

**IN THE DISTRICT COURT  
AT TE AWAMUTU**

**I TE KŌTI-Ā-ROHE  
KI TE AWAMUTU**

**CRI-2019-072-000053  
[2019] NZDC 24303**

**WAIKATO REGIONAL COUNCIL**  
Prosecutor

v

**MEADOWBANK FARM LIMITED**

and

**CHRISTOPHER JOHN HOWARD EMPSON**  
Defendants

Hearing: 26 November 2019, heard in Hamilton District Court,  
Appearances: J O'Sullivan for the prosecution  
PM Lang for the defendants  
Judgment: 13 December 2019

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**RESERVED SENTENCING DECISION OF JUDGE HARLAND**

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**Introduction**

[1] Meadowbank Farm Limited (**Meadowbank**) has pleaded guilty to one charge of unlawfully discharging farm animal effluent (a contaminant) from a cowshed effluent sump to land in circumstances where it may have entered groundwater.<sup>1</sup> Mr Empson, a director of Meadowbank has pleaded guilty to one charge of contravening

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<sup>1</sup> A contravention of ss 15(1)(b) and 338(1)(a) of the Resource Management Act 1991 (**RMA**).

an abatement notice relating to the same discharge.<sup>2</sup> The maximum penalty for Meadowbank's offending is a fine not exceeding \$600,000 and the maximum penalty for Mr Empson's offending is a fine not exceeding \$300,000 or a term of imprisonment not exceeding two years.

[2] It was common ground that a fine would be the appropriate sentencing response and counsel agreed that a global starting point for it was appropriate. The difference between counsel was the level of the starting point for the fine, with counsel for the prosecutor submitting it ought to be \$200,000 and counsel for the defendants submitting that it ought to be in the range of \$55,000-65,000.

### **Background**

[3] Meadowbank was incorporated on 3 May 1961 and operates a dairy farming business at 538 Pokuru Road, Te Awamutu (**the farm**), which it purchased in 2001. The property comprises an area of approximately 72ha, and a further 20ha area provides an effective milking platform of about 90ha. The two directors of Meadowbank are the defendant Mr Empson and his wife.

[4] The property peak milks a spring calving herd of about 220 cows, but the average herd size is approximately 200 cows. Mr Empson advised that young stock are grazed off the property from five months old, a practice which means that only 200 milking cows are on the farm, not 200 cows plus 100 young stock that would otherwise be the case. The property is farmed at a low level of intensity. No nitrogen fertiliser is applied to the farm unless absolutely essential, and it does not import any feed. Mr Empson advised that the goal is for the farm to be self-sufficient. To that end, home-grown maize silage is currently the only supplementary feed.

[5] Although the farm is a relatively small property in modern dairy farming terms, the Empson farming enterprise is larger, and encompasses other properties. Farm staff are employed to provide labour to operate the business on a daily basis, with Mr Empson overseeing operations. In the last few years the farming enterprise has evolved and the Empson's two sons have become more actively involved in the

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<sup>2</sup> A contravention of s 338(1)(c) of the RM.

farming operation. Most recently, over the last two or so years, plans have been developing to amalgamate the farm with the immediately neighbouring Empson farming partnership property, to create a larger single dairy farm that would incorporate improvements in the effluent infrastructure. Cameron Empson has been very involved in these plans, as I outline later in this decision.

[6] The defendant Meadowbank has the ultimate and overarching responsibility for all farm infrastructure-related decisions, with any business decisions regarding capital improvements or extraordinary expenditure being made primarily by the company directors, with the majority of that oversight being by Mr Empson.

