

ORIGINAL

**IN THE DISTRICT COURT
AT PAPA KURA**

CRN: 6055016712

AUCKLAND REGIONAL COUNCIL

v.

Gerardus Franciscus VAN DEN BOGART

Defendant

Date: 10 March 1997

Counsel: B Hunt for Defendant
Sgt Mansfield - Prosecutor

WJM TREADWELL, ENVIRONMENT COURT JUDGE

The defendant is charged under s.15(1)(B) Resource Management Act 1991 in that on or about and between 1 May 1996 and 18 July 1996 that section was contravened by discharging a contaminant onto land in circumstances which may have resulted in that contaminant entering water otherwise than as expressly allowed by a rule in a regional plan and in any relevant proposed regional plan.

The information relates to a poultry farm which appears to be one on a reasonably large scale and any water escaping from those premises whether by means of roof storm water discharge or by run off from around the sheds appears at the time the offences were committed to have at all times been mixed with effluent of an unacceptable type and quantity.



In some ways this type of offence in relation to poultry farms is similar to that faced by a dairy farmer where his cattle are allowed free run of the farm and any effluent resulting from storm water coming into contact with that effluent is not a situation giving rise to an offence against the act. But as the cattle are concentrated in one place for milking the discharge from the milking sheds becomes a matter subject to the Act and the farmer is required to put in suitable treatment plants.

In the present circumstances, storm water and discharge from the sheds flowed by means of a covered concrete drain to an unexposed roadside drain which in turn fed into the Symonds stream which in turn feeds the Manukau Harbour. Tests indicated that there was an unacceptable biological oxygen demand and an unacceptable level of faecal coliform. The Manukau Harbour itself is a problem area and discharges of this type have an extremely undesirable cumulative effect on natural waters, cumulative effect being a matter which can be taken into account in terms of this Act.

I gather from what I have been told that the defendant has now modified his operations and tidied the farm up, particularly by reducing or eliminating the slaughter of hens which was adding to the discharge of waste during the period of these offences.

I am, however, singularly unimpressed with what he has done which, to me, contains all the elements of another accident waiting to happen. The tidy up really consists of containing some effluent in a holding tank and having a soak pit to cope



with any overflow or to cope with effluent not being discharged into the primary holding tank. The effluent, when the tank is full, is I am told suctioned out and carted away. I know nothing about the fate of the liquid which goes into the soakage pit but I express some concern that I was not told that any tests had been taken by the defendant prior to embarking upon that form of effluent disposal, because for all anyone knows, it may still be finding its way into underground water.

I accept that the defendant's parents have been farming this property since 1960 and are now elderly and because they have been farming it in this way for that length of time they apparently were lulled into a sense of false security and decided to simply carry on as before, not realising that they were breaching an Act of parliament which has now been passed, an Act which carries severe penalties.

I am accordingly prepared to view the matter as at the lower end of the fine scale, and to accept that the warning has now been issued and that any further breaches of this Act will not be tolerated. The defendant's Counsel will undoubtedly tell him that second time round for this type of offence can start to attract extremely severe penalties. I simply warn at this stage that there are several cases where farms giving rise to effluent, particularly pig farms, have been run in a way which is unacceptable in terms of the Act and that the owners of those farms, when faced with a second or third offence, plead poverty as a means of avoiding a fine. I simply observe that in these circumstances the Environment Court is now looking at alternative remedies which can include community service, periodic detention,



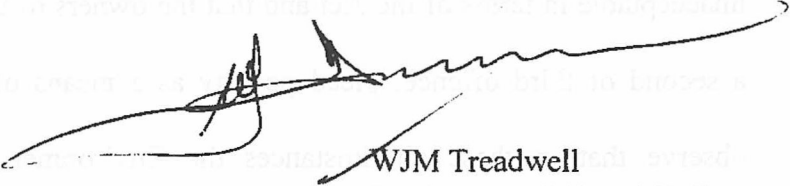
suspended prison sentences or actual prison sentences. Therefore, for any future offences, the excuse of shortage of money is unlikely to be received by the Court.

In setting the fine, I have taken into account the fact that the defendant is apparently struggling financially, but on the other hand he is struggling financially but has a substantial capital asset. I am not greatly concerned with who presently owns that asset when setting the fine. I am also conscious that the analyst's costs incurred by the regional Council in bringing this prosecution are high, but on the other hand the defendant must realise that it is not until recently that he has indicated he will plead guilty to the charges.

I will, however, take this as a warning and will impose a fine at the lower end of the scale, but that scale, one must always remember under this Act, is already on the high side as far as penalties for matters such as this are concerned.

The defendant is convicted and fined \$2,000.00, Court costs \$95.00, regional Council analyst fees \$262.81 and solicitor's costs \$400.00. The fine less 10% to be paid to the informant.

Thank you.



WJM Treadwell
Environment Court Judge