

**IN THE DISTRICT COURT
AT TAURANGA**

**I TE KŌTI-Ā-ROHE
KI TAURANGA MOANA**

**CRI-2022-070-002185
[2023] NZDC 25788**

BAY OF PLENTY REGIONAL COUNCIL
Prosecutor

v

ALPINE EXPORT NZ LIMITED
Defendant(s)

Hearing: 7 February 2023

Appearances: A Hopkinson and V Brewer for the prosecutor
B S Carruthers KC for the defendant

Judgment: 23 November 2023

SENTENCING NOTES OF JUDGE D A KIRKPATRICK

[1] The defendant, Alpine Export NZ Limited (**Alpine**), has pleaded guilty to four charges of discharging odorous compounds to air from the defendant's pet food manufacturing factory at 32 Koromiko Street, Judea, Tauranga, on four separate dates between 10 October 2021 and 9 June 2022.¹ The same odour discharges also contravened an abatement notice issued to Alpine Export NZ Limited on or about 27 August 2019 and it has pleaded guilty to four further charges for that.²

¹ CRNs 22070500636, -637, -640 and -642.

² CRNs 22070500643, -644, -646 and -648.

[2] The charges are an offence under ss 338(1)(a) and (c) and 15(1)(c). Under s 339 of the RMA, the maximum penalty for each offence for a person other than a natural person is a fine not exceeding \$600,000.

Background

[3] The defendant manufactures pet food from raw meat products at its factory at 32 Koromiko Street, Judea Street, Tauranga. The site is 2,510m² in size and consists of a factory building which houses processing rooms where pet food is made and packaged.

[4] The site is located in an industrial area in Tauranga City known as the Judea Industrial Estate. The area to the west of the factory is industrial. State Highway 29 / Takitimu Drive runs along the site's eastern boundary. Approximately 100 – 300 metres to the east of the site (on the other side of State Highway 29 / Takitimu Drive) there is a large residential area which is part of the central Tauranga suburb known as the Avenues.

[5] Alpine originally manufactured its pet food using three ovens. Over time its operations, production capacity and number of ovens have increased. The sixth and seventh ovens were installed in the defendant's factory in 2019.

[6] Pet food is manufactured at the site 24 hours a day, seven days a week. Approximately 10 – 11 tonnes of raw product is manufactured each day. This generates three to four tonnes of finished pet food product. The pet food meat ingredients are delivered frozen and then tempered before being ground and mixed with minerals on-site to create the raw pet food mixture. The raw pet food mixture is placed on cooking trays and into commercial ovens for air-drying to create a jerky type of product. The air-drying process produces odorous compounds which are discharged to air via the oven's exhaust stacks. The seven ovens each have a separate exhaust stack that extends approximately 10 metres above ground level. The odour is stronger at the beginning of the air-drying cycle which is when most of the moisture is removed from the product.

[7] Alpine began odour control at its factory in 2018. Alpine uses ozone to treat the odours from its manufacturing process. Each oven has four ozone generators which release ozone into the oven exhaust stacks, where it reacts with the odour to reduce odour prior to discharge to the air.

[8] The ozone is created by passing electrical current through the ozone generators, meaning there is a correlation between the current (measure in amps) passing through the ozone generator and the quantity of ozone generated. Alpine normally operate the ozone generators at no less than two amps. The level of amps for each ozone generator is displayed on a computer located in the production office. This enables Alpine's operators to monitor the effectiveness of odour mitigation measures during production.

[9] The connection between the oven and the exhaust stack is not perfect and fugitive odours can escape from the oven and discharge into the head space of the oven room. The oven room head space is vented to the atmosphere via short stacks located in the oven roof room. Alpine uses UV units to treat fugitive odour discharges from the short stacks. The UV units are located at the inlet to the short exhaust stack and glow blue when they are turned on.

Discharges not allowed by any resource consent

[10] There is no resource consent that authorises discharges of contaminants at or from the Alpine site under s 15(1) RMA.

[11] Until 18 April 2018 discharges to air from the Alpine site were subject to rule 17 in the operative Bay of Plenty Regional Air Plan (**Air Plan**). On 27 February 2018 the Regional Council publicly notified Proposed Plan Change 13 (Air Quality) to the Regional Natural Resources Plan (**PC13**). PC13 was intended to replace the Air Plan. PC13 includes Rule AQ R21(r) which provides:

AQ R21 Specific activities – Discretionary – Nga mahinga tauwaiti – Ka whiriwhirihia:

The discharge of contaminants to air from any of the following activities is a discretionary activity: ...