### **The effluent system**

[7] The property's main effluent infrastructure consists of a small sand trap off the side of the cowshed yard which directs all dairy shed wastewater and effluent to a nearby sump.<sup>3</sup> Ostensibly, that main sump has the capacity for a single milking and therefore the system irrigates to land on a daily basis during the milking season.<sup>4</sup>

[8] There is a facility to divert stormwater before it reaches the sump, however as that diversion is situated in the pipework beyond the sand trap, any rainwater collected on the yard will generally be contaminated by the residual content of that sand trap. For this reason, the stormwater diversion is rarely used.<sup>5</sup>

[9] The stormwater diversion is designed with buried PVC piping, which directs its discharge to land below the cowshed at the head of a wetland area.

[10] An electric motor-driven effluent pump is mounted within the sump. The pump is operated by a float switch. The switch turns the pump on and off automatically when the levels of the sump rise and fall.

[11] A network of effluent piping then directs the contents of the sump to a travelling irrigator, which applies the effluent to land.

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<sup>3</sup> Photograph booklet, Images 1-4.

<sup>4</sup> Photograph booklet, Image 5.

<sup>5</sup> Photograph booklet, Image 6.

[12] There are no documented farm protocols or procedures on the farm with respect to the operation and management of the effluent system.

[13] A second sump was installed to cater for the effluent and wastewater generated off the exit race from the cowshed, as well as any runoff from the tanker track. The contents of the secondary sump are pumped to the main sump for subsequent irrigation.<sup>6</sup>

[14] The pump installed within the secondary sump is identical to the main sump pump and acts as a backup for the main pump if there are any mechanical failures. Should that situation arise, the plan was for the secondary pump to replace the main pump while it was being repaired.

#### **Abatement notice**

[15] An abatement notice was issued to Mr Empson following earlier Council inspections that resulted in him being prosecuted in 2012 for contravening the RMA. The abatement notice is dated 11 June 2012 and it directed Mr Empson to cease and prohibited him from unlawfully discharging farm animal effluent at this and other farms owned by the Empson farming interests. The farm that is the subject of this prosecution (Farm 74119) is specifically referred to in the abatement notice. A copy of the abatement notice was annexed to the Summary of Facts.<sup>7</sup>

[16] The abatement notice outlined the non-compliance history in relation to Farm 74119 which related to historic overflows of dairy effluent from the sump to the adjacent paddock surface.<sup>8</sup> This sump is the same sump involved in the offending in this case.

#### **Relevant legislation and rules**

[17] Section 15(1) of the RMA stipulates that no person may discharge any:

- (a) contaminant into water; or

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<sup>6</sup> Photograph booklet, Images 7-8.

<sup>7</sup> Summary of Facts, Appendix A.

<sup>8</sup> Summary of Facts, Appendix A, paragraph 35.

- (b) contaminant onto or into land in circumstances which may result in that contaminant (or any other contaminants emanating as a result of natural process from that contaminant) entering water – unless that discharge is expressly allowed by a national environmental standard or other regulations, a rule in a regional plan as well as a rule in a proposed regional plan for the same region (if there is one), or resource consent.

[18] Farm animal effluent is “a contaminant” pursuant to s 2 of the RMA.

[19] Section 338(1)(c) of the RMA provides that it is an offence to commit the contravention of an abatement notice.

[20] The property relies upon permitted activity Rule 3.5.5.1 in the Waikato Regional Plan, which allows farm animal effluent to be applied onto land in certain circumstances.

[21] There are no national environmental standards, other regulations, resource consent or rules in a regional plan that expressly allow for any of the discharges that occurred in this case.

### **The offending**

[22] On 5 September 2018 at about 10.00am, monitoring officers from the Council went to the farm for the purpose of undertaking a compliance inspection of the effluent management system. The main effluent sump was examined and it was discovered that there had been a recent overflow of farm animal effluent from it. The effluent was sitting within depressions and flowing along a path that led to a wetland area approximately 65m away.<sup>9</sup>

[23] At the time, there was also an active discharge occurring from the stormwater diversion, which had been operating due to light rain. The discharge from the outlet of the stormwater piping also ended up within the same wetland area.<sup>10</sup>

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<sup>9</sup> Photograph booklet, Images 9-12.

