ORIGINAL

18 NOV 1996

IN THE DISTRICT COURT
HELD AT NEW PLYMOUTH

CRN NOS. 6021004706
6021005044
45, 46, 47, 48 & 49

BETWEEN **TARANAKI REGIONAL COUNCIL**

Informant

AND **TARANAKI BY-PRODUCTS LIMITED**

Defendant

DATES OF HEARING RE SENTENCE: 21 & 22 October 1996

DATE OF SENTENCE: 22 October 1996

COUNSEL

Mr Rai for informant
Mr Wilkinson for defendant

SENTENCING NOTES OF JUDGE R J BOLLARD

The Taranaki By-Products Limited is before the Court for sentence on seven charges brought by the Taranaki Regional Council under the Resource Management Act 1991. One charge relates to the discharge of a contaminant, namely, effluent from an aerobic pond on the company's rendering plant property into water, namely, the Inaha Stream. The remaining six charges relate to the discharge of a contaminant, namely, "stick water" from the company's same premises onto land at Manawapou Road, Hawera. Basically, the circumstances of the first matter are that on the 25th of January a biologist from the Regional Council carried out a survey of the Inaha Stream and noticed that there were sewerage fungus growths in the stream which was of environmental concern owing to their ability to consume oxygen in their decomposition process. At that stage it was not known what the cause of these fungal growths was; but the defendant company was one of the possible originators and the Regional Council through its officers was in touch with the defendant requesting that the defendant take steps to check its effluent disposal system. On 29 February, just over a month later, a further survey of the stream was undertaken and at this stage it was found that the fungal growths had extended to a point approximately 1km down the stream. It was at this stage that it

became apparent that the defendant's system was in fact the cause of the problem, despite the defendant's efforts over the interim period to try and ascertain what problems might be involved with its system.

The defendant consulted its engineering advisers in Wellington who had recommended the design for upgrading the system from two ponds to five ponds. Ironically, despite this upgrade the modified system failed to perform to expectation. The defendant has been so concerned about this matter that it has taken it upon itself, according to its counsel Mr Wilkinson, to arrange for a further upgrade of the system to eight ponds - and photographs have been produced showing these further works in progress. Naturally that expanded system will be anticipated to accommodate the company's growth aspirations in the foreseeable future, but as well the company's decision at this stage has been triggered by the concerns stemming from the incident earlier this year.

I accept that this case falls at the lower end of the scale, given the circumstances that the company did make reasonable endeavours to ascertain the cause, including, as I have indicated, consulting with its advisers in Wellington. However, there was certainly a detriment caused to the stream although one that has rectified itself subsequently.

Taking all matters into account, I consider that a fine of $3000 would meet the justice of the situation. I note the company's guilty plea, its expression of concern about the incident occurring so soon after the upgrading had taken place and lastly its ready co-operation with the Regional Council. The company is also ordered to pay the prosecution solicitor's costs of $113 and Court costs $95.

Turning to the remaining charges, these charges appear to fall into a somewhat different category in that they have a deliberate element about them. I am told that the company was facing an emergency within its operation towards the end of May this year, - and despite the fact that it had permits to discharge "stickwater" by way of an injection process into the ground at two other rural locations, those avenues were not sufficient to enable the company to dispose of all the "stickwater": that needed to be disposed of at the time. The company had applied to the Regional Council for a resource consent but no such consent was granted at the time the offences occurred. In other words, the company presumed that it would obtain consent by proceeding to act in accordance with it ahead of time. The amount of "stickwater"

disposed of was substantial, inasmuch as I am told that the tanker truck used to convey the material holds 20,000 litres. Complaints were received on 20 May by the Taranaki District Council and this was followed up the following day by an officer of the Regional Council who went to Hawera and observed a sub-surface injection vehicle in the area. The following day the same officer observed a tanker vehicle of the defendant travelling south. The unit was followed to Manawapou Road property. The driver initially commenced injection of the waste into the ground, and after 5 minutes or so the waste was disposed of by releasing a valve on the tanker, resulting in an uncontrolled discharge of "stickwater" on to the land. Photographs were taken and have been provided to the Court.

The Regional Council accepts that the effect on the environment was not significant, in that the consequences related mainly to the odour created by the uncontrolled discharge on the 22 May.

The defendant acknowledges through its counsel that it was well aware that what it was doing was unlawful when the consent that it required had not been obtained. What it should have done was to arrange for a commercial disposal firm to remove the waste in a proper manner pending the grant of a resource consent. It appears that it chose not to take this course because of the likely costs.

It is important in cases of this kind that companies do not see it as more attractive to avoid the greater costs of proper waste disposal through commercial operators by adopting an unlawful approach as in this case.

All things considered, given the deliberate nature of the matter, but nevertheless affording as much consideration as I can to the various points raised by Mr Wilkinson, the company will be convicted and fined on each charge the sum of $2,500, save for the sixth charge where the fine will be $3,500, reflecting the greater concern at what occurred through the action of the defendant's employee.

I trust that this case may be a reminder to industrial concerns generally that removal of wastes on an unapproved basis will not be treated lightly by the Court. The company is also ordered to pay the solicitor's costs of $113 on the last charge together with Court costs of $95 on each of the charges.

I order that of the fines 90% is to be paid to the Regional Council pursuant to s.342 of the Act.

R J Bollard
Environment Judge