(r) Pet food manufacture by the application of heat.

[12] Under s 86F of the RMA, rule AQ R21(r) must be treated as operative from 18 April 2018.

[13] On 4 October 2018 Alpine lodged an application for resource consent to discharge contaminants to air (namely odour and occasional smoke/steam) under the new PC13 rule. However, the Bay of Plenty Regional Council returned Alpine's consent application under s 88(3) of the RMA because it was incomplete.

[14] Alpine did not lodge a complete resource consent application until September 2019. Alpine's 2019 application for resource consent to discharge contaminants to air was then put on hold at Alpine's request while Alpine carried out further assessments of its emissions and potential impacts given Alpine installed new odour technology in 2019.

Compliance history

[15] From 2015 to 2022 the Regional Council received more than 1,100 odour complaints from the public about discharges of odour from the Alpine site. As a result of these complaints the Regional Council has had extensive communication with Alpine about odour discharges from its site.

[16] From around 2019 the Regional Council began receiving increasing numbers of odour complaints from residents to the east of the Alpine site. Council officers responded to a number of these complaints by carrying out odour assessments. On some occasions the officers could not detect offensive or objectionable odours discharging beyond the site's boundary at the time of the assessments, but on other occasions they did.

[17] On 27 August 2019 the Regional Council issued Abatement Notice RA9-00079 to Alpine requiring it to cease discharging offensive and objectionable odour to air in contravention of s 15(1)(c) RMA. The abatement notice was not appealed and remains in force.

[18] Between August 2019 and August 2021, the Regional Council issued five infringement notices relating to odour discharges from the site. Alpine paid the infringement fees.

[19] On 14 June 2021, the Regional Council issued Alpine with a formal warning letter in relation to recent failures of the ozone odour control system. On 6 July 2021, the Regional Council issued a further formal warning letter to Alpine relating to additional discharge points (short stacks) and reiterated the inherent risk of ongoing future discharges of offensive and objectionable odours beyond the boundary. On 5 August 2021, the Regional Council enclosed a cover letter with the August 2021 infringement notices advising that further breaches would more than likely lead to further enforcement action.

The current offending

10 October 2021

[20] At 3:30pm on 10 October 2021 the Regional Council responded to a complaint received at 2:55pm about odour from the Alpine site. The complaint described the odour as being like “dirty old mutton, fat and other old meat cooking down / roasting. A very off odour to it. When I first smell it my stomach heaves.”

[21] The Council officer went to the complainant’s address on Edgecumbe Road and detected a strong meaty fish odour.

[22] The wind direction at the time was south-west, meaning the complainant’s house (in the residential area approximately 145 metres from the Alpine site) was downwind of the Alpine site.

[23] While at the complainant’s address, the officer performed three separate 10-minute odour assessments over the course of an hour using the FIDOL methodology.³ The officer determined that the odour was offensive and objectionable.

³ “FIDOL” is used as a means to assess odour complaints with reference to its: frequency of occurrence, intensity, duration of exposure to the odour, offensiveness of the odour, and its location.

[24] The officer then went to Alpine's site and tried to enter the site but found that both the Koromiko Street entrance and the Erica Street entrance were locked. The officer called Alpine's duty phone twice but there was no answer.

[25] When the officer walked back to his vehicle at 5:02pm, he saw that a car had arrived at the Alpine site and the Koromiko Street gate was now open. When the officer entered the site, he noticed the same odour as he had detected at the complainant's address.

[26] The officer inspected the odour mitigation system in the Alpine factory and found that some of the ozone generators were not working. Ovens two, three, five and six were each registering zero amps across one of their ozone generators indicating that these ozone generators were not producing any ozone to treat the air discharges from the ovens.

[27] After leaving the site, the officer carried out an upwind assessment and detected no odour, and a 360 boundary walk where he detected odour while walking along State Highway 2.

[28] The following day a Regional Council enforcement officer telephoned Alpine's compliance manager Mr Neville Buckley and advised him that the Regional Council was commencing an investigation into the odour discharge detected on 10 October 2021.