<sup>10</sup> Photograph booklet, Images 13 and 14.

[24] Samples were collected of the discharge from the end of the stormwater pipe, as well as from the end of the flowpath of the effluent from the sump. When analysed they revealed high levels of contaminants consistent with farm (dairy) animal effluent.<sup>11</sup>

[25] Appendix D to the Summary of Facts is a statement from Mr Dragten, a scientist whose expertise includes the effect of land use activities on soil properties and groundwater contamination in the Waikato Region. He outlines the potential for adverse effects to occur if dairy effluent ponds on the ground in circumstances where the soil becomes saturated. He describes the impact this can have on groundwater.<sup>12</sup> Importantly, because groundwater provides the base flow for surface waterways during periods between rainfall, contaminants that enter groundwater may therefore eventually enter surface water. This is particularly so for nutrients such as nitrogen.

### **Investigation**

[26] During the investigation it was established that, on 5 September 2018 during the morning milking, the main effluent pump had developed mechanical issues and was not operating properly. As a result, the effluent pump was turned off. Subsequently, due to its small storage capacity, the effluent sump overflowed discharging the excess effluent and wastewater generated from the cowshed overland where it flowed towards the wetland area.

[27] Since 2007, the Council has corresponded from time to time with Meadowbank and has identified issues with the sump that has historically overflowed with effluent, and it has been highlighted to Mr and Mrs Empson that the effluent system must be managed to ensure that the sump does not overflow. The correspondence also identified that it is an offence to allow an overland discharge of effluent to land where it may enter water.

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<sup>11</sup> Photograph booklet, Images 15 and 16.

<sup>12</sup> Summary of Facts, Appendix D and in particular paragraphs 14-17.

[28] The Council's most recent visit prior to the offending was on 21 September 2017. After this visit, a letter was sent to Meadowbank that referred to concerns the Council had about effluent storage on the farm, in particular that it was of insufficient size and there was a risk that it could not comply with the rules in the Regional Plan.

### **Starting point**

[29] The purposes and principles of sentencing were not in dispute, including the oft-referred to purposes of accountability, denunciation and deterrence. The factors in assessing a defendant's culpability for the offending are usually referenced to the High Court decision of *Thurston v Manawatu-Wanganui Regional Council*.<sup>13</sup> Importantly, sentences should be pitched at a level that provides a disincentive for a person to take the risk of environmental damage by avoiding expending money on repairs and maintenance of critical equipment.<sup>14</sup>

[30] The framework provided in *Waikato Regional Council v GA & BG Chick Limited*<sup>15</sup> is also relevant, although only as a guide. The Court often refers to the three levels in *Chick* to ascertain whether the offending is at the lower end of the scale, moderately serious or more than moderately serious, however the fines referred to in *Chick* are well out of date given the 2009 amendments to the RMA which increased the penalties by doubling them for both individual and corporate offenders.

[31] More recently, counsel for the prosecutor in the Waikato Region has been signalling that fines, particularly those for corporate offenders, are not at a level that provides a sufficient deterrent to those in the dairy farming industry who might consider delaying investing in infrastructure or appropriate management techniques and therefore cause unlawful discharges of effluent to land in circumstances where those discharges may or in fact do enter water. There is merit in this issue being raised, and the Court being reminded of the need for a fine to take into account the maximum penalty provided for by Parliament from time to time. This is so even though it is not possible to link in a particularly scientific way the amount of a fine with continued

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<sup>13</sup> HC Palmerston North, CRI-2009-454-24 at paragraphs [41]-[47].

<sup>14</sup> *Glenholme Farms Limited v Bay of Plenty Regional Council* [2012] NZHC 2971 at [41] per Heath J.

<sup>15</sup> [2007] 14 ELRNZ 291 (DC).

offending of a similar type. A common-sense approach, however, would indicate that the higher a fine, the more likely it is to impact on the business being operated.

