied that an amount at least equal to the remains of one cattle beast was dumped, together with a quantity of blood. In fact, although the offal appears to have been sheep and/or pig waste, Mr Young accepted in his evidence that the quantity would have been equal to that of a cattle beast. The disposal site was on the river side of a stop bank, but the distance of the site from the river itself was not given in evidence.

Evidence of previous offal dumping at the same site was detected by Mr Bruere when present on the 24th. Earlier material dumped had a covering of about 150mm of soil. I am satisfied from Mr Grant's evidence that this waste was the offal which Mr Hamilton told Mr Grant he had dumped on the previous Friday, 19 June.

As mentioned, Mr Bruere arrived at the Apanui Road site on the 24th while dumping was in progress. The company's employees dumping the waste were told by Mr Bruere to cover the material to prevent access by dogs. He then attempted to locate the owner of the property without success. He went back to the company's abattoir and saw Mr Young, advising him that the dumping activity was liable to attract prosecution proceedings and the practice should stop. An altercation ensued resulting in Mr Young directing Mr Bruere to leave the premises.

Mr Bruere returned to Apanui Road to check that the offal was being duly covered. He spoke to Mrs Carey, an occupier of the land, and advised her of the lack of authorisation for the activity; also to Mr Carey who advised that he was unaware of the activities' unlawfulness, but would stop it and see that the dump site was filled in and compacted by a bulldozer as soon as possible.

When Mr Bruere arrived back at the Regional Council offices later in the afternoon of the 24th, he found that a letter had been faxed by Mr Young to the Regional Council for Mr P M Dell and Mr R B Gardner, both officers of the Council who also gave evidence before me. The fax was sent on 12:25 pm shortly before the loaded utility and trailer left the abattoir for Apanui Road. It read :

**Re Disposal of Rendering*

You will be aware of my commitment to solving the unauthorised disposing of rendering by my travelling to Whakatane to meet with you especially on Monday. Today I have officially relieved Peter Hamilton of his position as Plant Manager and from tomorrow I will be in charge of the day to day running of the plant and no unauthorised disposal will take place from tomorrow."

At about 5.00 pm on the 24th, Mr Young saw Mr Bruere as the latter was leaving the council's offices and apologised for his comments in the earlier altercation between them. Mr Young had apparently felt upset that the company was being held responsible for Mr Hamilton's actions when he (Mr Young) was in the course of relieving Mr Hamilton of his post.

Two days prior to the 24th, Mr Young arranged to meet with Messrs Dell, Gardner and Bruere at the Council's offices. This was as a result of a communication on the 19th from the Council advising that prosecutions were to be taken for the May occurrences. Mr Dell, who is the Council's Director of Environmental Monitoring, gave evidence that various issues were discussed at the meeting, including the matter of prosecution for the dumping of offal in May. Mr Dell went on to say in his evidence-in-chief (paragraph numbers omitted) :

"As a result of the discussions that took place, it was my understanding that Mr Phil Young was going directly to the Plant in Opotiki on the afternoon of Monday 22 June 1992 to raise this matter with the Plant Manager, a Mr Peter Hamilton. It was my understanding from the conversations that Mr Young understood the serious nature of the dumping of offal in the fashion that had occurred and he would ensure that the appropriate actions were taken to ensure that it would not occur again.

It was my belief that as I was dealing with the Managing Director of Pro Pacific Limited, that he was in control of the Company and as such he had the power to ensure that no further dumping of offal occurred."

Mr Young did not dispute Mr Dell's assertion (which was confirmed by Mr Gardner in his evidence) that he (Mr Young) was going to ensure that further unauthorised offal dumping by the company did not occur after the date of the meeting, namely 22 June. Rather, he claimed that Mr Hamilton went behind his back in organising the dumping at Apanui Road on 24 June. I will return to this aspect of the case later.

I come now to the question whether offal and blood are contaminants within the meaning of the term "contaminant" as defined in section 2 of the Act, the definition reading :

'Contaminant' includes any substance (including gases, liquids, solids, and micro-organisms) or energy (excluding noise) or heat, that either by itself or in combination with the same, similar, or other substances, energy, or heat -

- (a) When discharged into water, changes or is likely to change the physical, chemical or biological condition of water; or
- (b) When discharged onto or into land or into air, changes or is likely to change the physical, chemical or biological condition of the land or air onto or into which it is discharged."

Mr Bruere had this to say in his evidence-in-chief (paragraph numbers omitted):

"Both offal and blood are organic materials which are by-products of the abattoir industry. They are unstabilised materials, which without special preservation will decay releasing other solid, liquid and gaseous products to the surrounding environment.

