



*Ministry for the*  
**Environment**  
*Manatū Mō Te Taiao*

**A Study into  
the Use of Prosecutions  
under the  
Resource Management Act 1991**

**1 July 2008 – 30 September 2012**



Based on a report by Karenza de Silva, Environmental Lawyer with assistance from Chris Buhler, Assistant Consents Officer, Taranaki Regional Council

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# Executive summary

The purpose of the Resource Management Act 1991 (RMA) is to promote the sustainable management of natural and physical resources. Enforcing regulations in plans and resource consents is sometimes required to achieve this purpose. This document sets out the results of a survey to determine the use of prosecutions in the last four years and provide comparisons to its use over periods since the enactment to the RMA.

The RMA has a graduated compliance and enforcement regime and local authorities have a range of options available to them to manage breaches of the Act and plans. The following formal enforcement options are available under the RMA:

- Infringement notices
- Excessive noise directions
- Abatement notices
- Enforcement orders
- Prosecutions.

Local authorities often also use a variety of informal measures to encourage compliance including verbal warnings, letters and monitoring visits.

Resource Management Act Surveys of Local Authorities are carried out biennially. Results of those surveys provide a comprehensive description of compliance activity. The most recent survey shows that 47 per cent of compliance is achieved through formal means and 53 per cent through informal means. Prosecutions represent one per cent of all action taken.

This report provides an analysis of the judgments and sentencing outcomes of 429 prosecutions under the Resource Management Act 1991, between 1 July 2008 and 30 September 2012.

There have been three similar analyses carried out since the Act first came into force in 1991. Table 1 shows the time periods when information was collected and reports provided. Not all local authorities were contacted and requested to supply information for the first three periods. The information is therefore not comparable across the years. In this latest work all local authorities were contacted and requested to provide information on prosecutions.

**Table 1: Analyses of prosecutions**

	<b>First Period</b>	<b>Second Period</b>	<b>Third Period</b>	<b>Fourth Period</b>
<b>Timeframe</b>	October 1991 -30 June 2001 (Nine years and 8 months)	1 July 2001 - 30 April 2005 (Three years and 10 months)	1 May 2005 - 30 June 2008 (Three years and 2 months)	1 July 2008 - 30 September 2012 (Four years and 3 months)
<b>Number of prosecutions analysed</b>	375 prosecutions	171 prosecutions	260 prosecutions	429 prosecutions
<b>Average number of prosecutions per year</b>	39	45	82	101

## Activity category

There are 16 sections of the Act that may be contravened and prosecutions can be taken. As in the previous three periods, most prosecutions in the fourth period (58 per cent) were for discharge of contaminants into water, either directly or indirectly under section 15(1)(a) and 15(1)(b) of the RMA. Table 2 shows the trend in prosecutions taken for contraventions of this section of the Act.

**Table 2: Proportion of prosecutions relating to discharge of contaminants into water**

	First Period	Second Period	Third Period	Fourth Period
Discharge to water, or onto land where may enter water	47%	43%	42%	58%

In the first, second and third periods only a sample of local authorities was contacted to supply data. Comparisons between periods are therefore problematic and caution should be used when interpreting trends. A further difficulty in making comparisons arises from the fact that the survey periods are of differing lengths.

## Break down by sector

Prosecutions have been categorised by the major activity undertaken by the defendants. Most prosecutions (62 per cent) have been in the agricultural sector, along with 73 per cent of the thirty highest fines. Agriculture has increased as a proportion of all prosecutions from previous periods. Reasons for these changes are unclear from the data. Table 3 shows the sectors with the highest number of prosecutions and fines.

**Table 3: Sector with the highest number of prosecutions and highest fines**

	First Period	Second Period	Third Period	Fourth Period
All prosecutions within period	commercial sector 41%	agriculture sector 37%	agriculture sector 43%	agriculture sector 62%
Highest 30 fines within period	commercial sector 74%	commercial sector 43%	commercial sector 43%	agriculture sector 73%

In the first, second and third periods only a sample of local authorities was contacted to supply data. Comparisons between periods are therefore problematic and caution should be used when interpreting trends. A further difficulty in making comparisons arises from the fact that the survey periods are of differing lengths.

## Prosecuting bodies

Regional Councils take the majority of prosecutions. There has been some variation in which of the councils are taking the most prosecutions; in the fourth reporting period, Otago has replaced Auckland in the top three. Table 4 shows the top three prosecuting bodies in each reporting period.

**Table 4: Prosecuting bodies that have undertaken the majority of prosecutions**

	First Period	Second Period	Third Period	Fourth Period
All prosecutions within period	Auckland, Waikato and Southland	Auckland, Waikato and Southland	Auckland, Waikato and Southland	Otago, Waikato and Southland

In the first, second and third periods only a sample of local authorities was contacted to supply data. Comparisons between periods are therefore problematic and caution should be used when interpreting trends. A further difficulty in making comparisons arises from the fact that the survey periods are of differing lengths.

## Outcome of prosecutions

Similar to other reporting periods, the majority of defendants (85 per cent) entered a guilty plea. The outcome for the prosecutions taken over the four periods is summarised in Table 5. The average total fine imposed per prosecution has steadily increased from \$6,500 in the first period to \$21,622 in the fourth period. Section 339 of the RMA was amended to increase the maximum fines for offences during the fourth period.

**Table 5: Outcome of prosecutions<sup>1</sup>**

Outcome	First period	Second period	Third Period	Fourth Period
Prosecutions where a guilty plea was entered	80%	82%	91%	85%
Convictions were obtained against the defendant	87%	90%	93%	92%
Defendants who were convicted and discharged	14	4	6	8
Defendants who were discharged without conviction	None	5	16	14
Prosecutions that were dismissed	None	6	2	7
Defendants who received suspended sentences	2	2	1	0
Prosecutions where an enforcement order was made	36	21	38	32
Sentences where imprisonment was imposed	None	2	2	2
Sentences where periodic detention/ community work was imposed	11	4	12	21
Highest fine imposed	\$50,000	\$55,000	\$86,500	\$120,000
Average individual fine imposed	\$4,400	\$5,631	\$7,221	\$10,347
Average total fine imposed	\$6,500	\$8,167	\$12,463	\$21,622

In the first, second and third periods only a sample of local authorities was contacted to supply data. Comparisons between periods are therefore problematic and caution should be used when interpreting trends. A further difficulty in making comparisons arises from the fact that the survey periods are of differing lengths.

<sup>1</sup> This table does not include data when related parties were prosecuted (for example married couples, companies and the directors of the companies) but were treated leniently by conviction and discharge or discharge without conviction.

## **Financial position of defendants**

Section 40 of the Sentencing Act 2002 requires the Court to have regard to the financial position of an offender.

In the third and fourth periods, the prosecutions were divided into three categories: very good, good and poor. The data for the third and fourth periods shows that where a fine is imposed the Courts reduce the fine significantly for defendants classified as “poor”.

## **Appeals**

In the first period, there were eighteen appeals, in the second period, there were only five appeals, in the third period, there were ten appeals and in the fourth period there were twenty appeals.

- In seven cases defendants appealed their conviction and sentence.
- In eight cases defendants appealed their sentence only.
- In one case a defendant appealed their conviction only.
- In three cases Regional Councils appealed against the dismissal of charges.

In six of the appeals, the fines were reduced. In one appeal the sentence of community work was reduced. In three appeals penalties were upheld. In three appeals there was remission to the District Court.

## **Restorative justice process**

The restorative justice process was not available to the Courts under the RMA in the first period. In the second period it was used in six prosecutions, in the third period it was used in thirteen prosecutions and in the fourth period, it was used in fourteen prosecutions.

# 1. Introduction

## 1.1 Purpose

The purpose of the Resource Management Act 1991 (RMA) is to promote the sustainable management of natural and physical resources. Enforcing regulations in plans and conditions in resource consents is sometimes required to achieve this purpose. This document sets out the results of a survey to determine the use of prosecution in the last four years and provides comparisons to its use over periods since the enactment to the RMA.

The Ministry for the Environment (the Ministry) and with regional councils commissioned this report to monitor prosecutions taken under the RMA. The report provides an analysis of the use of this enforcement tool and the outcomes of prosecutions under the RMA for the period between 1 July 2008 and 30 September 2012.

## 1.2 Scope of report

This report provides an analysis of 429 prosecutions undertaken between 1 July 2008 and 30 September 2012 (i.e. cases that were heard and finalised during this fourth period). It does not provide an analysis of cases that were under appeal on 30 September 2012. Some of these prosecutions related to one incident but resulted in sentences being imposed against a number of different defendants.

An analysis of the prosecutions is provided in terms of:

- sectors and general activities
- individual local authority prosecution rates
- the outcomes of prosecutions including the number of unsuccessful prosecutions
- fine level in relation to financial position of defendants
- culpability of defendants (i.e. the deliberateness of the offence)
- the use of sentencing options
- the average fines
- awards of costs
- 30 highest fines
- appeals
- the level of fines imposed before and after the 1 October 2009 amendment which increased the maximum fines available.

This report also provides information about how local authorities make decisions on whether to take enforcement action. This decision making process was not addressed in the previous reports.

## 1.3 Offences and penalties

Sections 338 and 339 of the RMA prescribe offences and penalties under the RMA. The offences and penalties are described in Table 6.

Of interest over this period is the amendment to Section 339 of the RMA where the maximum fines for offences was increased from 1 October 2009. Fines increased from \$200,000 (for both companies and individuals) to \$600,000 for companies and \$300,000 for individuals. The maximum term of imprisonment of two years was not changed.

Section 338 (4) of the RMA provides that an information for a prosecution may be laid up to six months from the time when the contravention first became known, or should have become known to the local authority. Section 342 (1) and (2) provides that where a local authority lays information, if there is a conviction and the court imposes a fine, the fine, (less a deduction of 10 per cent which is credited to the Crown bank account), is paid to the local authority.

**Table 6: Provisions and penalties for offences**

Section	Offence Contravention of/permit a contravention of	Maximum penalty (section 339) for offences pre 1 October 2009	Maximum penalty (section 339) for offences from 1 October 2009
338(1), 338(1A) 338 (1B)	Sections 9 and 11–15 which impose duties and restrictions in relation to land, subdivision, coastal marine area, beds of rivers and lakes, water, discharge of contaminants.  Any enforcement order.  Any abatement notice (other than a notice for unreasonable noise).  Any water shortage direction.  Sections 15A, 15B, 15C for discharges from ships and offshore installations.	Two years imprisonment or \$200,000 fine and \$10,000 further fine for a continuing offence <sup>2</sup> per day/part of day during which the offence continues.	Two years imprisonment or \$300,000 fine for individuals and \$600,000 fine for companies And \$10,000 further fine for a continuing offence per day/part of day during which the offence continues (no amendment to maximum for continuing offence).
338(2)	Section 22, failure to provide name and address to enforcement officer.  Section 42, protection of sensitive information.  Any excessive noise direction.  Any abatement notice for unreasonable noise.  Any order (other than an enforcement order) made by the Environment Court.	\$10,000 fine and \$1,000 further fine for continuing offence per day/part of day during which the offence continues.	No amendment

<sup>2</sup> Section 339(6): The continued existence of anything, or the intermittent repetition of any actions, contrary to any provision of this Act shall be deemed to be a continuing offence.

338(3)	<p>Obstruction of person in the execution of powers under the Act.</p> <p>Section 283 – non-attendance or refusal to co-operate with the Environment Court.</p> <p>Any summons or order to give evidence pursuant to s 41.</p> <p>Any provision specified in an instrument for creation of an esplanade strip or in an easement for access strip or entry of a strip which is closed.</p>	\$1,500 fine	No amendment
338(1), (1A), (1B), 338(2), 338(3)	As above.	<p>Section 339(4) provides that a sentence of community service may be imposed.</p> <p>Section 339(5) provides that the Court instead of, or in addition to, imposing a fine or a term of imprisonment may make any or all of the orders specified in s 314 (enforcement orders).</p>	No amendment

There are three prosecutions in the fourth period which are for obstructing enforcement officers. These obstruction offences occurred when Council Officers were investigating incidents.