[32] Another important consideration is the principle of consistency, namely that similar offenders committing similar offences in similar circumstances ought to receive similar sentences.

[33] Bearing all of these matters in mind, a typical approach is for the Court, on sentencing those responsible for unlawful discharges of dairy effluent, to assess the defendant's culpability for the offending, the effects of the offending on the environment, and also for the Court to consider the degree to which the factors in *Thurston* and *Chick* might apply (there is some overlap). Then the Court typically considers comparable cases and finally fixes a starting point for a fine. That is the process I will now employ.

#### ***Culpability for the offending***

[34] Counsel for the prosecutor, Ms O'Sullivan, submitted that the conduct in this case was "grossly reckless" and showed a "deliberate disregard for the provisions of the RMA".<sup>16</sup> She submitted that the effluent storage facilities on the farm were manifestly inadequate, and that the defendants had been well aware of this fact since, at the very latest, 2012 when the abatement notice was issued.

[35] Ms O'Sullivan submitted there was a failure by the defendants to take corrective action in a timely way, and that the discharges were more than foreseeable, they were inevitable. Ms O'Sullivan accepted that the triggers for the unlawful discharge were:

- (a) the failure of a pump half-way through morning milking, allowing the effluent sump to overflow; and
- (b) the opening of a stormwater diversion, (funnelling runoff away from the effluent sump and towards the wetland) despite the fact that the "stormwater" was contaminated with effluent.

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<sup>16</sup> Submissions at paragraph 94.

However, she also submitted that the primary cause of the unlawful discharge was the failure by the defendants to invest in sufficient effluent storage capacity at the farm.

[36] Ms O'Sullivan highlighted that the farm's milking shed is serviced by two effluent pumps, but:

- (a) the main sump is only large enough to hold one milking's effluent at most and there is no ability to defer irrigation because of this. The irrigation pump in the sump was the pump that failed on 5 September 2018;
- (b) the secondary sump was installed after the 2012 offending. It collects run-off from the tanker loop and exit race of the milking shed. The secondary sump pumps into the main sump, therefore effluent from both the milking shed and the secondary sump can be flowing into the main sump at the same time, exacerbating the storage issue.

[37] Overall, by failing to invest in the infrastructure in a timely way, Ms O'Sullivan submitted that the defendants took the risk that unlawful discharges could occur. She referred to the recent case of *Vernon v Taranaki Regional Council*<sup>17</sup> where the High Court affirmed that deferring the capital outlay required to operate lawfully is a form of profiting from offending. In other words, Ms O'Sullivan submitted that the decision not to upgrade the farm's effluent systems meant that the defendants retained capital that could then be spent on acquiring or developing other profitable assets. The effect of this, she submitted, was that a non-compliant farm could gain a competitive advantage over a non-compliant farm, which could be said to disadvantage lawful operators.

[38] As well as the delay in investing in appropriately sized effluent infrastructure, Ms O'Sullivan also highlighted that there were no documented farm protocols or procedures in respect of the operation and management of the effluent system for this farm.

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<sup>17</sup> [2018] NZHC 3287 at [41].

[39] In summary, Ms O'Sullivan submitted that there were infrastructure problems and management failures associated with this farm, and both needed to be considered when assessing the defendants' culpability for the offending.

[40] The defendants' culpability for the offending was pitched at a high level by Ms O'Sullivan. She submitted that Mr Empson's past interactions with the Council and the Court, by virtue of his conviction on ten RMA charges across four farming properties in 2012 (including this farm),<sup>18</sup> elevated both defendants' culpability for the offending, because Mr Empson was the director responsible for the capital expenditure decisions for Meadowbank. For this reason, she submitted that the culpability for Meadowbank and for Mr Empson was essentially the same.

