

**IN THE DISTRICT COURT  
AT INVERCARGILL**

**CRI-2017-025-001630  
CRI-2017-025-002170  
[2018] NZDC 2904**

**SOUTHLAND REGIONAL COUNCIL**  
Prosecutor

v

**BLUE SKY MEATS (NZ) LIMITED**  
Defendant

Hearing: 19 February 2018  
Appearances: B J Slowley for the Prosecutor  
M Parker and A Gaborieau for the Defendant  
Judgment: 19 February 2018

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**NOTES OF JUDGE B P DWYER ON SENTENCING**

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[1] Blue Sky Meats (NZ) Limited (Blue Sky) appears for sentence on three charges laid by Southland Regional Council alleging breach of s 15(1)(b) Resource Management Act 1991. The charges are:

- That, on 21 February 2017, at Morton Mains near Invercargill, Blue Sky Meats (NZ) Ltd discharged a contaminant namely meat processing effluent on to land in circumstances that may have resulted in that contaminant entering water when the discharge was not expressly allowed by a national environmental standard or other regulation, a rule in a regional or proposed regional plan or a resource consent (charging document ending in 618);

- That, on 29 March 2017, at Morton Mains near Invercargill, Blue Sky Meats (NZ) Ltd discharged a contaminant namely meat processing effluent on to land in circumstances that may have resulted in that contaminant entering water when the discharge was not expressly allowed by a national environmental standard or other regulation, a rule in a regional or proposed regional plan or a resource consent (charging document ending in 619);
- That, on 16 September 2017, at Morton Mains near Invercargill, Blue Sky Meats (NZ) Ltd discharged a contaminant namely meat processing effluent on to land in circumstances that may have resulted in that contaminant entering water when the discharge was not expressly allowed by a national environmental standard or other regulation, a rule in a regional or proposed regional plan or a resource consent (charging document ending in 761);

[2] Blue Sky has pleaded guilty to all three charges. I am advised by counsel that s 24A Sentencing Act 2002 is not applicable in this case. There is no suggestion that a discharge without conviction is appropriate so the Defendant is hereby convicted on the three charges.

[3] Blue Sky operates a meat exporting plant at Woodlands near Invercargill. It holds a discharge permit allowing irrigation of 1000 cubic metres per day of treated effluent from the plant on to land which it owns near the works. The permit prohibits overland flow or ponding of the effluent and its entry into surface water bodies. I observe that that is a common requirement of just about every discharge permit that I have seen in this region.

[4] The first of these three offences occurred on 21 February 2017 when Blue Sky reported to the Council that an application of effluent on to pasture had led to a discharge into an unnamed tributary of the Waihopai River. Council officers inspected the property and they found that soil in the irrigation paddock was saturated with some areas of deep ponding. Effluent had got into a swale on the property and that in turn had conveyed the effluent to the river. Apparently, the Defendant's staff tried to block the swale with a bund but when Council officers

were there they could see that effluent was still getting into the waterway at the time of their inspection.

[5] The second offence was discovered by Council officers in the course of a routine inspection on 29 March 2017. They found that a leaking irrigation hydrant had caused overland flow and ponding of effluent which seemed to the officers to have been occurring for some time. There is no evidence that effluent had entered ground water or surface water on this occasion.

[6] The third offence occurred on 16 September 2017 when Blue Sky reported to the Council that again, there had been a discharge of effluent to the tributary. A staff member had turned the system on and it was subsequently found on inspection that there was an open hydrant in the irrigation line which was discharging effluent directly into the paddock where it was overflowing and ponding. Effluent had entered a tile drain which again took it into the tributary and, according to the summary of facts, overland flow had also got into the tributary.

[7] This incident was not immediately reported to the Council as required by the discharge permit. Mr Parker advises that when Blue Sky management became aware of the situation on the Monday morning (the discharge had happened over a weekend) they properly reported it to the Council but the staff responsible at the time the discharge happened had not done so.

[8] When the Council was notified and undertook an inspection, its officers found effluent mixed with rain water in the irrigation paddock. There was ponded but diluted effluent on a neighbouring property adjacent to the tributary. There was also found to be a second tile drain which was discharging effluent and ponded effluent still discharging to the waterway through thick grass.

[9] The waterway is a tributary of the Waihopai River which flows into the New River Estuary near Invercargill. Water quality in the tributary and the main river are of poor quality primarily as a result of land use practices. Nevertheless, I am told that the river is an important breeding ground for whitebait, is used for stock watering purposes and is part of the Council's Living Streams programme which

seeks to improve the quality of water in various waterways. Finally, of course, the estuary into which the river flows is part of the Waituna Wetland which is a Ramsar site.