[29] Alpine's compliance manager Mr Neville Buckley provided an initial explanation for the 10 October 2021 odour discharge via email on 21 October 2021. Mr Buckley said there was a programming fault on 10 October that affected ovens four and seven. Staff operating the ovens at that time were stopping ozone mitigation measures and manually opening dampers to start the ovens. Mr Buckley stated that there were some untreated discharges from those two ovens for a brief period during the afternoon.

[30] When interviewed under formal caution in relation to the 10 October 2021 discharge, Mr Buckley stated:

- (a) Alpine started odour control about three years ago;
- (b) Alpine has had issues with the plant and the ozone generators failing;
- (c) the oven ozone system was upgraded on 7 and 8 October 2021;
- (d) on 10 October 2021 they did not replicate the ozone programme properly for ovens four and seven. The ovens would not fire so the Alpine workers stopped the ozone to start the ovens up;
- (e) Alpine staff members would have received information that the stop ozone button is for emergencies;
- (f) the zero amps recorded on ozone generators for ovens two, three, five and seven means the ozone generators have either faulted or the ovens are not running; and
- (g) an alarm is not sent to anybody when the ozone stop button is pushed or when the ozone generators cease operating.

26 November 2021

[31] On 26 November 2021 the Regional Council responded to complaints from four separate complainants in the residential area to the east of the Alpine site. The complainants described the odour as:

- (a) “like cooking off meat”;
- (b) “rotting meat being cooked and the odour was coming and going with the wind”;
- (c) “like a roasting smell but like a putrid, acrid roasting smell”; and

- (d) “like rotten, stinking, dead meat. It’s like when you come across a decomposing carcass – it stinks.”

[32] The wind direction at the time was south to south-west, meaning the complainants’ properties were downwind of the Alpine site.

[33] At 2:12pm the officer went to the first complainant’s address on Edgecumbe Road and detected a strong, meaty odour at the rear of the property. While at the complainant’s address, the officer performed four 10-minute FIDOL assessments over the course of 90 minutes and determined that the odour was offensive and objectionable. The officer was feeling unwell from the odour by the time he finished these assessments.

[34] The officer then responded to a second odour complaint, arriving at the second complainant’s property on Edgecumbe Road approximately 170 metres from the Alpine site at 4:08pm. The officer detected the same meaty odour.

[35] The officer then made contact with a second enforcement officer, and both officers proceeded to the Alpine site to undertake a site inspection. However, when the officers arrived, the Alpine gates were closed and they were unable to gain entry. The officers left a message on the Alpine duty phone.

[36] The officers carried out an upwind assessment and could not detect any odour. The officers conducted a 360-degree odour assessment around the Alpine site and detected the same cooked meat odour near the eastern wall of the Alpine site. The second officer noted that a cooked meat smell was discharging from vents on the eastern side of the Alpine oven room. The odour made his stomach turn.

[37] At 5:07pm an Alpine employee arrived at the factory. The employee confirmed that Alpine was cooking pet food at the time. The officers inspected the odour mitigation system and observed that two of the four ozone generators on oven seven were recording zero amps, indicating that they were not producing any ozone to treat the air discharge from the oven.

[38] None of the UV bulbs in the head space above the seven ovens were on, indicating that the fugitive odour discharges were not being treated.

[39] One of the enforcement officers then attended the third complainant's address on 13th Avenue at 5:53pm. The officer detected the same odour which he had previously determined to be offensive and objectionable.

[40] Alpine's manager Mr Karll Radonich provided an initial explanation for the 26 November discharge by email on 29 November 2021. Mr Radonich said the UV lamps were not working at the time because "the sub main had tripped causing the UV lamps to stop working". The electrician had stated that doubling up UVs in the short stacks overloaded the breaker. This issue had since been rectified and the circuits separated.

[41] When interviewed under formal caution in relation to the 26 November 2021 odour discharge, Neville Buckley stated:

- (a) Alpine has been carrying out 20-30 odour assessments per week since September or October of 2021 and has not detected high levels of odour discharge, out of the Alpine stacks;
- (b) there is sometimes a drop-off in ozone, which could be an issue with the ozone generators, or water, or other flows that set them down;
- (c) the older generators are quite small and have a tendency to overheat and shut down, so they are putting in new generators; and
- (d) there is no audible alarm if the UV lamps turn off.

24 March 2022

[42] On 24 March 2022 the Regional Council received odour complaints at 7:48am and 2:10pm from two unrelated complainants who reside approximately 200 metres and 145 metres to the east of the Alpine site respectively.