[41] Mr Lang painted a different picture. He submitted that, at the time of the compliance inspection when the offending was revealed, the effluent management system was in the process of being modernised and upgraded. The background to this was explained in a statement Mr Empson presented personally to the Court, and the two statements Mr Cameron Empson also submitted to the Court. It appears that, as is often the case with family farming enterprises, a succession plan was being considered by the family that would result in Mr Cameron Empson taking over the management of this farm and the adjoining farm, also owned by Empson interests.

[42] Mr Cameron Empson explained in his statement that for the past three years Mr Empson senior and he had been discussing the upgrade of all infrastructure on the two farms to create a single complying farming operation with a single milking shed and effluent management system. He set out<sup>19</sup> the steps taken during the 2016/2017 season and the following season to investigate the options associated with the infrastructure upgrade.

[43] Mr Cameron Empson outlined that he was actively involved in looking at options to improve the effluent management system, which included a temporary solution to purchase a bladder to provide additional storage for effluent. The initial

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<sup>18</sup> *Waikato Regional Council v Empson*, CRI-2012-072-000282, Hamilton District Court, 27 September 2013.

<sup>19</sup> In his statement of 14 November 2019.

information provided to Mr Cameron Empson about the bladder, he said, did not include all the details about the filtration of effluent that would be required to be used in conjunction with the bladder. When it became clearer that a filtration system would be needed, it was decided to abandon the bladder option for cost reasons and to focus on designing and installing a new dairy shed and effluent storage pond.

[44] Mr Cameron Empson explained that the final planning, contracting and commencement of work associated with installing a new storage pond occurred over the period September 2018 to April 2019, with excavation and pond construction starting in April 2019 and being completed in May 2019. The works involved were described as “major” and included earthmoving and pond construction activities, installing a plastic pond liner, constructing a weeping wall solids removal system and piping. I was advised that the cost of installing the effluent storage system was close to \$200,000, with the effluent irrigation system costs being in addition to that amount.

[45] The new dairy shed (a single shed for both properties) has yet to be constructed.

[46] In the meantime, and as a result of installation of the new effluent storage system, Mr Cameron Empson advised that effluent from both sheds operating on the farm which is the subject of this case, and the adjacent farm, are now piped directly to the pond. He said that no irrigation has been required on the farm from May to October 2019, however some irrigation had occurred on the adjoining farm.

[47] Mr Cameron Empson also explained that to help to provide the financial assistance needed for the construction of the new pond and the new dairy shed, he and his wife had raised funds through asset sales and borrowing to purchase the house that they now live in, situated on the farm subject to this prosecution. This was arranged during the period May to November 2018 with settlement occurring at the end of November 2018.

[48] In summary, Mr Cameron Empson said that although there had been delays, and results have sometimes been slow and disruptive, the improvements to the effluent storage system have been complicated. He maintained, however, that the goal was

always to install a system that conforms with the rules and provides a sufficient buffer to cover unforeseen circumstances.

[49] In his statement, Mr Empson senior explained the various options that were considered to upgrade both the effluent management system and the milking shed. In his statement to me he said:

I'm sorry if slow progress has been seen as a reluctance to do anything, or as a disregard for the best practice. I can only try to reassure you that this was far from the case. I've always believed, that if possible, a job should be done once and do it right first time. I've proceeded, others would say slowly, with ideas and plans as time and money would allow. ...

I deeply regret it, if my untimely manner, or lack of urgency has caused any harm to people, places or the industry.

[50] Finally, Mr Empson senior noted that the interim system he had in place with back-up pumps to bridge the gap was not fool-proof, even though by referring to this I infer he had been hoping that it would be sufficient (if not fool-proof) to cover the situation until a permanent solution could be found.

[51] I agree with Ms O'Sullivan that, even though the trigger for this offending was the failure of the pump in the sump and the opening of the stormwater diversion, the real problem was the lack of effluent storage.

