

ORIGINAL

IN THE DISTRICT COURT  
HELD AT AUCKLAND

CR NO. 4048030655

AUCKLAND REGIONAL COUNCIL

v

INGS TRADING COMPANY  
LIMITED

DATE OF HEARING: 17 February 1995  
DATE OF DECISION: 17 February 1995  
COUNSEL: Mrs Cunningham on instructions from McKechnie  
Quirke Morris & Lewis, Solicitors, Rotorua for  
Defendant

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DECISION OF JUDGE W J M TREADWELL

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This is a prosecution in terms of the Resource Management Act in respect of discharging a contaminant onto land in circumstances which resulted in it entering water and no resource consent was held for that particular activity.

The facts are that a director of the company, Mr Paul Ing, was unloading a container of <sup>soy</sup>oil from a truck when the container fell and approximately half spilt from the container and found its way into a storm water drain. At that stage that was all Mr Ing did to investigate any potential further contamination by that

particular spillage. One might even assume a total disinterest from what I was told by counsel when he says that he has seen other people putting things down this particular storm water system. People have got to learn today that the "out-of-sight out-of-mind" attitude which might have prevailed under previous legislation is certainly not the rule today. In any case, the oil found its way into a small stream where, having regard to the size of the stream, the results may be described as almost catastrophic. Ducks were coated with oil and presumably died and the stream became anaerobic with ~~the~~ consequential damage to any life in that stream. Photographs were produced to me showing the stream which presents a very sorry sight indeed. To make the matters worse, the stream discharged into the Manukau Harbour which is an area of water of some sensitivity and an area of water <sup>in</sup> which not only the public but the Maori people are expressing great interest. As I said before, Mr Ing did nothing whatsoever until Council officers managed to track down the spill. He admitted to Council officers that spillage and was told the Council officers would arrange quotes, and that he was expected to clean the spill up. Some quotes were faxed to him which caused him some alarm because of the assessment of litreage and the cost of clean-up but he still did nothing himself on behalf of the company to clean up this stream other than to ring his solicitor and then pass the matter on to his insurance company.

The spill was subsequently cleaned up and the company paid the cost of the clean-up of some \$1,700. I am told that there is now a different system in place on site with a new forklift and metal drums. The company, however, had better take on board the warning that that would not be sufficient if in some way a further accident occurred and any contaminant found its way into the storm water drain. In order to avoid liability under this Act the <sup>escape</sup> ~~scope~~ of contaminants into that storm water drain would virtually need to be prevented by some method such as bunding or something like that but I am not prejudging what would or would not be adequate.


I am told that Mr Ing and his brother run a company in Hamilton and that there is a type of containment system in those premises whereby any spillages are contained and the landlord from time to time removes any contaminants from site. He said he thought that these premises at Otahuhu had the same system. I simply do not accept that. Mr Ing presumably signed some lease for the premises and would be well aware of what the obligations of the landlord were and if those obligations did not include removing contaminants from site, he had no reason to expect that those facilities were on site.

I regard this matter seriously. We here have a person who saw a contaminant spill onto the ground and go down a storm water drain and did nothing whatsoever to ascertain where that drain may lead. It was, as I said at the outset, an out-of-sight out-of-mind operation. On the other hand, I have to balance the fact that this is a small company and I am told by counsel that a fine in the five figure bracket would be totally crippling to the company. Balanced against that, I must not give the impression that small companies can get away with a licence fee for serious spills merely because they plead that they are a small company. What has happened with this particular spill is exactly what the Resource Management Act seeks to prevent and it goes about preventing it in a very positive manner by couching potential defences in the strict liability category. I also must point out that in a case of a spill, to be able to mount a successful defence, there is a question of clean-up to be considered. It is part of the strict liabilities section, s.341, that the effects of the action or event were adequately mitigated or remedied by the defendant after it occurred. As I have said before, absolutely nothing was done.

Counsel quoted to me a penalty given in another case involving Foodstuffs but from what I have been told, I do not consider that to be in any way on all fours with the present case because it appears that that was an accidental discharge and the

company was not aware that the discharge was actually occurring but once it became aware, took immediate mitigation measures. In this present case the defendant was aware right at the outset that the discharge had happened and did precisely nothing about it.

I consider the fine must be substantial but I do not consider, having regard to the financial abilities of the company, that it should be in the five figure bracket although I must confess I am very much tempted to go into that particular arena. I take into account the fact that the defendant company has paid the clean-up costs and in the circumstances the company will be fined the sum of \$7,500 together with solicitor's costs \$500, Court Costs \$95. The fine <sup>is</sup> 10% as provided for in s.342.  
to be paid to the informant.



WJ M Treadwell  
District Court Judge  
Planning