## 1.4 Methodology

The process for producing this report involved obtaining and analysing judgements and sentencing outcomes<sup>3</sup> of 429 prosecutions under the RMA for the period between 1 July 2008 and 30 September 2012<sup>4</sup>. A two-stage process was used to obtain this information.

The first stage involved a search of the Thomson Reuters case law database for RMA prosecutions. The second stage involved contacting all local authorities to locate prosecutions that were not included in the Thomson Reuters database.

An effort has been made to obtain copies of the judgements, sentencing notes or details of all prosecutions for the fourth period. Details have not been obtained for all prosecutions because the records provided in some instances are incomplete.

The data for this report was put into an 'Excel' spreadsheet using a separate row for each defendant unless two or more defendants were related and where the court took this into consideration when sentencing (e.g. a company and the director of the company). The number of prosecutions is based on the analysis of individual prosecutions and not the actual number of decisions. The actual number of decisions is a smaller number.

<sup>3</sup> Sentencing "outcomes" are from the sentencing notes or from details provided by local authorities for cases where sentencing notes were not available or could not be located.

<sup>4</sup> Prosecutions were included where they were completed in the District Court between 1 July 2008 and 30 September 2012.

Table 7 shows the number of prosecutions in each period. All local authorities were contacted and requested to provide information for the fourth period. In the first, second and third periods only a sample of local authorities was contacted to supply data. Comparisons between periods are therefore problematic and caution should be used when interpreting trends. A further difficulty in making comparisons arises from the fact that the survey periods are of differing lengths. These issues should be considered in relation to all the figures and tables exhibited in this report.

**Table 7: Number of prosecutions in each period**

	<b>First Period</b>	<b>Second Period</b>	<b>Third Period</b>	<b>Fourth Period</b>
<b>Timeframe</b>	October 1991 -30 June 2001 (Nine years and 8 months)	1 July 2001 - 30 April 2005 (Three years and 10 months)	1 May 2005 - 30 June 2008 (Three years and 2 months)	1 July 2008 - 30 September 2012 (Four years and 3 months)
<b>Number of prosecutions analysed</b>	375 prosecutions	171 prosecutions	260 prosecutions	429 prosecutions
<b>Average number of prosecutions per year</b>	39	45	82	101

In the first, second and third periods only a sample of local authorities was contacted to supply data. Comparisons between periods are therefore problematic and caution should be used when interpreting trends. A further difficulty in making comparisons arises from the fact that the survey periods are of differing lengths.

## 2. Results

This section provides information on offences which have resulted in prosecutions, broad categories of activities that are noted in court documents as being carried out by defendants and the outcomes of prosecutions. The analysis does not take into account the reasons behind changes in the compliance of various sectors and the resulting enforcement action required.

The information presented in this section represents one aspect of the enforcement regime available under the RMA. Compliance can be achieved by either formal methods (infringement notices, abatement notices, excessive noise directions or prosecution.) or by informal methods (verbal warnings, letters and monitoring visits). The Resource Management Act Survey of Local Authorities covering the 2010/2011 period shows 47 per cent of compliance was achieved through formal means and 53 per cent through informal means. If excessive noise directions (a large number of offences) are excluded, 14 per cent of compliance was achieved through formal means and 86 per cent through informal means.

Prosecutions tend to be an enforcement action of last resort and often for the most serious offending. In the last period, prosecutions represent one per cent of all enforcement action taken.

### 2.1 Offences: general activity categories

This section provides an analysis of the prosecutions by general activity. The data includes both successful and unsuccessful prosecutions. The sections of the RMA that correspond to each of the general activity categories for offences are listed in Table 8.

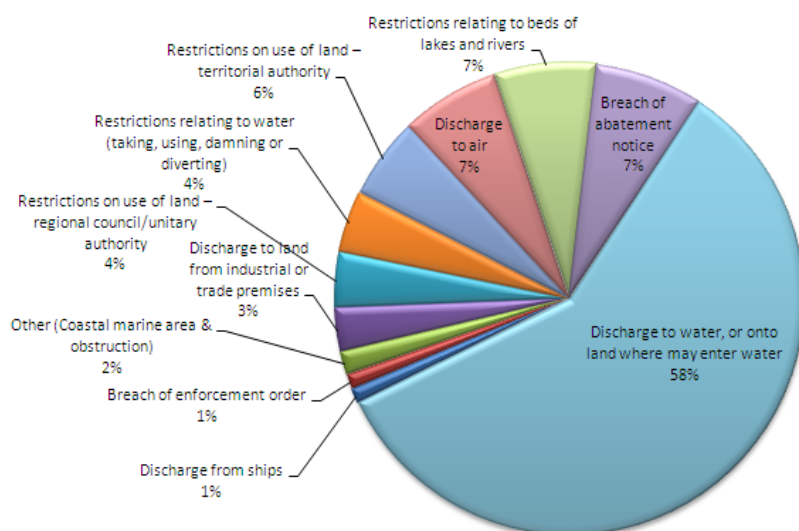
The offences are categorised based on the sections of the RMA that have been contravened and are before the Court at the sentencing hearing. Figure 1 provides a breakdown of the types of

contraventions which have resulted in prosecution. Successful and unsuccessful prosecutions are included. The total number in Table 8 (501) does not equal the total number of prosecutions in the fourth period (429) because there were prosecutions which fitted more than one category.

**Table 8: Prosecutions by RMA general activity for fourth period**

General activity categories	RMA Section	Number	Percentage
Restrictions on use of land – territorial authority	9(1)	28	6%
Restrictions on use of land – regional council/unitary authority	9(3)	19	4%
Restrictions relating to beds of lakes and rivers	13	35	7%
Restrictions relating to water (taking, using, damning or diverting)	14	22	4%
Discharge to water, or onto land where may enter water	15(1)(a), 15(1)(b)	290	58%
Discharge to air	15(1)(c), 15(2)	34	7%
Discharge to land from industrial or trade premises	15(1)(d)	16	3%
Discharge from ships	15B	5	1%
Breach of enforcement order	338(1)(b)	7	1%
Breach of abatement notice	338(1)(c)	37	7%
Other (coastal marine area & obstruction) <sup>5</sup>	12 & 338(3)(a)	8	2%
Total		501	100%

**Figure 1: General activity categories of prosecutions for fourth period**



Most prosecutions (58%) in the fourth period were for discharging contaminants into water either directly or indirectly under section 15(1)(a) and section 15(1)(b) of the RMA. This has also been the largest activity category in each of the previous reports.

<sup>5</sup> There were no prosecutions in the fourth period for contravention of s 11, s 15A, s 15C, s 338(2) and sub 338(3)(b) & (c).

## 2.2 Offences: by sector

Those prosecuted (defendants) have been grouped into six sectors: agriculture; commercial<sup>6</sup>, industrial<sup>7</sup>; local authority; residential; and other.

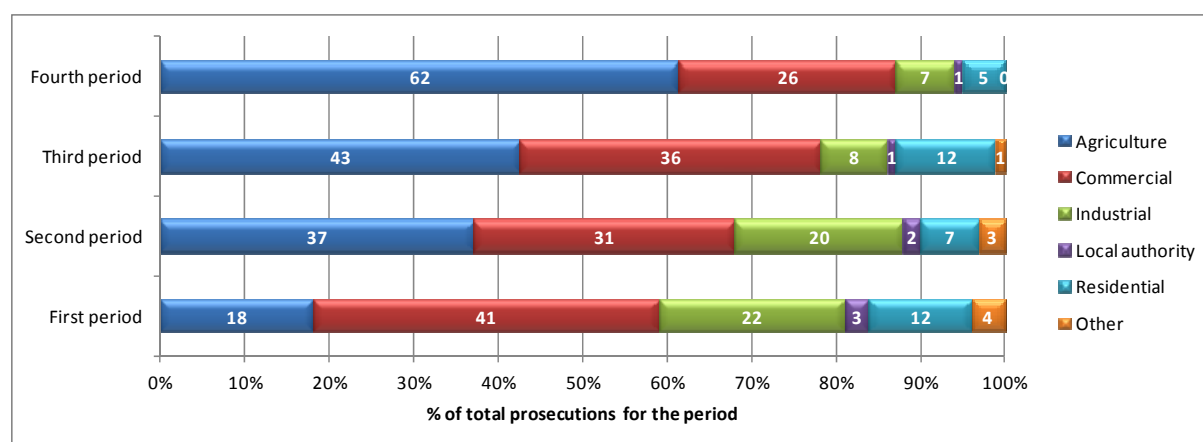
Table 9 shows the number of prosecutions in each sector for the four periods. Figure 2 shows the percentage of prosecutions in each sector for the four periods. Please see the cautionary comments relating to the difficulties in making direct comparisons in the introduction to Table 7 on page 12.

**Table 9: Prosecutions by sector**

Sector	First period (%)	Second period (%)	Third period (%)	Fourth period (%)
Agriculture	18	37	43	62
Commercial	41	31	36	26
Industrial	22	20	8	7
Local authority	3	2	1	1
Residential	12	7	13	5
Other	4	3	1	0

In the first, second and third periods only a sample of local authorities was contacted to supply data. Comparisons between periods are therefore problematic and caution should be used when interpreting trends. A further difficulty in making comparisons arises from the fact that the survey periods are of differing lengths.

**Figure 2: Prosecutions by sector for each period**



In the first, second and third periods only a sample of local authorities was contacted to supply data. Comparisons between periods are therefore problematic and caution should be used when interpreting trends. A further difficulty in making comparisons arises from the fact that the survey periods are of differing lengths.

### Sub-sectors

For this period, defendants have been grouped into smaller sub sectors (listed in Appendix 8). Offences arising from the discharge of dairy effluent make up 48% of all prosecutions in the fourth period.

<sup>6</sup> Commercial includes contractors and consultants.

<sup>7</sup> Industrial includes factories, plants and landfills and all activities that come within the definition in the RMA of "industrial or trade premises" and "industrial or trade process".

## 2.3 Who is prosecuting?

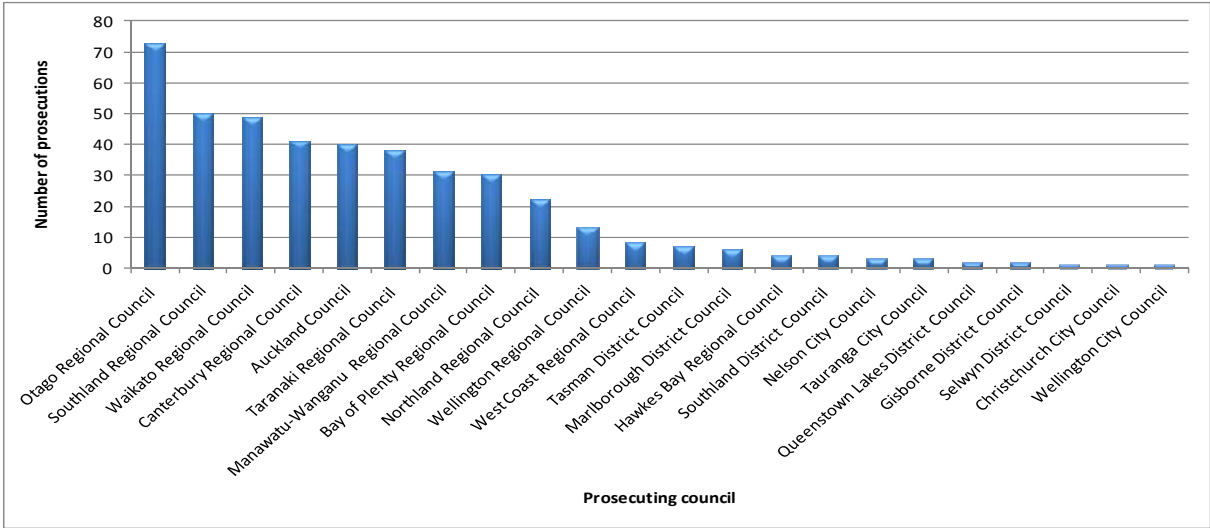
All of the prosecutions in the fourth period have been brought by local authorities. The numbers of prosecutions brought by each local authority for the fourth period are listed in Appendix 1.