[52] The previous convictions of Mr Empson in 2013 (**the 2013 offending**) included unlawful discharges from the farm that is the subject of this prosecution (Farm 74119) although, in the main, it related to the two other farms (Farms 74120 and 74121), and the offending in relation to the two other farms comprised nine out of the ten charges. In that case, I found the defendants' culpability for the 2013 offending to be high. At paragraph [545] I noted:

I agree with the informant that the defendant's culpability for the offending is high. He continued to maintain a personal philosophy that the effluent management pond systems were adequate and compliant, when they were not. Other farm staff interviewed during the investigation highlighted some concerns about the systems they were required to work with. The manager of Farm 74119 stated that the race runoff (CRN ending -152) had been happening since he had started working on the farm some 11 years previously. The farm manager also commented that this issue had also been highlighted to the defendant by the shed inspector.

[53] Although in this case the failure in the system was not specifically related to the problem with the system identified in the 2013 offending for this farm, Mr Empson must have been well aware that effluent storage and the management of effluent systems were required to be a matter of priority. In this case I accept that steps were being taken to improve the effluent management system, and that Mr Cameron Empson was directly involved in investigating the options and providing some of the capital to do just that. I accept that these things take time, however even though I accept Mr Empson senior's explanation that he likes to take time to do a job properly, there should have been more urgency attached to fixing the very poor effluent storage that was on this farm. It took five years from the prosecution in 2013 for the problems with the effluent management system on this farm to be addressed. This is an unacceptable time-frame.

[54] For this reason, I find Mr Empson's culpability for the offending to be high. His actions bind the company.

#### ***Effect on the environment***

[55] The property is located within the Waipa catchment, with the nearest named watercourse being the Mangamahoe Stream approximately 3.2km downstream.

[56] The application of effluent did not flow directly into a surface watercourse, however ponding and saturating of the soil with effluent creates hydraulic conditions that impose a high risk that untreated or partially treated effluent will leach into the groundwater. Research has shown the presence of "green water" at a depth of 1m on soil cores where dairy effluent has been ponded on the soil surface, and this has the potential to directly contaminate groundwater with pathogenic micro-organisms, thereby posing a risk to drinking water. These effects were outlined in detail in Appendix D to the Summary of Facts, which was a statement by Mr Dragten, an environmentalist scientist. Mr Dragten's concluding paragraph summarises the concern as follows:<sup>20</sup>

The over-application of dairy effluent can result in contaminants from that effluent, or contaminants that would otherwise have been taken up by plants,

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<sup>20</sup> Summary of Facts, Appendix D, paragraph 17.

entering groundwater. Groundwater provides the “base flow” for surface waterways during periods between rainfall. Contaminants that enter groundwater may, therefore, eventually enter surface water, particularly so for nutrients such as nitrogen.

[57] The discharge in this case carried high levels of contaminants as is to be expected with dairy effluent. Faecal coliforms in the stormwater and the wetland ponding were measured at 320,000 and 700,000 cfu/100mL respectively. The stream samples returned results of 11,000 cfu/100mL. This is an order of magnitude above the satisfactory maximum of 500 cfu/100mL. This creates a risk of direct contamination to groundwater with pathogenic micro-organisms, and the potential to pose a risk to drinking water quality. As has been noted many times in cases of this kind, the concern is the cumulative effect of such discharges on the environment.

[58] The defendants did not take any steps to remediate the wetland.

### ***Comparable cases***

[59] Counsel for the prosecutor submitted that some caution should be used in drawing comparisons with other cases, as each must turn on its own. Nevertheless, Ms O’Sullivan submitted that the Court could draw some assistance from starting points for the fines imposed in *Vernon v Taranaki Regional Council*<sup>21</sup> and *Waikato Regional Council v H & S Chisholm Farms Limited*.<sup>22</sup> Counsel for the defendants also referred to these cases and *Waikato Regional Council v Smith*.<sup>23</sup>

[60] Both *Vernon* and *H & S Chisholm Farms* are distinguishable, *Vernon* largely because that case concerned an unlawful discharge from a disconnected irrigator allowing effluent to discharge directly to ground where it flowed 35m into an unnamed stream, and *Chisholm Farms* because although the overflow was from an effluent pond, it followed torrential rain, and there was no previous history as in this case. *Smith* concerned an overflow from a pond with the effluent running overland down towards an unnamed tributary but stopping in a natural ponding area about 2m short of the tributary. The starting point adopted in *Smith* was that which had been

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<sup>21</sup> [2018] NZHC 3287 (starting point \$60,000 upheld on appeal to the High Court).