The types of products which are released as these by-products decay include:

Nitrogenous substances, such as nitrate and ammonia;

Nutrients such as phosphorous and nitrogenous compounds;

Colour and turbidity;

Objectionable odours; and

Organic by-products.

When discharged to land, offal and the decay products listed above would cause contamination by altering the physical, chemical and biological condition of the land receiving that offal. The most significant feature of the contamination is the biological contamination. Offal and blood may contain pathogenic organisms such as salmonella, sheep measles and hydatids. Without proper precautions these may be transmitted to either humans, live-stock or pets."

Mr Bruere went on to testify that the discharge of offal onto land will also produce the risk of adverse effect upon groundwater. He stated that disposal of this type of waste into pits in the ground, in addition to releasing contaminants to the soil, is most likely to cause nitrogen and/or pathogenic contamination of groundwater, the depth to groundwater varying with the location. As to the offal disposal pits dug behind the abattoir in relation to the dumpings in May, Mr Bruere stated :

"The pits dug behind the abattoir for disposal were dug below the level of groundwater, as each of the two holes which I viewed contained water up to a level within 600mm of the ground surface.

Previous soil investigations adjacent to the abattoir revealed that soil strata in this area comprises very impervious topsoil and subsoils down to a depth of approximately 1.5m. At this depth, coarse pumice and/or gravel strata exists which is capable of transmitting water at a higher rate than the overlying strata. Any contaminants entering this strata could be circulated to other areas in the groundwater. Once the contaminants have entered the groundwater, there is no control on their movement.

There are a number of shallow bores in close vicinity to this disposal site which abstract water from shallow groundwater. Two of the three pits dug behind the abattoir were not covered immediately after receiving blood or offal. An unpleasant odour was present around the pits."

And as to the Apanui Road site where the dumpings in June occurred, he said :

"The disposal pit dug on the river side of the stop bank on Mr Carey's property has been dug in a very free-draining soil strata. The depth to groundwater is unknown. It is likely that contaminants released in this pit would quickly reach groundwater.

This disposal pit is located in the flood plain of the Waioeka River. As shown by photos, a previous dumping event had only been covered by less than 150mm soil/gravel. This would easily be unearthed by a major flooding event."

Mr Bruere's evidence as to the materials dumped in May and June being contaminants within the meaning of the Act was supported by Mr Dell, a person qualified and experienced in soil science. On the other hand, Mr Young who holds a Bachelor of Agriculture degree, posed the following questions :

1. If offal is a contaminant, is it because it contains organic matter or because it contains micro organisms, which are both commonly found in land and water?
2. When is offal a contaminant and when is it not a contaminant, in terms of its breakdown into reduced forms of organic matter? In other words does offal start off being a contaminant and at a certain point be deemed not to be a contaminant because of its breakdown?
3. Obviously the rural plan includes farming as one of its activities and offal is a natural by-product of the rural plan and (is thus) permitted under the rural plan. Therefore does the fact that the abattoir is deemed an industry premise under section 15 of the Resource Management Act mean that it requires a consent? The answer would be yes, if we were certain that it was a contaminant, which we're not".

Mr Young went on, both in his evidence and submissions to assert that offal, in itself, is not a contaminant within the meaning of the Act. He suggested that if the company is guilty of the charges laid, then every farmer disposing of animal carcasses on their farm properties in the ordinary course of farming operations is liable to prosecution.

On the evidence before me I am not prepared to comment on the options and procedures available to farmers and other rural users who may be faced with disposal of dead animals occasioned through natural causes, including major weather events. However, reference was made in the prosecution's evidence to the Council's intention to include in the review of the Council's regional plan, clear guide-lines for animal waste disposal by farmers and others carrying on rural land uses. Whether the Act, taken in conjunction with the present state of the Council's regional plan, produces unsatisfactory legal difficulties for farmers and other non-industrial rural land users is something I must refrain from speculating upon. For present purposes, after carefully considering the expert evidence adduced, I am satisfied beyond any reasonable doubt that the offal and blood wastes dumped on 19 and 28 May and 24 June respectively were contaminants within the meaning of the Act. I accept the evidence of Mr Bruere and Mr Dell as to the way that offal and blood is likely to change the physical, chemical and biological condition of land onto or into which the substances concerned are discharged. As Mr Dell explained, as the offal and blood decomposes and breaks down it moves into a more liquidified state and is then liable to move rapidly and migrate through the soil. Although unable to be specific on the actual speed of the process, he was firm in the view, as was Mr Bruere, that decomposition undoubtedly leads to significantly increased nitrate and ammonia levels in the soil. Other aspects such as the introduction of pathogens were referred to as well. In short, both Mr Dell and Mr Bruere were of the view that the dumpings on the respective dates in May and June were of such content and quantity as to amount to contaminants under the Act. I accept their evidence. The wastes concerned, when discharged into the holes on the respective sites, were likely to change the physical, chemical, or biological condition of the land into which the discharges were undertaken.

