

# ORIGINAL

IN THE DISTRICT COURT  
HELD AT WHANGAREI

CRN Nos. 6088003518 and  
6088003533

BETWEEN

NORTHERN REGIONAL  
COUNCIL

Informant

AND

TRANZ RAIL LIMITED

Defendant

**Dates of Hearing:** 13 and 14 May 1996

**Date of Decision:** 15 May 1996

**Counsel:**

Mr Bell for the informant

Ms Atkins and Mr Riley for the defendant

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## NOTES OF SENTENCING BY JUDGE R J BOLLARD

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The defendant Tranz Rail Limited is before the Court having been found guilty of two charges brought by the Northland Regional Council under the Resource Management Act. The first charge relates to the discharge of urea formaldehyde from the defendant's premises at Otiria in circumstances resulting in the discharge reaching an unnamed tributary of the Otiria Stream. The second charge relates to the discharge of urea formaldehyde vapour to air in consequence of the discharge to ground. The circumstances in which the incident occurred have been fully described in my main decision as to liability. I do not propose to repeat them.

Ms Atkins, in a careful and comprehensive plea in mitigation for the defendant, has drawn my attention to various aspects that require to be taken into account on the defendant's behalf. However, in weighing an appropriate penalty one has to bear in mind the various aspects to be taken into account in the Machinery Movers' case and

therefore, while having regard to the points emphasised by Ms Atkins, I balance those factors with the other aspects which Machinery Movers requires me to have regard to.

In favour of the defendant, it may be said that Tranz Rail was, through its staff, co-operative in assisting with the clean-up operations required following the discharge. Public agencies had to be called to the site. Given the extent of the discharge which I have mentioned in the main decision, those agencies included the Fire Service, Police, Waste Management Officers of the Regional Council and the Northland Regional Health Protection Officer. It is of relevance to note that the vapour to air discharge was such that the Health Protection Officer felt it necessary, with the assistance of the Police, to speak to residents in the vicinity within a zone of 400m, advising them to evacuate their properties until the clean-up had reached a point where re-occupation could safely occur.

Tranz Rail has not profited from the incident in any way, inasmuch as the loss of the urea formaldehyde resin glue, which was destined for a customer, has had to be made up - the amount being \$15,000. I am also informed and accept that some \$70,000 was spent cleaning up the spill, and that another estimated \$20,000 has been spent so far in follow-up action - that is to say, in action designed to tighten and improve procedures and incidental equipment to more satisfactorily guard against any repetition. I accept that Tranz Rail takes its environmental responsibilities seriously and that this incident has created a concern for its management and staff, such that concerted action has been, and is being, taken to ensure that the safety of the urea formaldehyde transfer operations is appropriate to ensure compliance with the Resource Management Act in future.

This is the first time that Tranz Rail has been prosecuted under the Act and I accept that the company is dismayed that its good record hitherto has been blemished by the finding of guilt on this occasion. The company pleaded at the earliest reasonable opportunity and has been straightforward in the defence which it sought to raise - that

defence being based on principles enunciated in the Biogas case. However, I bear in mind that the Regional Council has had the cost of having to run a full prosecution and consequently a reasonable allowance towards its costs must be made.

The Regional Council also seeks recovery of various expenses it has incurred in relation to the incident amounting in total to \$1,984. This amount has not been challenged by Tranz Rail and I consider it a reasonable figure against the background of what happened and the requirements placed upon the Regional Council in consequence in dealing with the spillage at the time and undertaking the subsequent prosecution proceedings.

As to the first charge, the evidence falls short of indicating that any fish life in the tributary or the Otiria Stream itself were killed. However, I accept the evidence of Mr Dall for the Regional Council that the entry of the urea formaldehyde into the stream, as per photographs produced, would have had a deleterious effect on organisms within the stream. As I have said in other cases, discharges of this kind into water courses, while not measurable in absolute terms in relation to effect, nonetheless do have a cumulative factor about them reflecting in the long term quality of the water bodies concerned.

All things considered, on the first charge Tranz Rail will be convicted and fined the sum of \$5,000 and ordered to pay reimbursement of expenses to the Regional Council amounting to \$992 being half of the \$1,984 earlier mentioned, plus \$750 costs towards the prosecution and Court costs \$95. On the second charge I propose fining the company at a higher figure because I consider the consequence of the vapour to air discharge to have been of prime concern. However, in fixing the figure I take account of the totality of the matter and the total fines and costs between the two charges.

On the second charge, the company will be fined the sum of \$7,500 and ordered to reimburse expenses incurred by the Northland Regional Council of \$992, and to pay

costs towards the prosecution in a similar sum as before \$750 and likewise Court costs in a similar sum of \$95.

Of the fines I certify that 90% is to be paid to the Northland Regional Council pursuant to s.342(1) of the Act. I also note that there is an outstanding account due by Tranz Rail to the Fire Service amounting to some \$3,700. I have not sought to deal with that as I accept Tranz Rail's assurance through its counsel that that amount will be paid to the Fire Service shortly.

*R. J. Bollard*

R J Bollard  
Planning Judge

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