<sup>22</sup> [2018] NZDC 20591 (starting point \$65,000).

<sup>23</sup> [2018] NZDC 6760 (starting point of \$50,000).

recommended by the prosecutor. I found the failures in that case mostly to do with the management of the effluent system, even though the system itself was problematic due to its age. On reflection, the starting point in *Smith* is at the very lower end of the available range.

[61] I have thought very carefully about whether a global starting point is warranted in this case. I have decided that a better approach is to separate out the offences and adopt separate starting points for them. This is because the main offender, Meadowbank, is a corporate entity and even though Mr Empson senior's role is critical in establishing its culpability for the offending, separate considerations apply to deductions for mitigation in relation to it.

[62] In relation to Meadowbank, taking into account the matters I have referred to, I consider the range for an appropriate starting point is a fine of between \$75,000 and \$100,000. Even though steps were being taken to improve the system they were not taken quickly enough, and Mr Empson senior's previous interactions with the Council resulting in the convictions referred to meant that he was fully aware of the consequences of continuing to operate with an inadequate system. I adopt a starting point of \$90,000, which is 15 percent of the maximum available fine for a corporate entity.

[63] In relation to Mr Empson I adopt a starting point for the fine of contravening the abatement notice of \$20,000.

**Should there be an uplift to the starting point for Mr Empson's fine?**

[64] Mr Lang accepted that a modest uplift could be justified but given the time that has passed since the earlier offending he submitted that it should not exceed 10 percent. I agree in principle, however because the fine for the company and Mr Empson will be paid for by Mr and Mrs Empson, I have decided not to apply an uplift in this case.

### **Mitigating matters – Mr Empson**

[65] Mr Empson is very well regarded by and involved in the community. He has generously given his time and money to community activities. He has worked very hard to build up his assets to benefit his family. He started with nothing, and the setbacks that faced him early on in life could well have crushed his spirit. In the previous case I allowed a deduction of two percent, but I did not know at that time as much of his background as I now know. I have taken his previous convictions into account by applying an uplift to the starting point. It is appropriate, in my view, to recognise the matters to which I have just referred in applying a deduction of five percent from the starting point.

[66] A 25 percent deduction is appropriate to reflect the early guilty plea.

### **Mitigation – Meadowbank**

[67] Meadowbank has no previous convictions. It is entitled to a five percent discount to reflect its prior good character.

[68] Steps have been taken to improve the infrastructure. As mentioned above, the investigation into what might be required was under way prior to this offending being brought to the attention of the Council. The storage aspect of the upgrade has now occurred and the new milking shed is to follow. The infrastructure improvements should have occurred some time ago, however in my view some recognition by way of mitigation is appropriate to reflect the steps taken. I allow five percent.

[69] The company pleaded guilty at the earliest opportunity and is entitled to a 25 percent discount to reflect this. The considerable remorse expressed by Mr Empson is encompassed in the plea.

### **Result**

[70] Both defendants will be convicted and fined as follows:

- In relation to Meadowbank (CRN ending -005) the sum of \$60,750.00
- In relation to Mr Empson (CRN ending 004) the sum of \$14,250.00

[71] Ninety percent of each fine is to be paid to the Council under s 342 of the RMA.

[72] Court costs of \$130 and solicitors fee of \$113 are also ordered in relation to each charge.

*M Harland*

M Harland  
District Court Judge and Environment Judge