Twenty two local authorities have taken one or more prosecutions in the fourth period. Fifty six local authorities have not taken any prosecutions in the fourth period.

All of the prosecutions brought by the predecessors of the Auckland Council have been classified as Auckland Council prosecutions. The Auckland Council began operating on 1 November 2010, combining the functions of the Auckland Regional Council and Auckland City Council, Manukau City Council, Waitakere City Council, North Shore City Council, Papakura District Council, Rodney District Council and most of Franklin District Council. In the fourth period, Auckland Council undertook 9 per cent (40) of prosecutions.

In the fourth period, Otago Regional Council undertook 17 per cent (73), Southland Regional Council undertook 12 per cent (50) of prosecutions, Waikato Regional Council undertook 11 per cent (49) of prosecutions and Canterbury Regional Council undertook 10 per cent (41) of prosecutions<sup>8</sup>.

**Figure 3: Numbers of prosecutions taken by each council in the fourth period**



## 2.4 Outcome of prosecutions

A comparison of the outcome of prosecutions over the four periods is provided below and in Table 10.

Please see the cautionary comments relating to the difficulties in making direct comparisons in the introduction to Table 7 on page 12.

In the fourth period:

<sup>8</sup> Canterbury Regional Council asked that it be noted that, due to the earthquakes in 2010 and 2011, resources were concentrated on earthquake recovery, and this may be associated with a reduction in prosecutions.

- In 85 per cent (363) of the prosecutions a guilty plea was entered
- Convictions were obtained against the defendants in 92 per cent (395) of the prosecutions
- Eight defendants were convicted and discharged
- Fourteen defendants were discharged without conviction
- The charges were dismissed in seven cases by the District Court and in one case the charges were dismissed by the High Court after an appeal (see Appendix 4).
- No defendants received a suspended sentence.

In the third period:

- In 91% of the prosecutions a guilty plea was entered (237 cases)
- Convictions were obtained against the defendants in 93% of the prosecutions (242 cases)
- Six defendants were convicted and discharged
- Sixteen defendants were discharged without conviction
- The charges were dismissed in two cases.
- One defendant received a suspended sentence.

In the second period:

- In 82% of the prosecutions a guilty plea was entered (140 cases)
- Convictions were obtained against the defendants in 90% of the prosecutions (154 cases)
- Four defendants were convicted and discharged
- Five defendants were discharged without conviction
- The charges were dismissed in six cases.
- Two defendants received suspended sentences.

In the first period:

- In 80% of the prosecutions a guilty plea was entered (300 cases)
- convictions were obtained against the defendants in 87% of the prosecutions (326 cases)
- No defendants were convicted and discharged
- Fourteen defendants were discharged without conviction
- There were no cases in which charges were dismissed.
- Two defendants received suspended sentences.

**Table 10: Outcome of prosecutions**

	First Period	Second Period	Third Period	Fourth period
<b>Guilty plea</b>	300 (80%)	140 (82%)	237 (91%)	363 (85%)
<b>Convictions</b>	326 (87%)	154 (90%)	242 (93%)	395 (92%)
<b>Conviction &amp; Discharge</b>	0	4	6	8
<b>Discharge without conviction</b>	14	5	16	14
<b>Prosecutions dismissed</b>	0	6	2	7
<b>Suspended sentences</b>	2	2	1	0

In the first, second and third periods only a sample of local authorities was contacted to supply data. Comparisons between periods are therefore problematic and caution should be used when interpreting trends. A further difficulty in making comparisons arises from the fact that the survey periods are of differing lengths.

In all four periods, the data analysed does not include any prosecutions where the charges were withdrawn because in this situation there is usually no written decision available.

There were a number of cases over all four periods in which some defendants were convicted and discharged. The cases were usually where there were related defendants (e.g. husband and wife and/or a company and its director). Data relating to these cases has not been included in the analysis because the Court took an overall (global) approach to sentencing.

## 2.5 Financial position of defendants

Section 40 of the Sentencing Act 2002 requires the Court to have regard to the financial position of an offender.

In the third and fourth periods, the prosecutions were divided into three financial categories: very good, good and poor. The category "good" has been applied where the Court held that the defendant was in a position to pay a fine. In some cases the Court has referred to this as a "neutral" position.

**Table 11: Financial position of defendants in the third and fourth periods**

Defendants with a good or very good financial position	Third period	Fourth period
Highest total fine imposed	\$86,500	\$120,000
Highest individual fine imposed		\$72,200
Average individual fine imposed	\$7,574	\$11,009
Average total fine imposed	\$13,322	\$22,937
Defendants with a poor financial position		
Highest total fine imposed	\$13,500	\$40,000
Highest individual fine imposed		40,000
Average individual fine imposed	\$2,798	\$3,277
Average total fine imposed	\$3,918	\$7,082

All fines (highest and averages) have increased in the recent period reflecting the amendment to section 339, increasing fines. All fines (highest and averages) have increased in the recent period, even with defendants that have less financial means. Table 11 shows the financial position of defendants over reporting periods three and four. During the reporting period, section 339 was amended to allow higher fines to be imposed. Table 12 shows the financial position of defendants by sector.

**Table 12: Financial position of defendants by sector in the third and fourth periods**

Sector	Third period			Fourth period		
	Very Good	Good	Poor	Very Good	Good	Poor
Agriculture	3	95	12	5	222	35
Commercial	0	77	16	1	93	10
Industrial	5	14	1	3	21	4
Local authority	0	3	0	0	2	0
Residential	0	23	7	0	14	7
Other	0	2	0	0	0	0

## 2.6 Culpability

The deliberateness of the offence is one of the sentencing factors the Court takes into account. The case, *Machinery Movers*, sets out culpability matters usually considered by the Court. The analysis of the prosecutions in the third and fourth periods includes the Court's assessment of the culpability of the defendant. This analysis was not undertaken for the first and second periods. The prosecutions were divided into 7 categories as set out in Tables 13 and 14. In cases where there is more than one defendant, the Court often apportions responsibility. In some cases assessment of culpability for each defendant is quite different. For example in *Taranaki Regional Council v BA Lilley & Duffy*<sup>9</sup>: Lilley, the owner of the dairy farm was convicted and fined a total of \$50,000 and Duffy, the share-milker was discharged without conviction (see appendix 2 for more details).

**Table 13: Findings about culpability for the third period**

	Agriculture	Commercial	Industrial	Local authority	Residential	Percentages
<b>Deliberate</b>	29	30	2	-	10	28%
<b>Element of deliberateness</b>	26	30	3	1	6	26%
<b>High level of carelessness/negligence</b>	8	9	1	-	5	9%
<b>Lowest end of scale of deliberateness</b>	1	1	2	-	1	1%
<b>Careless</b>	21	14	7	-	4	19%
<b>Accidental</b>	17	3	4	-	2	10%
<b>No finding</b>	6	6	1	2	2	7%

In the third period the majority of cases (63%) had a high degree of culpability – there was a high degree of deliberateness, carelessness or negligence in the offending

**Table 14: Findings about culpability for the fourth period**

	Agriculture	Commercial	Industrial	Local authority	Residential	Percentages
<b>Deliberate</b>	36	21	2	0	5	15%
<b>Element of deliberateness</b>	26	16	0	0	0	10%
<b>High level of carelessness/negligence</b>	56	18	8	0	2	20%
<b>Lowest end of scale of deliberateness</b>	25	1	1	0	2	7%
<b>Careless</b>	85	28	11	1	7	31%
<b>Accidental</b>	19	8	3	0	3	8%
<b>No finding</b>	12	8	3	1	2	6%

In contrast to the previous period, in the fourth period the majority of cases (54%) were at the lower end of the culpability scale in that there was less deliberateness, carelessness in the offending. In some instances there was no judgement recorded on the amount of culpability.

<sup>9</sup> 14/12/2010, Judge Dwyer, DC New Plymouth, CRI 2010-043-003887 & 473.

## 2.7 Penalties other than fine

In addition to or instead of imposing a fine or term of imprisonment, the Court can make an enforcement order and/or a sentence of community work<sup>10</sup>. Table 15 shows penalties the Court has imposed in these instances.

**Table 15: Penalties other than fines**

	First Period	Second Period	Third Period	Fourth Period
Enforcement order	36	21	38	32
Imprisonment	0	2	2	2
Community work/Periodic detention	11	4	12	21

In the first, second and third periods only a sample of local authorities was contacted to supply data. Comparisons between periods are therefore problematic and caution should be used when interpreting trends. A further difficulty in making comparisons arises from the fact that the survey periods are of differing lengths.

## 2.8 Costs

The Court can award costs to the successful party in a prosecution under section 13(3) of the Costs in Criminal Cases Act 1967. There is a maximum scale of costs that can be awarded in the schedule to the Costs in Criminal Cases Regulations 1987. The scale for a defended hearing is a maximum of \$226 for each half-day and a minimum of \$113 for each half-day if the defendant pleads guilty.

Generally, the Court can award costs to the successful party in a prosecution under section 13(3) of the Costs in Criminal Cases Act 1967. The High Court considered the issue of costs in *Interclean Industrial Services Ltd v Auckland Regional Council*<sup>11</sup>. It found that:

- Under the RMA, the Court does not have power to order the defendant to pay the legal costs of bringing the prosecution.
- However, the costs of prosecution could be taken into account in assessing the amount of the fine.

Under the Costs in Criminal Cases Regulations, the scale for a defended hearing is a maximum of \$226 for each half-day, and a minimum of \$113 for each half-day if the defendant pleads guilty. In most prosecutions over the four periods, the Court has awarded legal costs according to this scale.

In the majority of prosecutions in the four periods, the Court has awarded costs according to the scale in the Costs in Criminal Cases Regulations.

The highest costs awarded in the fourth period was made in *Auckland Regional Council v URS New Zealand Ltd, Brown Bros (NZ) Ltd, Gasoline Alley Services Ltd & Fuelquip (NZ) Ltd*.<sup>11</sup> The offence was discharge of 10,000 litres of petrol from a motor vehicle service station. The petrol

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<sup>10</sup> Details of the cases where sentences of imprisonment and community work were imposed are in Appendix 2. Community work was previously called "periodic detention".

<sup>11</sup> 23/07/2010, Judge McElrea, DC Auckland, CRI-2008-004-013603.

entered a stormwater system and then flowed into a stream. The clean-up operation for the stream took four days. Gasoline Alley Services Ltd spent \$205,000 on the clean-up which included work of \$74,708 undertaken by Fuelquip. A substantial amount of petrol remained in the ground at the service station. A guilty plea was entered by Fuelquip (NZ) Ltd. The other three defendants defended the charges but were unsuccessful. Judge McElrea in the District Court convicted and fined the four defendants. The relevant factors in setting the fine included dangerous nature of petrol, difficulty of controlling petrol once discharged underground, carelessness, a specialist company that should have known better and extent of the damage. The Court found that discharge was due to an unusual combination of factors. The sentences imposed are in Appendix 4. The sentences included an order for payment in different proportions of a total of \$56,000 towards Council costs and the clean-up costs of \$205,000. The Court also made an enforcement order for investigation to determine whether remediation is required and an order that remediation be undertaken if required. The decision has been appealed. The parties await the outcome of the appeal.