[43] At 2:45pm a Council enforcement officer responded to the second complaint. The wind direction at the time was changeable, swinging between a south and south-west direction, meaning the complainant's property was downwind from the Alpine site.

[44] The officer arrived at the second complainant's address on Edgecumbe Road at 2:50pm. His initial assessment was of a strong, meaty, rancid, dead animal, decayed, cadaverous odour.

[45] While at the second complainant's address, the officer undertook three 10-minute FIDOL assessments between 2:50pm and 4pm. At the end of the third assessment the officer determined that the odour was offensive and objectionable. The officer recorded that the odour made him feel sick.

[46] The officer then went to the Alpine site, accompanied by a second enforcement officer. The officers arrived at approximately 4:45pm and inspected the odour control computer screens which showed that 13 of the 28 ozone generators had amps less than two. None of the UV bulbs were working on any of the stacks associated with ovens one through seven.

[47] The officers undertook an upwind odour assessment at 5:11pm and could not detect any odour.

[48] When interviewed under formal caution in relation to the 24 March 2022 odour discharge, Neville Buckley stated:

- (a) on 24 March 2022 Alpine had installed additional "spray balls"⁴ and the ozone generators were upgraded but they were still running the old ones, which will be upgraded as they go;
- (b) it is not normal practice to run the ozone amps at less than two;

⁴ "Spray balls" are the nozzle mechanisms used to input ozone into the exhaust stacks.

- (c) there was a white powder on the spray balls which was being investigated;
- (d) with the blocked spray balls the stacks would not be receiving the same amount of ozone;
- (e) the amp reading of less than two most likely related to the ozone spray balls;
- (f) no alarms were set for the UV and they were going through a process to work out why the UV lights were not working; and
- (g) none of these issues made any difference to the odour discharges as Alpine staff carried out a perimeter check and did not find any odour at all.

9 June 2022

[49] On 9 June 2022 a Regional Council enforcement officer responded to a complaint received at 9:10am from a resident of Edgecumbe Road. The officer arrived at the complainant's property at 11:33am. It was raining at the time and there was little wind. The officer could not detect any unpleasant odour.

[50] Later that day the officer responded to a complaint received from a second complainant on Edgecumbe Road at 4:17pm. The officer arrived at the second complainant's property at 5:05pm, where he detected a strong, unpleasant, meaty, gamey odour. The officer noted that the wind was from the west, meaning the complainant's property (which is approximately 200 metres east of the Alpine site) was downwind of the Alpine site.

[51] The Regional Council officer phoned Alpine at 5:09pm to advise them that he was assessing odour from the site as the result of a complaint. The Alpine staff member said that the odour mitigation systems were working.

[52] While at the second complainant's property the officer performed a FIDOL assessment at 5:15pm and found that the odour was present at all times but was varying in its intensity throughout the assessment. The officer performed a further FIDOL assessment at 5:47pm during which he assessed the odour to be objectionable even in periods of short duration.

[53] The officer then went to the Alpine site to inspect the odour mitigation system software and saw that most of the generators for the seven ovens were registering average current levels of approximately 1.6 amps.

[54] The officer left the Alpine site and carried out an upwind assessment during which he could not detect any odour. The officer also carried out a 360-degree boundary walk around the Alpine site, during which he detected the same offensive and objectionable odour at the eastern boundary of the Alpine site that had been detected at the complainants' addresses that day.

[55] Alpine did not provide an explanation in relation to the discharge on 9 June 2022.

Environmental effects

[56] In relation to the adverse effects of the discharges on the environment, the agreed summary of facts records the following:

72. Effects of odour can include nausea, headaches, retching, difficulty breathing, reduced appetite and frustration. Repeated or prolonged exposure to odour can lead to a high level of annoyance, and the person experiencing this may become particularly sensitive to the presence of the odour.

73. Alpine is located within an industrial zone. However, there is a residential area located approximately 100 – 300 metres to the east of the site. The prevailing wind is from the west and the residential area is on a ridge above the site.

74. There are a number of residential properties which have been affected by the ongoing odour discharges from Alpine's pet food factory. In addition, there have been some complaints received from business premises located in close proximity which have had staff who have been affected by odour discharges from the Alpine Site.

