

IN THE DISTRICT COURT
HELD AT AUCKLAND

CRN NO. 7004026769

BETWEEN

AUCKLAND REGIONAL
COUNCIL

Informant

AND

WATER TECHS GROUP LIMITED

Defendant

Hearing as to sentence: 11 December 1997 and 22 May 1998

Date of interim remarks: 22 May 1998

Date of final outcome: 29 May 1998

Counsel: Mrs Hollings for informant
Mr Banbrook for defendant

INTERIM REMARKS OF JUDGE R J BOLLARD AND RECORD
OF FINAL OUTCOME

The defendant, Water Techs Group Limited, is before the Court for sentence on one charge brought by the Auckland Regional Council under s.338 of the Resource Management Act that Water Techs contravened s.15(1)(b) of the Act by discharging a contaminant on to 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 or resource consent or regulations.

The background needs only to be shortly stated. On 22 October 1996, an employee of Water Techs, Mr Scott, was engaged in washing down the hull of a boat called "Morning Glory". This operation was conducted at slipway premises under the control of a firm called Orams Marine (Auckland) Limited. Employees of Orams had undertaken some rather rudimentary efforts to partially stem the flow of waste material into the harbour. Water Techs employee was not involved in attending to this aspect of preparation. He undertook the actual cleaning down of the boat via a water blaster. As a result of the cleaning down, the harbour was discoloured for an area of approximately 100m² - the discolouration being of a blue hue, reflecting the colour of the paint on the boat. Obviously, small particles of paint residue became combined with the water and ran down the slipway, despite rudimentary efforts to stem the flow into the harbour.

At the time the Regional Council and Orams were in communication. The Regional Council had informed Orams in a letter, shortly before the incident, that contaminant run-off into the harbour was not to be continued with, and that such run-off was to be fully captured and conveyed off-site.

Mr Banbrook, in appearing for the defendant, has presented a comprehensive plea in mitigation in which he stresses the secondary part played by his client. In the light of evidence called by him this morning and this afternoon, I accept his submission that his client was only indirectly involved. Even so, were it not for circumstances shortly to be mentioned, I would have strong reservations in dealing with the matter in the way that I nevertheless propose to do. It does appear that the Water Techs employee might well have been expected via instructions from his firm to have made his own inspection of the system in place for avoiding contamination of the harbour. Nevertheless, I bear in mind that Orams have already been dealt with by another Judge, not being an Environment Judge, on a basis whereby the total fine \$2,000.00 plus costs amounted in all to some \$6,300.00 - this being in relation to 5 incidents, one of those incidents being that now before me.

In the light of the level of penalty imposed upon Orams as the party primarily responsible in the present instance, and bearing in mind that the penalty mentioned covered other incidents as well, it appears to me that the outcome urged upon me by Mr Banbrook, namely, that his client be discharged without conviction on payment of the Regional Council's costs in the present matter of \$5,300.00, is reasonable. Furthermore, his client proposes voluntarily to make a donation to a Trust whose purpose is to assist the marine environment, namely the Island Care Trust Inc. The other point I bear in mind, is that the Regional Council, against the background I have endeavoured to outline, does not object to the matter being disposed of on the basis mentioned.

I do not overlook the principles in *Machinery Movers*, but consider that this case has special features attaching to it. As I have said, I am satisfied that Water Techs was involved only in an indirect way, and that they were inadvertently caught in a situation where matters were going on as between the Auckland Regional Council and Orams to which they were not a party, let alone cognisant about.

I propose to adjourn the matter for 7 days to enable payment of the costs and donation to be effected, and upon notification that that has been attended to, I will finally dispose of the matter in Chambers as suggested by counsel.

Addendum

With the above matter having been further referred to me in Chambers on 29 May 1998, and being satisfied as to payment of the informant's costs and the making of the relevant donation, the outcome indicated by the Court on 22 May 1998 is confirmed.



R J Bollard
Environment Judge/District Court Judge
watertec.doc