In a number of other cases, defendants have spent significant sums on clean-up costs prior to the hearing and this was regarded by the Court as mitigation. One example is *Auckland Regional Council v Gubbs Motors Ltd & Kauriland Marine Stops Ltd*<sup>12</sup>. The offence was discharge of 18,500 litres of diesel from a diesel installation. The diesel entered a tributary and flowed into the Mahurangi River and the Mahurangi Harbour. The diesel installation was used by the Gubbs Motors bus fleet and others. Kauriland Marine Stops was responsible for the installation. Both defendants pleaded guilty. The defendants paid a total of \$264,385 for the clean-up costs.

The highest costs awarded against a Council in the fourth period (and in any of the four periods) was made by the High Court in *Wallace Corporation Ltd v Waikato Regional Council*<sup>13</sup>. The High Court ordered the Waikato Regional Council to pay costs of \$270,282 and experts costs of \$146,240. The three defendants: Wallace Corporation Ltd, Mr Dew and Mr Cross, were convicted and fined in the District Court for burial of electrical capacitors containing polychlorinated biphenyls (PCBs) in contravention of s 15(1)(d) and in addition an enforcement order was made against Wallace Corporation Ltd requiring it to locate and remove the contaminants regardless of the cost. The defendants successfully appealed the sentence and conviction<sup>14</sup>. Wallace Corporation also appealed the enforcement order. The High Court allowed the appeals and quashed the enforcement order and substituted it with an enforcement order requiring implementation of a monitoring system and upon decommissioning of plant a requirement for location and removal of the buried capacitors. The decision on the costs awarded against the Council followed the successful appeal.

## 2.9 Fines

### 2.9.1 Average and total fines as a result of the s339 amendment

Section 339 of the RMA was amended to increase the maximum fines for offences from 1 October 2009 from \$200,000 to \$600,000 for companies and \$300,000 for individuals. The maximum term of imprisonment of two years was not changed.

Judge Jackson in *Canterbury RC v B J Dakin & Company Ltd* said:

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<sup>12</sup> 20/03/2009, Judge Moore, DC Auckland, CRN-08088500246 & 006.

<sup>13</sup> 7/10/2010, Wild J, HC Hamilton, CRI 2008-404-000404 – 406.

<sup>14</sup> 7/10/2010, Wild J, HC Hamilton, CRI 2008-404-000404 – 406.

*“... there needs to be a substantial uplift in the existing level of fines to reflect ... a three-fold increase in maximum fines now imposed on companies under the Resource Management Act.”*

Figure 4 shows the comparison of average total fines and lowest and highest fines imposed for offences before and after the increase in maximum fines in the fourth period. The data in the graph does not include prosecutions where the defendants were regarded by the Court as “poor” and where the Court classified the offences as accidental because these two factors are two main reasons for reduction of fine. When these two factors are excluded a more accurate picture is provided of the fines.

The most important statistic is the average total fine. The average total fine before the increase in maximum fines is \$19,789. The average total fine after the increase in maximum fines is \$28,792. This shows that there has been an increase in the average fine imposed after the increase in maximum fines.

**Figure 4: Increase in maximum total fines 1 October 2009 – pre- and post increase comparison in fourth period (excluding poor financial standing and accidental offences)**

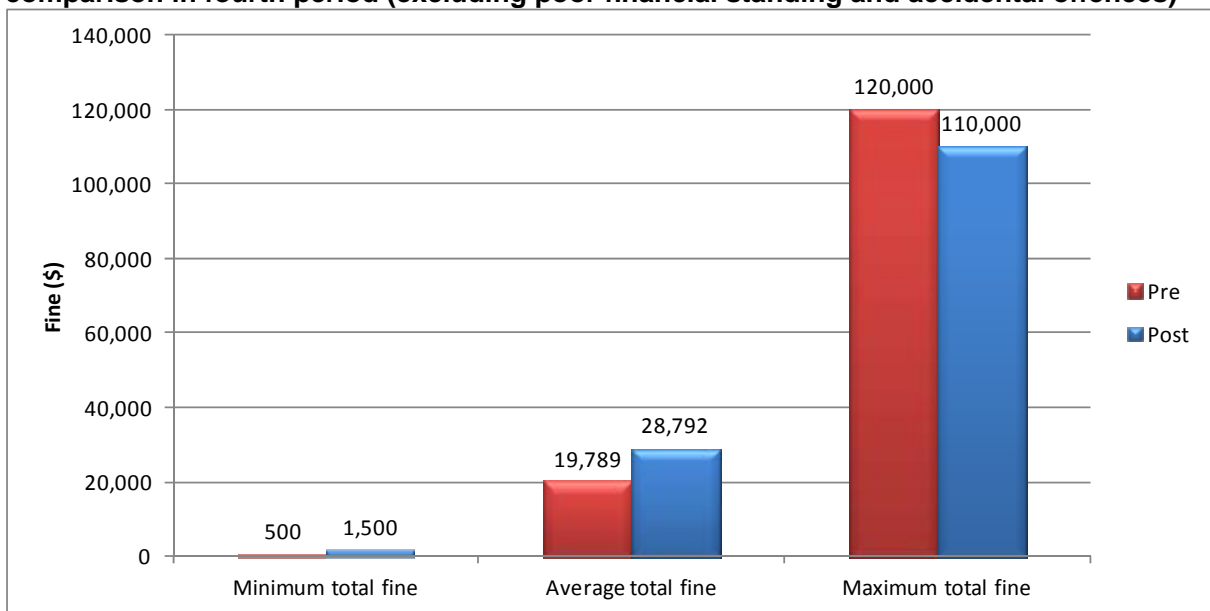
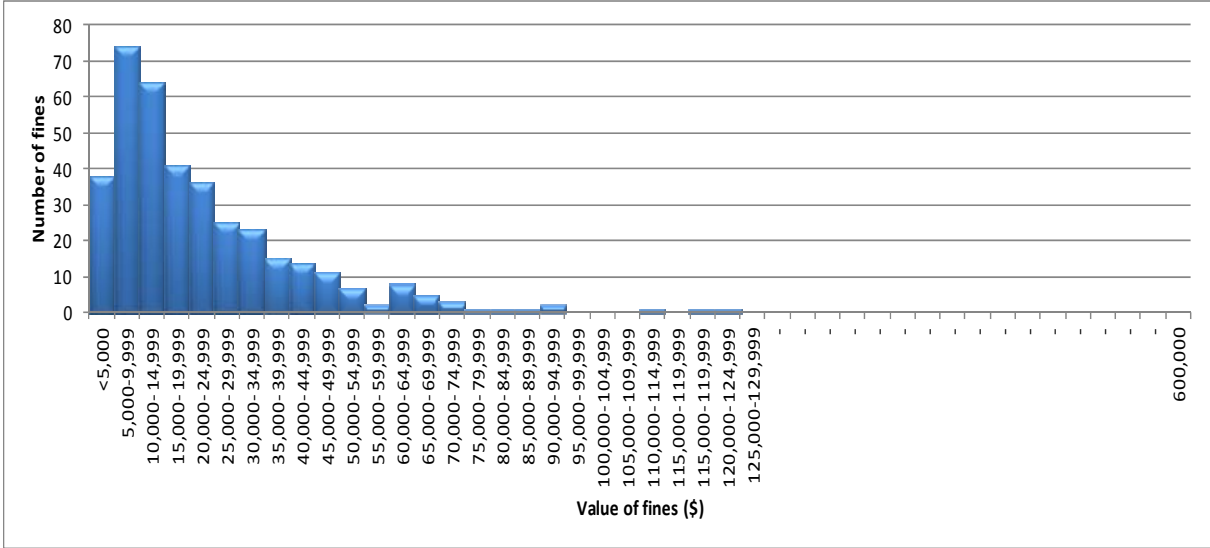


Figure 5: below shows the number and value of total fines across the fourth period.

**Figure 5: Spread of the value of total fines in the fourth period.**



**2.9.2 Average fine**

A prosecution may result in more than one fine. Average fines are therefore categorised into individual fine and total fine. Table 16 shows the average and total fines across the four periods. In the fourth period the average individual fine imposed was \$10,347 and the average total fine imposed (per prosecution) was \$21,622.

**Table 16: Average fine for the four periods**

	First Period	Second Period	Third Period	Fourth Period
Average individual fine imposed	\$4,400	\$5,631	\$7,221	\$10,347
Average total fine imposed	\$6,500	\$8,167	\$12,463	\$21,622

In the first, second and third periods only a sample of local authorities was contacted to supply data. Comparisons between periods are therefore problematic and caution should be used when interpreting trends. A further difficulty in making comparisons arises from the fact that the survey periods are of differing lengths.

All average fines (individual and total) have steadily increased over the four periods. As discussed in the analysis of the financial position of defendants (Table 11), the Courts have increased the cost of breaching the RMA over time and have responded to the amendment to the Act where fines were increased from \$200,000 to \$600,000 for companies and \$300,000 for individuals.

Table 16 shows the average, maximum and minimum total fines for the fourth period in each of the sectors.

**Table 17: Prosecutions by sector for the fourth period – average, maximum and minimum total fines<sup>15</sup>**

Sector	Average	Maximum	Minimum
Agriculture	\$22,400	\$120,000	\$500
Commercial	\$20,987	\$117,500	\$800
Industrial	\$25,330	\$67,500	\$3,000
Local authority	\$0	\$0	\$0
Residential	\$6,092	\$14,250	\$400

In the first, second and third periods only a sample of local authorities was contacted to supply data. Comparisons between periods are therefore problematic and caution should be used when interpreting trends. A further difficulty in making comparisons arises from the fact that the survey periods are of differing lengths.

### 2.9.3 Restorative justice

Restorative justice<sup>16</sup> involves community-based processes to help empower victims to ask questions of the offender and where an offender can take responsibility for their offending, as an alternative in some cases to fines or other sentencing options.

In the fourth period, the restorative justice process was used in fourteen prosecutions; details of these cases are in Appendix 5. In the third period the restorative justice process was used in thirteen prosecutions. In the second period, the restorative justice process was used in six prosecutions. The restorative justice process was not available under the RMA for the first period (October 1991 to 30 June 2001). The opportunity to use restorative justice was made possible by the introduction of the Sentencing Act in 2002.

### 2.9.4 Highest fines

A comparison of the fines imposed by the Court over the four periods is shown below and highlighted in Table 18.

In the fourth period:

- The highest fine imposed in this period was \$120,000 in *West Coast Regional Council v Potae and Van der Poel Ltd*<sup>17</sup>
- The total of the thirty highest fines in this period was \$2,122,700.
- The average of the thirty highest fines in this period was \$70,757.

In the third period:

- The highest fine imposed in this period was \$86,500 in *Waikato Regional Council v Hydro Energy (Waipa) Ltd & Neal*<sup>18</sup>
- The total of the thirty highest fines in this period was \$1,114,250.
- The average of the thirty highest fines in this period was \$37,142.

In the second period:

<sup>15</sup> These figures are based on the total fines for each prosecution and not the individual fines imposed.

<sup>16</sup> The Role of Restorative Justice in RMA Prosecutions, Judge FWM McElrea, 27 July 2004, *Resource Management Journal*, Issue 3, Volume XII, November 2004.

<sup>17</sup> 20/04/2010, Judge Borthwick, DC Greymouth CRI-2009-009-17910.

<sup>18</sup> 12/10/2007, Judge Smith, DC Hamilton, CRI 2007-019-3364, 2006-073-450 & 2006-073-447.

- The highest fine imposed in this period was \$55,000 in *Auckland Regional Council v Nuplex Industries Ltd*<sup>19</sup>
- The total of the thirty highest fines in this period was \$609,200.
- The average of the thirty highest fines in this period was \$20,307.