75. The odour discharges on the four offence dates involved five different complainants. The Regional Council has obtained witness statements from four of these complainants about the recent odour discharges from the Alpine site. In those statements people living at nearby residential properties described the odours from the Alpine pet food factory as follows:

- (a) “*dirty old mutton fat*”, “*like old meat roasting*” “*sour slightly fermenting smell*” and it makes her stomach heave;
- (b) “*rotten, stinking, dead meat*”, “*like a degrading carcass*” and she is embarrassed to invite friends over;
- (c) “*like rotting meat being cooked*”;
- (d) “*a roasting smell*” but with a “*putrid, acrid smell*”, “*sickening*” and she cannot stand it.

76. The complainants describe having to move indoors to avoid the odour, closing windows and doors, and wanting to move house.

Survey of local residents

77. Between 26 November and 12 December 2020, the Regional undertook an odour survey of residents within the residential area immediately to the east of the Alpine site (i.e. residents living within the Edgecumbe Road, 12th, 13th, and 14th Avenues area).

78. 74 local residents responded. Of those:

- (a) 64 (87%) stated they had experienced a cooked meat / pet food odour at their home in the last 3 months.
- (b) 63 (85%) said they found the odour to be unpleasant.
- (c) 59 (80%) said they found the level of cooked meat/pet food odour to be objectionable.

79. The most common descriptive terms used by the survey respondents was “*putrid/foul/decayed*”, “*cadaverous/like a dead animal*”, “*oily/fatty*”, “*sharp/pungent/acid*” and “*acrid*”.

80. The majority of the respondents said they thought the source of these odours was the Alpine factory/ pet food factory of the Judea industrial area.

Prosecutor’s submissions

[57] The prosecutor submits that the defendant’s culpability is at the high end of the scale. There was no resource consent authorising the discharges. Alpine was on express notice of its obligations to ensure offensive and objectionable odours did not discharge beyond its site, following complaints and Council interactions with Alpine regarding odour discharges. Alpine did not begin using odour controls at its factory

until 2018. Despite increasing production in 2019, Alpine failed to address odour discharge issues. Alpine was issued with an abatement notice, five infringement notices, and two formal warning letters, all relating to odour discharges. Alpine is in the business of manufacturing pet food and should know how to manage odour generated from this commercial activity.

[58] The prosecutor noted that individually the discharges between October 2021 and June 2022 occurred for reasons such as staff not being properly trained to use or monitor the odour mitigation controls, technical faults, a lack of fail safes, and interim mitigation measures not working effectively. However, when viewed cumulatively, the prosecutor submits the repeat offending is indicative of poor management practices and an odour mitigation system that was not appropriate given the nature and extent of Alpine's activities.

[59] The prosecutor submits there is a commercial element to the offending given Alpine's failure to reduce production levels while it worked to resolve the problems with its odour management. Alpine has recognised the factory's ozone system will not be able to adequately address the odour issues for the current level of operation and this has prompted Alpine to expand its business to a new factory in Palmerston North, yet it has not reduced current operations while waiting for the new factory to become operational.

[60] The prosecutor submits that residents living approximately 100 – 300 metres to the east of Alpine's factory were affected by the odours and that the offending had a significant impact on the victims' well-being and their use and enjoyment of their homes and outdoor living spaces.

[61] The prosecutor referred to a number of sentencing decisions of this Court to provide general guidance for an appropriate sentencing level for this type of offending:

- (a) *Bay of Plenty Regional Council v Zivi Limited*;⁵

⁵ *Bay of Plenty Regional Council v Zivi Limited* [2020] NZDC 24102.

- (b) *Otago Regional Council v WG Limited Partnership*;⁶
- (c) *Hawke's Bay Regional Council v Hawke's Bay Protein Limited*;⁷
- (d) *Waikato Regional Council v Open Country Dairy Limited*;⁸
- (e) *Waikato Regional Council v Open Country Dairy Limited*.⁹

[62] The prosecutor submitted that Alpine's offending in the present case is less serious than the offending in *Open Country Dairy*, where the offending was aggravated by the severity of the odour effects experienced by large numbers of people in residential areas. However, the prosecutor submits that Alpine's offending is more serious than the offending in *Ziwi*, *WG Limited Partnership*, and *Hawke's Bay Protein* due to the greater number of charges, including repeated contraventions of an abatement notice, the high level of culpability, the protracted nature of the offending, and the significant impacts on the wellbeing and amenity of nearby residents.