As to the two charges against the company over the May incident, I find these charges proved to the necessary standard on the evidence. I find beyond reasonable doubt that contaminants within the meaning of the Act were discharged into the land behind the company's abattoir building on 19 and 28 May, in contravention of section 15(1)(b) and (1)(d) of the Act. For the purposes of section 15(1)(b) I accept Mr Bruere's evidence as to the circumstances, including the nature of the location and presence of shallow bores in the close vicinity - which leaves me in no doubt that the discharge was such as to be likely to result in contaminants emanating from the material in the course of decomposition entering groundwater. I accept Mr Bruere's evidence that one of the holes which was not used for offal dumping was nonetheless partly filled with water on inspection, thus supporting the view that the holes were dug to a depth below the groundwater level. I am satisfied as well that the offal and blood wastes placed in the other adjacent pits became mixed with groundwater that had seeped into those pits.

As to section 15(1)(d) it is plain that the contaminant wastes were discharged from the company's industrial or trade premises into the pits behind the abattoir building. Finally, for the purpose of both informations, I am satisfied from the

evidence led for the prosecution that the discharge was not allowed by a rule of the Council's regional plan, a resource consent, or regulations.

In summary, the discharges on 19 and 28 May were undertaken with the knowledge and sanction of Mr Hamilton, being the person responsible for the management of the company's abattoir at the time. I am satisfied in the light of Mr Dell's and Mr Bruere's evidence and the photographs produced that the dumpings in May were undertaken in circumstances liable to result in a contaminant entering water within the meaning of the term "contaminant" under the Act. It may be noted that earlier I used the expression "likely to result in" and have now said "liable to result in" etc. I do not overlook that section 15(1)(b) says "may result in". If those words pose a lesser test then the relevant charge is proved all the more so. Lastly, I accept the view expressed by Mr Bruere that the offal holes were below the level of the groundwater table so that groundwater was liable to and indeed did enter the holes.

Mr Young raised the possibilities of water in the holes being animal washwater and rainwater in his cross-examination of Mr Bruere. I accept that the banks surrounding one or more of the holes appear wet from the photographs taken on 28 May - which may well indicate that rain had occurred. But the photographs show a different appearance to the sides of the holes as inspected on 20 May, and I am quite satisfied that groundwater was present in the holes on the relevant dates. The company is accordingly convicted on these charges.

As to the remaining charges pertaining to the June incident, I accept the evidence of Mr Bruere based on his personal inspection on 24 June that the nature and quantity of the material dumped was such as to be likely to change the condition of the land into which the discharge occurred. While I am satisfied dumping also took place on 19 June I am not sufficiently clear as to what and how much was dumped. However, I find the charge against the company based on contravention of section 15(1)(d) prove beyond reasonable doubt as regards the dumping on the 24th in the light of Mr Bruere's evidence, supported on those aspects where expert opinion was involved by Mr Dell, whose evidence I likewise accept. The company is convicted on this charge. Here again the discharge was not allowed by a rule of the Council's regional plan, a resource consent, or regulations.

As to the further charge alleging contravention of section 15(1)(b) I am not satisfied beyond reasonable doubt that this charge is established. Mr Bruere indicated that the depth to groundwater was unknown. Moreover, there was no evidence of water present in the hole as per the relevant photographs produced. Furthermore, Mr Bruere indicated when under cross-examination that his evidence as to the site being within the flood plain of the Waioeka River was based on what he was told by another officer of the Council not called as a witness. Finally, the distance of the site from the river itself, albeit on the river side of the stop bank, was not indicated. Because of these uncertainties surrounding this charge, it is dismissed.

As to the charges still remaining, the one against Mr Young arising out of the charge against the company alleging contravention of section 15(1)(b) is likewise dismissed. As to the other charge arising out of the charge against the company alleging contravention of section 15(1)(d), I am under some doubt as to whether Mr Young personally knew what Mr Hamilton was about on the 24th in arranging disposal of the offal and blood in question. While I am left with a suspicion that Mr Young may have known what Mr Hamilton was doing, suspicion alone is not enough and consequently this charge must also be dismissed.