In the first period:

- The highest fine imposed in this period was \$50,000 in *Taranaki Regional Council v Petrocorp Exploration Ltd*<sup>20</sup>
- The total of the thirty highest fines in this period was \$611,000.
- The average of the thirty highest fines in this period was \$20,367.

**Table 18: Thirty highest fines**

	First Period	Second Period	Third Period	Fourth Period
Highest fine imposed	\$50,000	\$55,000	\$86,500	\$120,000
Total of 30 highest fines	\$611,000	\$609,200	\$1,114,250	\$2,122,700
Average of the 30 highest fines	\$20,367	\$20,307	\$37,142	\$70,757

In the first, second and third periods only a sample of local authorities was contacted to supply data. Comparisons between periods are therefore problematic and caution should be used when interpreting trends. A further difficulty in making comparisons arises from the fact that the survey periods are of differing lengths.

### 2.9.5 Fines by sector

Figure 6 shows that in the fourth period, the largest proportion of high fine prosecutions occurred in the agriculture sector, where 73% of the highest thirty fines were imposed.

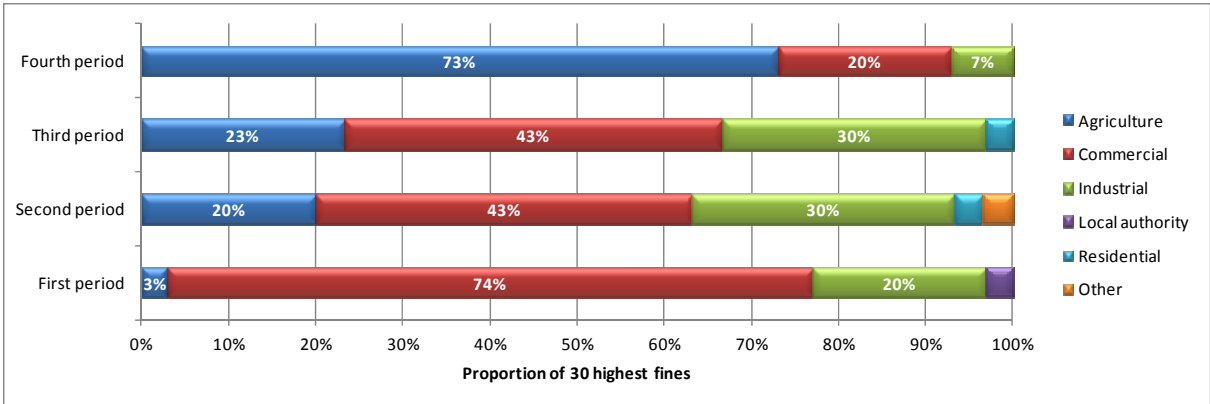
Table 18 shows that, by comparison, in the third period, the largest proportion of high fine prosecutions occurred in the commercial sector, where 43% of the highest thirty fines were imposed. In the second period, the largest proportion of prosecutions occurred in the commercial sector, where 43% of the highest thirty fines were imposed. In the first period, the largest proportion of prosecutions occurred in the commercial sector, where 74% of the highest thirty fines were imposed.

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<sup>19</sup> DC Auckland, CRN 2004066321, 18/03/2003, Judge McElrea.

<sup>20</sup> DC New Plymouth, CRN 5043008689, 22/10/96, Judge Bollard.

**Figure 6: Prosecutions for the thirty highest fines by sector across the four periods**



In the first, second and third periods only a sample of local authorities was contacted to supply data. Comparisons between periods are therefore problematic and caution should be used when interpreting trends. A further difficulty in making comparisons arises from the fact that the survey periods are of differing lengths. The maximum fine has also changed over the periods.

**Table 19: Prosecutions for the thirty highest fines by sector for the fourth period**

Sector	Numbers	Percentage
Agriculture	22	73 %
Commercial	6	20 %
Industrial	2	7 %
Local authority	0	0 %
Residential	0	0 %
Other	0	0%
Total	30	100 %

The details of the four highest fines in the fourth period are listed in Table 20. The next twenty six highest fines are listed in Appendix 3<sup>21</sup>. The last fine listed in Appendix 3 is a total fine of \$50,000. A fine of \$50,000 was also imposed in a number of other cases.

<sup>21</sup> The sentencing for the Rena prosecution was after the timeframe of this report. The prosecution was brought by a central Government Agency (Maritime New Zealand) rather than a local authority. The owners of the Rena were fined \$300,000 for discharging harmful substances after the ship grounded off the Tauranga coast on 5 October 2011. The company pleaded guilty to the charge under the RMA and was sentenced in Tauranga District Court on 26 October 2012.

**Table 20: The four highest fines in the fourth period**

Case	Total Fine	Sector	Details	Offence – pre or post 1/10/2009
<p>1 <i>West Coast Regional Council v Potae and Van der Poel Ltd</i><sup>22</sup></p>	<p>\$120,000</p>	<p>Agriculture</p>	<p>Eight charges for discharge of dairy effluent on various dates in 2008 in contravention of s15(1)(b) &amp; contravention of abatement notices.</p> <p>The total fine of \$120,000 was imposed on four charges (\$50,000, \$30,000, \$30,000, \$10,000). There was conviction and discharge on the remaining four charges.</p> <p>Offending occurred on three adjacent farms in Hokitika. There was a sharemilker responsible for daily management on each farm. Defendant was responsible for provision of effluent system. Judge Borthwick held that defendant's culpability was significantly higher than that of the sharemilkers.</p> <ul style="list-style-type: none"> <li>• 500 cows on 240 ha farm. 1 charge for ponding of effluent from irrigator on 20 days, 1 charge for overflow of effluent from saucer on 2 days and 1 charge for continuing offence for breach of abatement notice. Irrigation undertaken on saturated soils. Starting point of \$75,000. Uplift of \$15,000 for continued use of inadequate system. Discount of 33% for early guilty plea and \$5,000 reduction for good reputation of defendant.</li> <li>• 250 cows on 120 ha farm. Discharge caused when wash-down from dairy shed flowed into open storm water diversion and secondly, when it overwhelmed a sump and flowed into nearby drain. Overflows on 10 dates. System was inadequate. Starting point of \$60,000. Uplift of \$15,000 because of history of warnings and system at time of hearing was inadequate. Discount of 33% for early guilty plea and \$5,000 reduction for good reputation of defendant.</li> <li>• 500 cows on 240 ha farm. 1 charge for ponding of effluent from irrigator on 1 day, 1 charge for overflow of effluent from a sump on 12 days and 1 charge for continuing offence for breach of abatement notice. System was inadequate. Starting point of \$65,000. Uplift of \$15,000 for continued use of inadequate system. Discount of 33% for early guilty plea and \$5,000 reduction for good reputation of defendant.</li> </ul> <p>Judge's description of the offences: <i>"This is serious offending, both in relation to the continuing breach of the abatement notices, and the harm done to the environment. The offending is over a long period of time, up to four months in the case of DS47<sup>23</sup> (which is the longest period alleged). The harm occasioned concerns the long term effects of effluent discharge — which is difficult to quantify."</i></p>	<p>Pre 1/10/2009</p>

<sup>22</sup> 20/04/2010, Judge Borthwick, DC Greymouth CRI-2009-009-17910

<sup>23</sup> Judge Borthwick referred to the three farms in the decision using the Council reference numbers DS47, DS50 and DS54.

Case	Total Fine	Sector	Details	Offence – pre or post 1/10/2009
2 <i>Manawatu Wanganui Regional Council v KW Thurston</i> <sup>24</sup>	\$117,500	Commercial	<p>The total fine of \$117,500 was imposed on five charges for discharge of wastewater in contravention of s 15(1)(b) on various dates in 2006 and two charges for contravention of an abatement notice (\$40,000, \$40,000, \$7,500, \$2,500, \$2,500, \$12,500 and \$12,500).</p> <p>Defendant entered into a lease and agreed to dispose of the waste stream generated by Longburn Meats. The waste included water used in cooking and cooling of meat products and wash down water. The waste was directed into the save-all from which companies under defendant's control removed the waste on a regular basis and transported it by tanker to the Palmerston North sewage treatment ponds where it was disposed of. This system apparently worked successfully for a number of years. In March 2006 the City Council introduced a charge to accept the waste which they had previously taken for free. The cost of waste disposal exceeded the rent received from Longburn Meats by a considerable amount. Judge Dwyer found that this motivated the defendant to stop deliveries to the sewage ponds and to divert the waste water from the save-all into the nearby sump from where it found its way to a watercourse.</p> <p>Relevant factors in setting the fine were the offending was deliberate, strong financial position of defendant and commercial motivation involved.</p> <p>Defendant appealed the sentences for this case (and another one). High Court dismissed the appeal.</p>	Pre 1/10/2009

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<sup>24</sup> 20/05/2009, Judge Dwyer, DC Palmerston North, CRI-2007-054-2550, CRN06054501068, 1069, 1108 & CRN07054500558-61. Appeal – 27/08/2010, Miller J, HC Palmerston North, CRI 2007-054-2550

Case	Total Fine	Sector	Details	Offence – pre or post 1/10/2009
3 <i>Southland Regional Council v Talisker Farms Co Ltd &amp; Loveridge</i> <sup>25</sup>	\$110,000	Agriculture	<p>Talisker Farms Company Ltd is the farm owner, 121 hectare, 380 cows. There were also two charges against the sharemilker Loveridge.</p> <p>The total fine of \$110,000 was imposed for discharge of dairy effluent on various dates in 2010 in contravention of s 15(1)(b) on five charges (\$20,000, \$10,000, \$30,000, \$40,000 and \$10,000).</p> <ul style="list-style-type: none"> <li>• 13 January - irrigator</li> <li>• 13 January - sludge cleaned out of wintering pad was dumped in an adjoining paddock. Contaminants leached from the sludge and ponded in the paddock.</li> <li>• 13 January - dumped sludge from storage pond onto land, continuing offence. Officers spoke to Talisker's director about risk of groundwater contamination. It was agreed that it would be cleaned up but this was not done and discharges were continuing on 26 February and 22 April 2010.</li> <li>• Storage pond overflowing, continuing offence on 22 February and 22 April</li> <li>• 26 February - the pile of sludge cleaned from the wintering pad had been lowered but contaminants were continuing to leech ponding in an adjacent paddock.</li> </ul> <p>Nearest surface water body is Maitara River, subject of Water Conservation Order. No evidence that effluent actually entered a surface waterway but in the vicinity are shallow aquifers which eventually discharge groundwater into the Maitara River.</p> <p>Seriousness of company's offending, moderate - multiple sources of discharge over a long period of time.</p> <p>Starting point for company for all offences - \$150,000. 25% discount for early guilty plea.</p>	Post 1/10/2009

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<sup>25</sup> 17/12/2010, Judge Borthwick, DC Invercargill, CRI-2010-025-2498 & 2499.