[63] The prosecutor submits that an appropriate global starting point for the fine in this case would be \$120,000. If the Court preferred to set separate starting points for the s 15(1)(c) charges and the abatement notice charges, the prosecution submits there should be a global starting point of \$80,000 (being \$20,000 each) for the s 15(1)(c) charges and a global starting point of \$40,000 (being \$10,000 each) for the abatement notice charges.

[64] The prosecutor submits there should be no discount for previous good character because Alpine has been subject to enforcement action and formal warnings by the Council. The prosecutor acknowledged that Alpine had participated in restorative justice and offered apologies to the victims but submits that Alpine took this opportunity to seek latitude from the victims as it continues to investigate long term solutions to the odour management issues and suggests this is hard to equate with genuine or exceptional remorse. The prosecutor does not accept there should be any

⁶ *Otago Regional Council v WG Limited Partnership* [2022] NZDC 21184.

⁷ *Hawke's Bay Regional Council v Hawke's Bay Protein Limited* [2021] NZDC 4097.

⁸ *Waikato Regional Council v Open Country Dairy Limited* [2019] NZDC 19755.

⁹ *Waikato Regional Council v Open Country Dairy Limited* [2020] NZDC 18034.

discount for Alpine's expenditure on mitigating odour issues; there should be no credit for belatedly complying with its environmental obligations, and there is no evidence that odour issues have been adequately addressed to date.

[65] The prosecutor submits the Court should consider ordering Alpine to pay emotional harm reparation to each of the five residents that prepared victim impact statements. Counsel referred to this occurring in the *Open Country Dairy* case.

Defendant's submissions

[66] Counsel for the defendant did not agree that Alpine's culpability is at the high end of the scale and pointed to a number of considerations in support of that submission. Alpine began using odour controls in 2017. While the PC13 rule is treated as if its operative, it has not yet been made operative. Rather than relying on existing use rights until the rule was made operative, in 2018 and 2019 Alpine proactively sought consent to discharge under the PC13 rule. Alpine has actively and consistently endeavoured to address odour issues. Alpine accepts that it has not yet done enough. Alpine has worked on trying, at significant cost, to address the issue. Alpine has committed to a series of actions and has an advanced exit strategy in the event the odour cannot be eliminated.

[67] Alpine accepts it is responsible for creating an undesirable situation, has acknowledged the harm to neighbours and has apologised to them.

[68] Alpine submits the offending is not more serious than the offending in *Ziwi*. The offending here relates to four dates, compared to five in *Ziwi*. Here the public have been complaining for three years, compared to the nine years of complaints in *Ziwi*. In both, the companies have made a number of unsuccessful attempts to reduce the odour and have been issued abatement notices and infringement notices. Alpine has decided to relocate at least part of its operations in advance of the prosecution and taken steps to relocate all of its operations in the event the wet-scrubber is not proven effective, compared to after the prosecution as in *Ziwi*.

[69] Alpine submits \$80,000 would be an appropriate global starting point for all offences.

[70] Alpine submits the remorse shown, including at the restorative justice conference and by Mr Russell and Ms Rothberg is a further mitigating factor. Counsel submits, given the outcome of the restorative justice conference and the subsequent fulfilment of the commitments, that it is open to the Court to determine that it should not impose a sentence.¹⁰

[71] In the alternative, counsel submits a discount of 10 per cent would be appropriate for the genuine remorse expressed by Alpine. Alpine submits a further discount of 10 per cent would be appropriate to reflect the outcome of the restorative justice conference and the fact it was funded by Alpine.

Legal framework

[72] There is no dispute between counsel as to the approach which the Court should take in sentencing offenders under the Resource Management Act. The Court must follow the two-stage approach as set out in *Moses v R*,¹¹ first identifying the starting point incorporating any aggravating and mitigating features of the offence, and then assessing and applying all aggravating and mitigating factors personal to the offender together with any discount for a guilty plea (calculated as a percentage of the starting point). The two stages involve separating the circumstances of the offence from those of the offender.

[73] All of the purposes and principles in ss 7 and 8 of the Sentencing Act 2002 must be borne in mind, as well as the purpose of the RMA to promote the sustainable management of natural and physical resources. Of particular relevance under the Sentencing Act 2002 are the purposes of accountability, promoting a sense of responsibility, denunciation and deterrence, and the principles relating to the gravity of the offending and the degree of culpability of the offender, the seriousness of the type of offence, the general desirability of consistency with appropriate sentencing levels and the effect of the offending in the community.