To recapitulate, Mr Young made it plain in his evidence that Mr Hamilton was still in charge until the end of the day on the 24th, with Mr Young taking over personally as from the 25th. Hence, the offence was committed by the company under the authorisation and control of Mr Hamilton as the person responsible for the abattoir's management at the time of the offence. However, while Mr Young was at the company's premises on the day in question in order, as he put it, to relieve Mr Hamilton of his post, I must afford him the benefit of the doubt left in my mind that Mr Hamilton's organisation of the dumping was a final act on his part, carried out without specific reference to Mr Young. Because Mr Hamilton was, on Mr Young's admission, still in control for that day, the company must stand convicted accordingly. The charge against Mr Young, however, is dismissed for the reasons given.

I will now hear submissions on the question of penalty in respect of the charges on which convictions have been entered.



R J Bollard
Planning Judge

IN THE DISTRICT COURT
HELD AT OPOTIKI

CRN 2047004474-76

BETWEEN PAUL MALCOLM DELL
(and officer of the Bay of
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Informant

AND PRO PACIFIC LIMITED

Defendant

CRN 2047004011-13

BETWEEN PAUL MALCOLM DELL

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APPEARANCES

Mr P Cooney for the informant
Mr P Young for himself and Pro Pacific Limited

HEARING on 3 February 1993

SENTENCING NOTES OF

JUDGE R.J BOLLARD

The defendant has been convicted in respect of three charges under s.338(1) of the Resource Management Act 1991 - one in respect of a contravention of s.15(1)(b) and two in respect of contraventions of s.15(1)(d). The contravention

of s.15(1)(b) and one of the contraventions of s.15(1)(d) arise out of the dumping of animal offal and blood waste behind the abattoir premises of the defendant at Gows Road, Opotiki on 19 and 28 May respectively last year. The amount involved was approximately 3/4 of a skip bin and about 500 litres of blood on 19 May and between 3/4 to a full skip bin of offal on 28 May. While the amount of the dumping on each occasion was not great, this type of offence must be treated as one of significant concern, particularly when one bears in mind the maximum penalty prescribed by Parliament under the Act. Abattoir operations of this kind are simply not permitted to dispose of offal waste in this manner and it is very important that the Act's requirements are observed by such operations, not only in the interests of the environment, but because such offences, when they are detected, involve bodies, such as the regional council in this case, in significant time and effort in determining exactly where the responsibility lies and what the environmental effects may be.

Section 15(1)(b) employs the words "in circumstances which may result in that contaminant, etc entering water". Cases where the contaminant may result in its entering water, and thus may adversely affect water, are of concern as well as cases where the contaminant is discharged directly into water. Here the waste was dumped in holes below the level of the local ground water table in an area whereby water was subject to being affected by the contaminant, the extent of the effect depending on the water's direction and migration pattern.


I take into account that there was no evidence to suggest that the bore water supply of any nearby landowner was actually affected adversely in consequence of the dumping and that the company was finally co-operative in carrying out the instructions of regional council officers in properly filling in the dump holes. However, it is of concern that the second dumping on 28 May was in direct contravention of the warning issued by the council's officer, Mr Bruere, on 20 May following his inspection of the dump holes after the dumping on the previous day, that is the 19th of May.

Taking all things into account, including everything advanced on the defendant's behalf in mitigation, the company is convicted and fined the sum of \$7,500 in respect of the contravention of s.15(1)(b) and is ordered to pay expenses of \$101.70, solicitor's fee \$565 and court costs \$95.

On the alternative charge of contravening s.15(1)(d) by virtue of the same incident in May the company is convicted and discharged.

As to the further contravention of s.15(1)(d) this relates to a dumping carried out by the defendant through its plant manager in June 1992. This dumping occurred on a rural site in Apanui Road, Opotiki, not far removed from the abattoir. As at the date of the offence, that is 24 June, the plant manager was under notice from Mr Young as managing director of the company, and due to relinquish his duties the following day. However, other employees of the company were still under the plant manager's supervision and direction on the day in question and the company, whether through its governing director, Mr Young, or otherwise, did not take steps expressly to forbid the other staff from carrying out further offal dumping if required so to do by the plant manager as the person in charge on that day. Here I take into account the comparatively small amount of the waste dumped as discussed in the decision as to liability, and the fact that there was insufficient evidence to point to any actual or potential adverse effect upon ground water or other appreciable detriment to the environment. All things considered, the company is convicted and fined the sum of \$2,500 on this charge and ordered to pay prosecution expenses of \$101.70, solicitor's fee \$565 and courts costs \$95.

I certify under s.342(1) that in the case of each fine payment thereof is to be made to the Bay of Plenty Regional Council, less the deduction provided for in s.342(2).


R J Bollard
Planning Judge