Case	Total Fine	Sector	Details	Offence – pre or post 1/10/2009
<p>4 <i>Otago Regional Council v Crichton Dairy Farms Ltd &amp; G Norris</i><sup>26</sup></p>	<p>\$94,000</p>	<p>Agriculture</p>	<p>Offending occurred on 19 October 2009.</p> <p>Crichton Dairy Farms Ltd (Crichton) is the owner and operator of the dairy farm. Mr Norris is the farm manager. 430 hectare farm, 1500 cows.</p> <p>The total fine against Crichton of \$94,000 was imposed on three charges for discharges of dairy effluent on 19 October 2009 in contravention of breach of rule in plan and s15(1)(b) (\$25,000, \$25,000 and \$44,000)</p> <ul style="list-style-type: none"> <li>• Effluent had ponded on 14 October as result of over-application of effluent by irrigator. No attempt to clean up ponded effluent before Officers inspected on 19 October. No evidence of run-off but potential to do so.</li> <li>• 19 October, effluent from hose and irrigator over-applied and flowed overland into tributary. Officers instructed Norris to stop discharge. Norris excavated hole to trap surface effluent and prevent more entering tributary.</li> <li>• Substantial quantity of effluent sludge had been cleaned out of sump and deposited in gully, small bund of topsoil below sludge in an attempt to contain it. This was ineffective and effluent flowed to tributary.</li> </ul> <p>Samples collected showed high degree of contamination. Tributary is in catchment of Kakanui River which has high ecological values and some recreational value.</p> <p>Both defendants had one previous conviction.</p> <p>Held - discharge from irrigator due to incorrect set up, lack of oversight while in use and failure to take timely steps to intercept flow of effluent. Discharge to stream from sludge heap was result of deliberate deposit of effluent in area where run-off highly likely and attempts to contain were inadequate.</p> <p>Starting points: for irrigator discharges: company \$70,000 &amp; Norris \$30,000. Stockpiling of sludge: company \$60,000 &amp; Norris \$25,000.</p> <p>Mitigation: Early guilty plea, co-operation with Council investigation. Crichton post offence engaged consultant and installed state of art system which included three ponds with 90 days storage and stopped using travelling irrigators. Prior to this Norris had recommended to company that it improve systems.</p>	<p>Post 1/10/2009</p>

<sup>26</sup> 6/09/2010, Judge Kellar, DC Oamaru, CRI 2010-045-000230 & 232.

## **2.10 Appeals to the High Court and Court of Appeal against penalties and the outcome of the appeals**

In the fourth period there were twenty appeals (refer to Appendix 4 – note that insufficient information is available to assess a number of other appeals):

- In seven cases defendants appealed conviction and sentence.
- In eight cases defendants appealed sentence only.
- In one case a defendant appealed conviction only.
- In three cases Councils appealed against dismissal of charges. The appeals were successful in two cases.
- In six of the appeals, the fines were reduced. In one case the sentence of community work was reduced. In three cases penalties were upheld. In three cases there was remission to the District Court.

In the third period there were ten appeals:

- In four cases defendants' appealed conviction and sentence. In five cases defendant's appealed sentence only.
- In two cases, the fines were reduced, in one case the High Court vacated sentences of community work and imposed fines, in four cases penalties were upheld, in one case the Court upheld the penalty and increased the reparation and in one case where the defendants appealed both conviction and sentence the Court held the fine was not manifestly excessive but directed the information should be reheard in the District Court.

In the second period there were five appeals:

- In one case the defendant appealed both conviction and sentence. In four cases defendant's appealed sentence only.
- In two of the appeals, the penalties were reduced, and in three of the appeals penalties were upheld.

In the first period there were eighteen appeals:

- In all 18 cases defendants appealed sentence.
- In ten of the appeals, the penalties were reduced, and in eight of the appeals the penalties were upheld.

### 3. Decision making about enforcement action

This report also provides information about how local authorities make decisions on enforcement action. This information was not included in the previous reports. This information is included in this report in order to see how many local authorities have followed a recommendation made by the Auditor-General about the prosecution decision making processes.

The Auditor-General in a Performance Audit Report, *Managing freshwater quality: Challenges for regional councils*, (September 2011) looked at “*how effectively four selected regional councils are managing and controlling land use and related activities for the purpose of maintaining and enhancing freshwater quality in their regions*” (Part 1, paragraph 1.2).

In Part 5, the Auditor-General discusses how regional councils take enforcement action under the RMA including decision-making for prosecution. The Auditor-General’s conclusion (Part 5, paragraphs 5.47 - 5.49):

*“The Crown Law Office’s Prosecution Guidelines are clear that prosecution decisions should be free from political influence. The independence of the prosecutor is described as “the universally central tenet of a prosecution system under the rule of law in a democratic society”.*

*In central government, there is a strong convention that enforcement decisions are made by officials, independent of political influence, because it is seen as “undesirable for there to be even an appearance of political decision-making in relation to public prosecutions”. This convention has been given statutory recognition in section 16 of the Policing Act 2008. We see no reason for different principles to apply when the enforcement agency is a local authority. At least one regional council has had legal advice to this effect, but has not acted on it.*

*In our view, councillors should not be involved either in decisions to prosecute or to investigate or hear grievances about cases. In our 2005 report, *Horizons and Otago Regional Councils: Management of freshwater resources*, we concluded that, to ensure fairness in matters of non-compliance, councillors should endorse an enforcement policy and expect staff to apply such a policy equally. We still endorse this approach.”*

The Auditor-General’s Recommendation 8 to all regional councils and unitary authorities in relation to the decision to prosecute:

*“We recommend that all regional councils and unitary authorities review their delegations and procedures for prosecuting, to ensure that any decision about prosecution is free from actual or perceived political bias.”*

The Auditor-General’s recommendation on prosecution decision making processes applies to territorial authorities as well.

### 3.1 Methodology

An email was sent to every local authority requesting information on the following three questions.

**Question 1: How does your Council make the decision to take enforcement action?**

- A. Senior Staff decision
- B. Council decision
- C. Other (provide details):

**Question 2: Has there been any change in procedure in relation to the decision to take enforcement action during the period 1 July 2008 to 30 September 2012?**

- A. Nil
- B. Yes, change in procedure (provide details including date of change):

**Question 3: What factors are considered (in whether to prosecute)?**

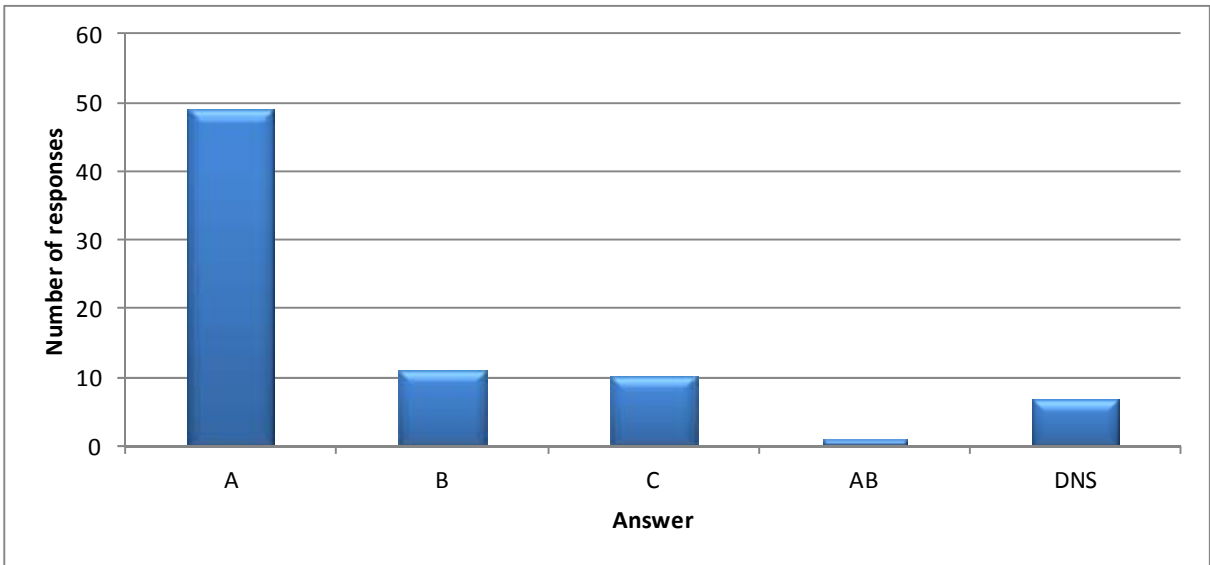
- A. Most or all of the factors listed in Machinery Movers Ltd v Auckland Regional Council
- B. Other (provide details):

### 3.2 Results

Figures 7, 8 and 9 provide a summary of Council responses to the questions. Full details of the responses are provided in Appendix 7.

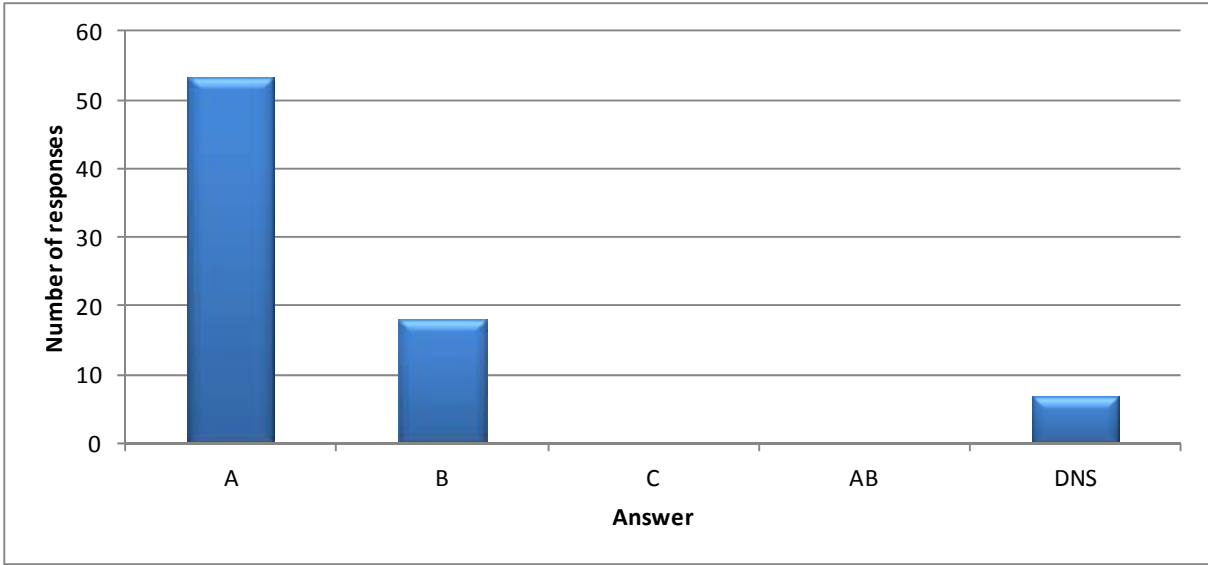
It is apparent that Question 1 may not have been clear because the local authorities were not given the option to choose both A and B. Some local authorities did choose both options. However, others may have wanted to choose both options but were not aware that they were able to do so.