[10] It is clear from the testing which the Council undertook that both of the discharges which got into the tributary and the ponded liquid which was found in the paddock on the 29<sup>th</sup> March, contained high concentrations of the usual range of contaminants which are found in effluent or animal discharges. Analysis of the February discharge showed that it had considerable impact on water quality up to half a kilometre downstream from the point of entry into the tributary.

[11] There is no argument between counsel as to the way in which I should undertake this sentencing or the principles I have to apply. I confirm that I have had regard to the matters in ss 7, 8 and 9 Sentencing Act 2002 and the matters identified in the *Machinery Movers* case. I record that the maximum penalty for each offence is \$600,000.

[12] The first matter for me to determine is the appropriate starting point for penalty considerations. Mr Slowley has suggested a figure of \$80,000 divided equally between the February and September discharges, that is, \$40,000 each. He has taken what is known as global approach to the sentencing, treating the two effectively as extensions of the same offending. He suggests \$30,000 for the March discharge which did not enter surface water. He says that there should be an uplift of \$10,000 in each case to reflect the fact that this is the second time that Blue Sky has appeared before the Court for resource management offending, the previous offending having taken place in 2014 with sentencing in 2015. I was the sentencing Judge on that occasion and I note that on that occasion I took a global starting figure of \$80,000 for two offences which I divided equally between them. Mr Slowley has followed that example, I think.

[13] Mr Parker suggests a similar all up starting point for the February and September offences where the discharge entered water and \$20,000 for the March offending, giving a figure of \$100,000 to which there should be an uplift for previous convictions. He then seeks to make allowance for various credits, these include a

donation of \$10,000 to a charity or an environmental trust which I am told Blue Sky intends to make. I note that I gave a deduction of \$5000 for a similar donation on the previous occasion. I am not going to do so on this occasion. It is the second time this has happened. I agree that such a donation is a mark of remorse but in my view, this Defendant simply should not be here again and is obliged to do everything it can to put things right.

[14] I note that the last time Blue Sky appeared before me, the factors which contributed to the discharge were the presence of a tile drain or tile drains in the property and inadequate storage ponds. The storage pond matter has been fixed, I acknowledge that. But tile drains were a contributing feature again in this offending. Before the previous offending there had previously been a history of non-prosecuted poor practice on the part of Blue Sky. In 2015 it expressed embarrassment at finding itself before the Court. It consented to the enforcement order which Mr Parker has discussed with me and I note that it has been complied with. It is disturbing to see the company before the Court once more notwithstanding its earlier expression of embarrassment.

[15] Returning to the issue of the \$80,000 starting point I adopted at the time of last conviction, I think that there is a material difference between that offending and the offending now before the Court. That is that these two current offences occurred several months apart. They were caused by different factors and I do not propose treating them as effectively one offence. In 2015 the offences occurred one day after the other.

[16] I consider when regard is had to the systemic element involved in this offending with effluent being conveyed in a swale or tile drain, management or supervisory shortcomings and the fact that effluent entered a surface water body, a starting point of \$50,000 is appropriate for each of the February and September incidents.

[17] I agree with Mr Slowley's submission that an uplift of \$10,000 is appropriate in each case to allow for previous convictions.

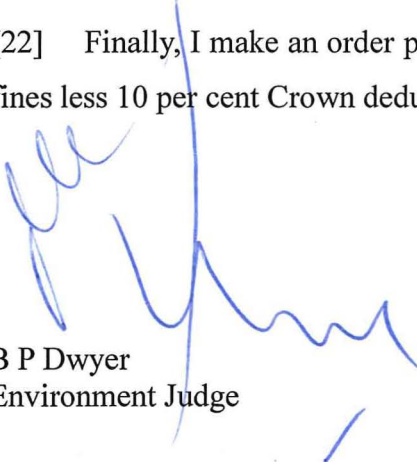
[18] In terms of the offending which happened in March, I concur with Mr Slowley's suggested starting point of \$30,000 and I am going to uplift that by the sum of \$5000 on account of previous offending.

[19] That gives figures of \$60,000 for each of the two more serious offences and \$35,000 for the March offence, a total of \$155,000.

[20] The only credit which I am going to allow in this case is a reduction of 25 per cent on account of the prompt guilty pleas which give an all up end penalty figure of \$116,250.

[21] On that basis I impose a penalty of \$45,000 for the February and September offences and \$26,250 for the March offence. In each case the Defendant will pay solicitor costs in accordance with the Costs in Criminal Cases Regulations 1987 (if there is any dispute as to those they can fixed by the Registrar) and Court costs \$130.

[22] Finally, I make an order pursuant to s 342 Resource Management Act that the fines less 10 per cent Crown deduction are to be paid to Southland Regional Council.



B P Dwyer  
Environment Judge