ORIGINAL

IN THE DISTRICT COURT
HELD AT AUCKLAND

DOUBLE SIDED

BETWEEN	**AUCKLAND REGIONAL COUNCIL**
	Informant
AND	**ENZA PRODUCTS LTD**
	Defendant

Date of Sentence: 4 December 1995
Counsel:

SENTENCING NOTES BY JUDGE D.F.G. SHEPPARD

The Defendant ENZA Products Limited has pleaded guilty to three charges under the Resource Management Act. The first is that on 9 February 1995 it contravened s 15 by discharging a contaminant onto land in circumstances which may have resulted in the contaminate entering water otherwise than as might be authorised. The second was a similar charge in respect of 27 April 1995, and the third is a charge that in March, April and May 1995 the company contravened an abatement notice served on it by an enforcement officer of the Regional Council, in

that it failed to cease the discharge of fruitjuice washwater and process water to the ground and stormwater system.

Those charges arise from the Defendant's business in mixing and packaging fruitjuice at premises at Papatoetoe. The premises have been established and used by the Defendant for some time and an officer of the Regional Council had visited the property in December 1991 and had identified a number of problems including washdown water from the factory floor and large juice vats entering stormwater cesspits on the yard. The Regional Council had written to the Defendant at that time stating that the discharges had to cease. The Defendant had replied stating that it was planning an upgrade to the sanitary sewers which would alleviate the problems and which was expected to be completed by February 1992. Evidently that was not achieved because on 9 February 1995 Regional Council staff visited the premises and found orange juice leaking from a wastebin and entering an adjacent stormwater cesspit. They also found that the manufacturing factory floor had recently been hosed down and the resulting washwater containing juices and other contaminants had flowed through a doorway to an adjacent stormwater channel, and then to a cesspit. The officers also

noted that there were also significant amounts of juice and other related fruit by-products on the pad and yard where a large waste compactor bin was situated, and also that water contaminated with silicon lubricant was running from the floor of the packaging part of the factory into a stormwater cesspit. The officers went to the nearby stream to which the stormwater drainage system discharges and they found that the stream was orange in colour and had fruit pulp floating on its surface. They took samples from one of the cesspits in the yard and from an outfall pipe from the stormwater system to the stream and the results of analysis of those samples showed high acidity and high biochemical oxygen demand.

Those are the circumstances that relate to the first of the three charges that I have before me. The Defendant is not challenging the specific facts. It asks me to take notice of the fact that between the Regional Council approach of 1991 and the events the subject of the first charge, there had been a complete change in the company's management at the particular factory concerned, and that the new management had not been made aware of the problem. Nevertheless it is still the same Defendant and I am not inclined to regard failure of management communication

within the Defendant company as justifying a mitigation of this offence. Correspondingly however, it is established that the company under its new management had embarked upon works which, when completed, would avoid the discharge of contaminants to the stream. Regrettably that had not been completed in time, but the commitment had been made and that is a matter which I should take into account. It certainly demonstrates, as counsel for the Defendant indicated, an attitude by the company which is conscious of its duties under the Resource Management Act, even if not pursuing them with the diligence that might have been hoped for.

The Defendant also asks me to take into account the division of responsibilities between the Regional Council and Watercare Services, the company responsible for the sewerage system. It is suggested that if that had not been the position and if the Regional Council had been involved in the discussions that the Defendant had been having with Watercare Services, these offences may not have occurred. I am not persuaded of that and I do not regard any attitude by the Defendant about the division between regulatory responsibilities of the Regional Council

and the operating responsibilities of Watercare Services as bearing on the issue before me.

The Defendant has informed me that the circumstances giving rise to the discharge on 9 February arose from a quantity of product having been found unsuitable for sale and requiring to be disposed of. It is regrettable that the arrangements that were made for the disposal of that unsuitable product were not appropriate to avoid discharge of contaminant to the local stream. Fortunately once the company's attention was brought to the problem a contractor was immediately called in to dispose of the remainder of the waste, and some steps were taken to continue to provide some protection against further discharges while the contract was being completed.

Turning next to the events of 27 April 1995 it is evident that by then the contract had still not been completed and there remained inadequate protection against discharge of contaminants. A Council officer visited the Defendant's factory on that day and found that discharges of contaminants were continuing. Again washdown water from inside the packaging plant was discharging through doorways and entering

stormwater cesspits. Later that day, although the problems had been brought to the attention of the Defendant's engineer, again the officer saw washdown water discharging through doorways and entering stormwater cesspits. Washwater flowing out of the factory contained a significant amount of foam. The Defendant has explained that there had been difficulties in having the contract completed and some delays in obtaining suitable apparatus to contain any spills. Again samples were taken and the samples demonstrated high acidity and relatively high biochemical oxygen demand.

In considering those two offences I have particular regard to the question of damage to the environment. In that respect the Informant reminds me that the discharge being highly acidic and containing high biochemical oxygen demand, would have an adverse effect on natural life in the stream to which it was discharged. However, it does appear that the quantities discharged were relatively small and there is no direct evidence of any environmental harm. The Informant has suggested that the discharges on these two events may have been examples of a long-standing practice and that they may also be typical of poor practices in industries in the area generally. I do not take those matters into account

in forming my conclusions about the sentence that is appropriate for those two charges.

The third charge which is brought before me relates to a contravention of, or failure to comply with, an abatement notice which relates to the same matter. It seems to me that although failure to comply with an abatement notice is of course an important matter, the principle concern for sentencing today must be the two actual discharges of contaminants to ground in circumstances where the contaminants entered the tributary of the Puanui Stream. In a similar case that was before me earlier this year of discharge from business premises of contaminant to water the fine was $3,000.00. In that case the Defendant had not taken any steps to adjust its premises to contain any spillage, and in the present case the Defendant had already put some works in hand. However, at the same time it is to be remembered that the present Defendant had been warned as long ago as 1991 that the premises were not satisfactory. In those circumstances it seems to me that the appropriate penalty would be similar to that imposed in the other case.

Therefore on each of the charges involving discharge of a contaminant the Defendant is convicted and fined $3,000.00 in each case. I have not been given the costs of investigation divided between the two charges so I will deal with them in respect of the first charge alone. On the charge relating to 9 February 1995 the Defendant is ordered to pay the costs of investigation amounting to $1,197.45. It is ordered that, save for the statutory 10%, the amounts of the fines are to be paid to the Informant, and if the Informant is also entitled to solicitors costs. The Defendant is ordered to pay solicitors costs of prosecution of $250.00 on each of those two charges and Court costs of $95.00.

The charge relating to contravention of an abatement notice, on that matter the Defendant is convicted and fined $450.00. The Defendant is ordered to pay $115.00 solicitors costs and $95.00 Court costs.

(D.F.G. Sheppard)

District Court Judge
and Planning Judge