**Figure 7: How does your Council make the decision to take enforcement action?**



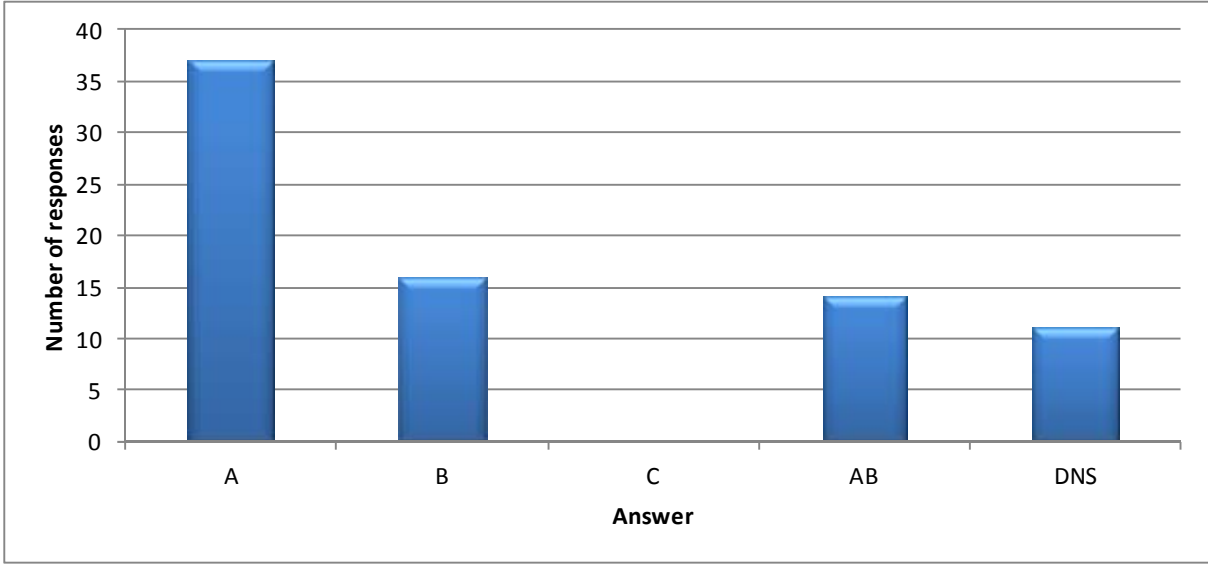
**A.** Senior Staff decision **B.** Council decision **C.** Other **AB.** Both A & B **DNS.** Did not specify

**Figure 8: Has there been any change in procedure in relation to the decision to take enforcement action during the period 1 July 2008 to 30 September 2012?**



**A.** Nil **B.** Yes, change in procedure. **DNS.** Did not specify

**Figure 9: What factors are considered in making a decision to prosecute or not?**



**A.** Most or all of the factors listed in *Machinery Movers Ltd v Auckland Regional Council*  
**B.** Other **AB.** Both A & B **DNS.** Did not specify

## Appendix 1: Numbers of prosecutions brought by local authorities in the fourth period<sup>27</sup>

Local Authority	Number of prosecutions	Percentage
Auckland Council	40	9.32%
Bay of Plenty Regional Council	30	6.99%
Canterbury Regional Council	41	9.56%
Christchurch City Council	1	0.23%
Gisborne District Council	2	0.47%
Hawkes Bay Regional Council	4	0.93%
Manawatu-Wanganui Regional Council	31	7.23%
Marlborough District Council	6	1.40%
Nelson City Council	3	0.70%
Northland Regional Council	22	5.13%
Otago Regional Council	73	17.02%
Queenstown Lakes District Council	2	0.47%
Selwyn District Council	1	0.23%
Southland District Council	4	0.93%
Southland Regional Council	50	11.66%
Taranaki Regional Council	38	8.86%
Tasman District Council	7	1.63%
Tauranga City Council	3	0.70%
Waikato Regional Council	49	11.42%
Wellington City Council	1	0.23%
Wellington Regional Council	13	3.03%
West Coast Regional Council	8	1.86%
<b>Total</b>	<b>429</b>	<b>100.00%</b>

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<sup>27</sup> Councils with no prosecutions are not included in this table.

## Appendix 2: Sentencing options

### Sentences of imprisonment imposed in the fourth period

Case	Brief details	Period of imprisonment	Offence – pre or post 1/10/2009
1 <i>R v WVG Conway &amp; CM Down</i> <sup>28</sup>	<p>Mr Conway and Ms Down were sentenced after being found guilty by jury trial of offences relating to the discharge of contaminants from a scrap metal yard in Otara.</p> <p>Conway was convicted of six counts of contravening an enforcement order, six counts of discharging a contaminant onto land under s 15(1)(b) and two of permitting the discharge of a contaminant from industrial trade premises onto land under s 15(1)(d).</p> <p>Down was convicted of six counts of contravening an enforcement order, six of permitting a s 15(1)(b) discharge, and six of permitting a s 15(1)(d) discharge. A sentence of 250 hours community work was imposed for Down.</p>	Conway - Six and a half months imprisonment	Pre 1/10/2009
2 <i>Taranaki Regional Council v AV Moulard, C Archibald, BC Cudby, Ingrams Contracting Ltd, RE Ford Ltd &amp; Wallis Developments Ltd</i> <sup>29</sup>	<p>Guilty plea. Two charges under ss 15(1)(b) and 15(1)(c) arising from operation of an illegal rubbish tip</p> <p>Mr Cudby had three previous convictions and a company of which he was Director had four previous convictions relating to operation of a different landfill.</p>	<p>Six months' community detention.</p> <p>A cumulative total of 300 hours community work also imposed.</p>	Pre 1/10/2009

<sup>28</sup> 18/12/2009, Judge Harland, DC Auckland, CRI-2008-004-19495.

<sup>29</sup> 29/1/2013, Judge Dwyer, DC New Plymouth, CRI-2011-043-003823.

## Sentences of community work imposed in the fourth period

Case	Brief details	Period of community work	Offence – pre or post 1/10/2009
1 <i>Auckland Council v DC Craig</i> <sup>30</sup>	Application for review of sentence. Sentenced on 18/12/2009 to two charges for discharge of organic matter and bacteria to water and odour from cattle carcasses into air.	Failed to complete sentence of community work. Sentence reviewed. Fine imposed totalling \$13,500 as financial position had improved.	Pre 1/10/2009
2 <i>R v WVG Conway &amp; CM Down</i> <sup>31</sup>	Down was convicted of six counts of contravening an enforcement order, six of permitting a s 15(1)(b) discharge, and six of permitting a s 15(1)(d) discharge	250 hours community work	Pre 1/10/2009
3 <i>Auckland Council v DW Bell</i> <sup>32</sup>	Guilty plea to three charges of discharge of dairy effluent in breach of s 15(1)(b) and one charge of contravention of abatement notice. Defendant leases farm. Poor financial position.	120 hours community work	Post 1/10/2009
4 <i>Auckland Council v GK Civil Ltd &amp; JG Master</i> <sup>33</sup>	Guilty plea by GK Civil Ltd to four charges and Master to three charges. Work on bridge. Discharge of concrete slurry & sediment. GK Civil Ltd- contractor. Total fine of \$33,500. Master – sub-contractor. Poor financial position & in receipt of ACC.	Master - 150 hours community work	Pre 1/10/2009
5 <i>Bay of Plenty Regional Council v JR Thomas</i> <sup>34</sup>	Guilty plea to discharge to land over a period of 10 years, copper aluminium chloride leaked from drums & discharge to air related to the burning of polypropylene sacks which had contained fertiliser and sulphur	400 hours community work, reparation of \$1,600 & enforcement order to prevent defendant being involved in any business activity in future involving the storage or handling of trade wastes.	Pre 1/10/2009
6 <i>Canterbury Regional Council v AJ Pattullo</i> <sup>35</sup>	Guilty plea to four charges. Discharge of contaminants to air from burning waste and discharge of demolition waste to land. Poor financial position.	150 hours community work	Pre 1/10/2009

<sup>30</sup> 14/12/2011, Judge Harland, DC Auckland, CRI-2011-004-001989.

<sup>31</sup> 18/12/2009, Judge Harland, DC Auckland, CRI-2008-004-19495.

<sup>32</sup> 12/04/2011, Judge Harland, DC North Shore, CRN 10044501176, 86, 87 & 88.

<sup>33</sup> 15/06/2009, Judge Thompson, DC Auckland, CRI-2008-004-027174.

<sup>34</sup> 16/03/2010, Judge Smith, DC Tauranga, CRN 09070501550, 552, 553 & 554.

<sup>35</sup> 28/09/2009, Judge Borthwick, DC Christchurch, CRN 09009501070-73.

7	<i>Canterbury Regional Council v Blair John Lloyd</i> <sup>36</sup>	Guilty plea to two charges of discharge of dairy effluent in breach of section 15(1)(b) by farm worker. Court held that discharge was significant and prolonged	Total fine of \$17,000, costs of \$2,700 & total of 260 hours community work.	Post 1/10/2009
8	<i>Christchurch City Council v Chang-Hsin Chou</i> <sup>37</sup>	Guilty plea to contravention of rule in plan requiring minimum net area of 420 m <sup>2</sup> per residential unit in breach of s 9(1) & charge under Building Act for work without building consent. Poor financial position.	Community Work 75 hours. Fined \$5,000 on BA charge	Pre 1/10/2009
9	<i>Otago Regional Council v Plakmaj Holdings Ltd, KM Kane &amp; CJ Byron</i> <sup>38</sup>	Guilty plea by three defendants to charge for discharge of dairy effluent in breach of section 15(1)(b). Plakmaj Holdings Ltd – contract milker. Fined \$16,600. Kane – Director of Plakmaj Holdings Ltd. Fined \$8,000. Byron – herd manager. Poor financial position.	Byron - 100 hours community work	Post 1/10/2009
10	<i>Otago Regional Council v Burnside Dairy Farms 2006 Ltd &amp; Jeremy Keane</i> <sup>39</sup>	Guilty plea by both defendants to two charges - discharge of dairy effluent in breach of section 15(1)(b) & in breach of plan. Burnside Dairy Farms 2006 Ltd – farm owner. Fined \$27,000. Keane – farm worker. Poor financial position.	Keane - 100 hours community work	Post 1/10/2009
11	<i>Otago Regional Council v Larry Frost</i> <sup>40</sup>	Guilty plea to five charges - discharge of dairy effluent & silage leachate in breach of section 15(1)(b). Farm owned by family trust. Defendant is one of trustees. Poor financial position.	220 hours community work on each charge	Pre 1/10/2009
12	<i>Queenstown Lakes District Council v J Spijkerbosch, M Spijkerbosch &amp; L Spijkerbosch</i> <sup>41</sup>	Guilty plea by three defendants to one charge for removal of eucalyptus tree in breach of s 9(3). J Spijkerbosch was land owner. Other two defendants are related to J Spijkerbosch (son and nephew)	Discharge without conviction for M Spijkerbosch & L Spijkerbosch upon performance by each of 80 hours community work and costs of \$500.	

<sup>36</sup> 30/11/2011, Judge Kellar, DC Christchurch, CRI-2011-009-004947.

<sup>37</sup> 28/05/2009, Judge Borthwick, DC Christchurch, CRI-2009-009-001429.

<sup>38</sup> 26/07/2010, Judge Jackson, DC Invercargill, CRI-2010-017-000247, 246 & 245.

<sup>39</sup> 6/09/2010, Judge Kellar, DC Oamaru, CRI-2010-045-000240.

<sup>40</sup> 29/07/2009, Judge Whiting, DC Balclutha, CRI-2009-005-000242.

<sup>41</sup> 30/07/2010, Judge Kellar, DC Queenstown, CRI-2010-059-000335.

13	<i>Southland Regional Council v A MacPherson, P Flannery, M Denize, A Cleland, Tussock Creek Dairies Ltd, Farmwright Ltd &amp; M Dickson</i> <sup>42</sup>	<p>Guilty plea by seven defendants to charges for discharge of dairy effluent in breach of section 15(1)(b). There were discharges on two dates.</p> <ul style="list-style-type: none"> <li>Tussock Creek Dairies Ltd - farm owner and consent holder (2 charges, both dates).</li> <li>Farmwright Ltd - dairy farm consultancy.</li> <li>Flannery, Denize &amp; Cleland - directors of Tussock Creek Dairies Ltd (1 charge).</li> <li>MacPherson – farm manager(1 charge)</li> <li>Dickson – farm worker in poor financial position (1 charge for discharge of dairy effluent from irrigator).</li> </ul> <p>Fines imposed on other defendants ranging from \$1,500 to \$10,000.</p>	Dickson - 100 hours community work	Post 1/10/2009
14	<i>Southland Regional Council v Hughes Crawley Company Ltd, Richard Todd &amp; P Hughes</i> <sup>43</sup>	<p>One charge of discharge of dairy effluent in breach of section 15(1)(b) from irrigator.</p> <ul style="list-style-type: none"> <li>Hughes Crawley Company Ltd - farm owner and consent holder. Conviction and discharge.</li> <li>Hughes – director of company &amp; farm manager. Fined \$22,000.</li> <li>Todd – farm worker. Court held not able to pay substantial fine.</li> </ul>	Todd - Fine of \$15,000 & 75 hours community work.	Post 1/10/2009
15	<i>Southland Regional Council v Navillus Farms Ltd &amp; MD Sullivan</i> <sup>44</sup>	<p>Guilty plea by each defendant to one charge of discharge of dairy effluent in breach of section 15(1)(b). Sullivan is Director of Navillus Farms Ltd.</p> <p>Company fined \$40,000.</p>	Sullivan - 100 hours community work	Pre 1/10/2009
16	<i>Taranaki Regional Council v BC Cudby</i> <sup>45</sup>	<p>Guilty plea. Two charges under 15(1)(b) and 15(1)(c) arising from operation of an illegal rubbish tip</p>	Cudby - Six months' community detention & a cumulative total of 300 hours community work.	Pre 1/10/2009
17	<i>Waikato Regional Council v Open Country Cheese Company Ltd &amp; AD Pryor</i> <sup>46</sup>	<p>Guilty plea by both defendants to one representative charge of discharge of dairy factory wastewater in breach of s 15(1)(b). Pryor – employee of dairy factory. Poor financial position.</p>	Pryor - 150 hours community work	Pre 1/10/2009

<sup>42</sup> 19/01/2011, Judge Jackson, DC Invercargill, CRI-2010-025-003422, 1042, 1044, 1043, 1046, 1045, 3421.