¹⁰ Sentencing Act 2002, ss 10(1) and (3).

¹¹ *Moses v R* [2020] NZCA 296 at [45] – [47].

[74] As to the overall sentencing approach for offending against the RMA, *Machinery Movers Ltd v Auckland Regional Council*¹² and *Thurston v Manawatu-Wanganui Regional Council*¹³ are the leading decisions of the High Court which provide a comprehensive summary of the applicable principles.

[75] Briefly, the RMA seeks not only to punish offenders but also to achieve economic and educational goals by imposing penalties which deter potential offenders and encourage environmental responsibility through making offending more costly than compliance. Relevant considerations include the nature of the environment affected, the extent of the damage, the deliberateness of the offence, the attitude of the defendant, the nature, size and wealth of their operations, the extent of efforts to comply with their obligations, remorse, profits realised and any previous relevant offending or evidence of good character.

Evaluation

[76] While there are no enduring physical effects from the offending of discharges of odour, there are societal effects which are within the scope of *effects* on the *environment* as those terms are defined in the RMA. The descriptions of the odours in the agreed summary of facts are graphic and Council officers concluded the odours met the criteria of offensive and objectionable. The odours have affected peoples' enjoyment of their properties and ability to undertake their everyday life. The odours have impacted the health and wellbeing of people, and amenity values. I conclude that the impacts of the discharges were serious.

[77] The incidents were not isolated; the charges allege four incidents occurring over a nine-month period. Cumulatively the discharges indicate that the management of the factory was unsatisfactory and the systems in place were not sufficient to control the effects of its activities. Alpine is in the business of pet food manufacturing and should have appropriate systems and management practices in place to manage odour. It was on notice regarding odour discharge issues following complaints, infringement notices, the abatement notice, and formal warning letters. While steps were taken by

¹² *Machinery Movers Ltd v Auckland Regional Council* [1994] 1 NZLR 492 at 503 (HC).

¹³ *Thurston v Manawatu-Wanganui Regional Council* HC Palmerston North CRI-2009-454-24, 27 August 2010 at [39] – [66] and [100].

Alpine to address the odour following each incident, the incidents point to an ongoing problem with its odour management.

[78] The Court has regularly commented that breach of an abatement notice is a serious offence in itself, with charges relating to abatement notice offences leading to large, separate fines in some case.¹⁴ In this case there are four charges of contravention of an abatement notice, associated with each of the four discharges.

[79] The purpose of a fine is to be of a level that is suitable to meet the purpose of deterrence, denunciation and accountability for the offending. In my judgement, an appropriate starting point in this case is \$100,000. I adopt this starting point for the discharge and abatement notice charges. This starting point reflects that the environmental effect in terms of the impact on neighbours was profound, and that the culpability of the defendant' was moderately high.

[80] The prosecutor and defendants both submitted that Alpine is entitled to a discount of 25 per cent for its early guilty pleas. I agree.

[81] I will not give a discount for past good character because, even with no previous convictions, Alpine has been the subject of numerous complaints, infringement notices and formal warning letters.

[82] I acknowledge Alpine's participation in the restorative justice process. I do not consider credit should be given for belatedly complying with environmental obligations. I do however accept Alpine is genuinely remorseful. I will grant a further discount of five per cent in relation to that.

[83] In relation to reparations, I note that during the restorative justice process an offer to contribute funds towards a neighbours' street party was declined. There is no specific request in the victim impact statements for reparations. The record of the restorative justice meeting indicates the neighbours are more interested in the odour stopping than any form of reparation or fine. As a result of the restorative justice process there are steps in place which both Alpine and the neighbours hope will

¹⁴ See for example, *Otago Regional Council v WG Limited Partnership* [2022] NZDC 21184.

address the odour issues. It appears to me that money would not address the effects endured. In all the above circumstances, I am of the view that no reparation payment should be made.

Sentence

[84] I convict Alpine Export NZ Limited and sentence it to pay a fine of \$70,000.

[85] As required under s 342 of the RMA, I direct that the fine, less a deduction of 10 per cent to be paid into a Crown bank account, be paid to the Bay of Plenty Regional Council.

[86] I order the defendant to pay Court costs of \$130 and solicitor's fee of \$113.

Judge D A Kirkpatrick

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

Date of authentication | Rā motuhēhēnga: 23/11/2023