<sup>43</sup> 17/12/2010, Judge Borthwick, DC Invercargill, CRI-2010-025-2691.

<sup>44</sup> 22/03/2010, Judge Doherty, DC Invercargill, CRI-2009-025-002882 & 2971.

<sup>45</sup> 28/09/2009, Judge Dwyer, DC New Plymouth, CRI-2009-021-154.

<sup>46</sup> 29/07/2009, Judge Harland, DC Morrinsville, CRI-2008-073-001014.

18	<i>Waikato Regional Council v Calford Holdings Ltd, Tirau Earthmovers Ltd &amp; RT Park</i> <sup>47</sup>	Earthworks to convert forestry land to dairy farm. Guilty plea to charges for use of land, disturbance of bed of river.  District Court imposed sentence of fines of \$10,000 & 300 hours community work for Park. Quashed by High Court on appeal & sentence of 100 hours substituted	Park - 100 hours community work and fines of \$10,000	Pre 1/10/2009
19	<i>Waikato Regional Council v CW Wilfredo Aguila</i> <sup>48</sup>	Discharge of dairy effluent. Farm worker. Not guilty plea. Convicted on three charges.  District Court imposed sentence of fine of \$15,000 & 120 hours community work. Quashed by High Court on appeal & sentence of \$11,000 & 80 hours substituted	80 hours community work & fine of \$11,000	Pre 1/10/2009
20	<i>West Coast Regional Council v A Vaida</i> <sup>49</sup>	Guilty plea to one charge of discharge of dairy effluent in breach of s 15(1)(b), continuing offence. Sharemilker. Poor financial position. Court held fine of \$35,000 would have been imposed if defendant was able to pay fine.	100 hours community work	Pre 1/10/2009
21	<i>West Coast Regional Council v R Brown &amp; M Bock</i> <sup>50</sup>	Guilty plea by both defendants to two charges of discharge of dairy effluent in breach of s 15(1)(b). Sharemilkers. Poor financial position. Court held fine of \$70,000 would have been imposed if defendants were able to pay fine.	Brown & Bock – total of 200 hours community work each	Pre 1/10/2009

<sup>47</sup> 11/11/2008, Judge Harland, DC Hamilton, CRI-2008-077-000090.

<sup>48</sup> 17/06/2010, Judge Harland, DC Hamilton, CRI-2008-073-2127. 23/08/11, Andrews J, HC Hamilton, CRI-2010-019-9746.

<sup>49</sup> 19/02/2010, Judge Borthwick, DC Christchurch, CRI-2009-089-000016.

<sup>50</sup> 18/05/2009, Judge Borthwick, DC Christchurch, CRI-2009-089-000017 & 18.

## Discharge without conviction in the fourth period

Case	Brief details		Offence – pre or post 1/10/2009
1 <i>Northland Regional Council v Brian Vincent Karl</i> <sup>51</sup>	Guilty plea by farm manager to four charges of discharge of dairy effluent from four separate sources. Disputed facts hearing mainly in relation to dispute between Karl and the farm owners (M & K Stanaway, see Appendix 3). Court found that Karl's responsibility for the problems with the effluent system at the farm was minimal.	Karl - discharge without conviction on the four charges.	Pre 1/10/2009
2 <i>Northland Regional Council v Fulton Hogan Ltd, Cates Bros Ltd &amp; North End Contractors Ltd, Whangarei District Council &amp; T Perkinson</i> <sup>52</sup>	See details in Appendix 5 – restorative justice	Fulton Hogan Ltd, Cates Bros Ltd & North End Contractors Ltd, Whangarei District Council – all discharged without conviction	Pre 1/10/2009
3 <i>Taranaki Regional Council v Lilley &amp; JR Duffy</i> <sup>53</sup>	Guilty plea by sharemilker to two charges of discharge of dairy effluent on two different dates.  Farm owner, Lilley was convicted after defended hearing.  Court found that Duffy's culpability was minimal. Duffy did his best to manage an inherently flawed effluent system.	Duffy - discharge without conviction.	Post 1/10/2009
4 <i>Taranaki Regional Council v Andrews &amp; T Van Kerssen</i> <sup>54</sup>	Guilty plea by farm manager to one charge of discharge of dairy effluent.  Disputed facts hearing on role of Van Kerssen.  Farm owner, Andrews was convicted.  Court found that Van Kerssen's culpability was at the lowest end of the scale as there was confusion as to who was responsible for managing the effluent pond and there was no adequate supervision by Andrews. .	Van Kerssen - discharge without conviction.	Pre 1/10/2009
5 <i>R v Council v Greymouth Petroleum Ltd, IP Johnston &amp; ET Ruwhiu</i> <sup>55</sup>	Late guilty plea after election of trial by jury by three defendants to indictment to one count of discharge of sediment in breach of section 15(1)(b) at four different stream crossings. Offence arose from earthworks to install pipelines for petroleum products.  Court found that there was no evidence of actual damage. If convictions entered against company then this would compromise future work. High degree of remorse. Company entered deed to contribute \$100,000 to riparian planting programme.	Three defendants discharged without conviction.  Greymouth Petroleum Ltd ordered to pay Council's expert's costs of \$5537 & \$20,000 towards costs of prosecution.	Pre 1/10/2009

<sup>51</sup> 1/12/2011, Judge Newhook, DC Whangarei, CRN-10011500066, 81, 82, 83.

<sup>52</sup> 13/10/2009 & 6/05/2010, Judge Newhook, DC Whangarei, CRN 09088500008, 023, 028 – 034 & 039.

<sup>53</sup> 14/12/2010, Judge Dwyer, DC New Plymouth, CRI 2010-043-003887 & 473.

<sup>54</sup> 16/07/2009, Judge Dwyer, DC New Plymouth, CRN 09043502602, 2610 & 2841.

<sup>55</sup> 17/05/2010, Judge Whiting, DC New Plymouth, CRI-207-043-003222.

Case	Brief details		Offence – pre or post 1/10/2009
6 <i>Waikato Regional Council v JD Smith</i> <sup>56</sup>	<p>Guilty plea by sharemilker to one charge for discharge of effluent and sediment from 2 sacrifice paddocks.</p> <p>Defendant recently arrived in NZ from Scotland. Defendant's company was employed as a 25% sharemilker by Plateau Farms Ltd, part of the Crafar Group of companies (now in receivership).</p> <p>Court found that defendant was minor player, reliant on those above him in the management chain to direct him, culpability was extremely low, consequences of a conviction were that he could be denied NZ residency which would mean that he would have to return to Scotland.</p>	Smith - discharge without conviction.	Pre 1/10/2009
7 <i>Waikato Regional Council v Charles Henare Rhind</i> <sup>57</sup>	<p>Guilty plea by farm manager to one charge for discharge of effluent.</p>	<p>Rhind - discharge without conviction.</p> <p>\$3,000 costs following completion of 80 hours ecological restoration work.</p>	Pre 1/10/2009
8 <i>Queenstown Lakes District Council v J Spijkerbosch, M Spijkerbosch &amp; L Spijkerbosch</i> <sup>58</sup>	<p>Guilty plea by farm manager to one charge for removal of eucalyptus tree in breach of s 9(3). J Spijkerbosch was land owner. Other two defendants are related to J Spijkerbosch (son and nephew).</p>	<p>Discharge without conviction for M Spijkerbosch &amp; L Spijkerbosch upon performance by each of 80 hours community work and costs of \$500.</p>	Post 1/10/2009
9 <i>Otago Regional Council v Country Pastures Farm Ltd &amp; Scott John Smales</i> <sup>59</sup>	<p>Guilty plea by sharemilker to one charge of discharge of silage leachate.</p> <p>Farm owner, Country Pastures Farm Ltd pleaded guilty and was convicted and fined \$15,000.</p> <p>Court found that Smales' culpability was minimal. He started work six weeks prior to offending and was not aware of discharge.</p>	<p>Smales - discharge without conviction.</p> <p>\$412 costs plus solicitor's costs of \$113 (as per scale)</p>	Post 1/10/2009

<sup>56</sup> 15/03/2010, Judge Harland, DC Hamilton, CRI-2009-063-565.

<sup>57</sup> 20/08/2010. No written decision. Details provided by Waikato Regional Council.

<sup>58</sup> 30/07/2010, Judge Kellar, DC Queenstown, CRI-2010-059-000335.

<sup>59</sup> 28/06/2012, Judge Dwyer, DC Dunedin, CRI-2011-005-000521.

## Conviction and discharge in the fourth period<sup>60</sup>

Case	Brief details		Offence – pre or post 1/10/2009
1 <i>Wellington Regional Council v Carterton District Council</i> <sup>61</sup>	Guilty plea for discharge of treated sewage. Court agreed with suggestion of a joint scheme for improvement of a stream at a cost of \$20,000.	Carterton District Council - conviction and discharge	Post 1/10/2009
2 <i>Bay of Plenty Regional Council v SM Deane</i> <sup>62</sup>	Farm manager of dairy farm. 1 charge for discharge of dairy effluent in breach of s15(1)(b). Held - Minor role. Difficult position; cows had to be milked and there was no assistance from the lessee and no knowledge about important aspect of effluent system. Difficult personal situation. Unemployed on a benefit with three children.	Deane - conviction and discharge	Post 1/10/2009
3 <i>Manawatu-Wanganui Regional Council v Rock Solid Holdings Ltd &amp; DG Brown</i> <sup>63</sup>	Guilty pleas by Rock Solid Holdings Ltd (RSL) and Mr Brown s 15(2A). Demolition waste from site in Palmerston North dumped on a rural property. RSL was the construction contractor acting in the demolition. Brown was manager of the demolition company, which was now in liquidation. No evidence of any adverse environmental effects of the illegal dumping. RSL was fined \$9,000. Court held that Brown had a higher level of culpability than RSL. He had been in the demolition industry for 35 years and ought to have known that the dumping was not legitimate. Conviction and discharge because of Brown's circumstances - 53 years old, unemployed and in poor health, no substantial assets, completing community work for unpaid road user charges or fines with at least two years of community work required to clear fines.	Brown - Conviction and discharge	Post 1/10/2009
4 <i>Northland Regional Council v Verano Properties Ltd, Airey Consultants Ltd, MD Lee, Hisbiscus Contractors Ltd, DSM Bawden, Accurate Earthmovers Ltd, CJ Win</i> <sup>64</sup>	Guilty pleas by defendants to discharge of sediment form subdivision site in breach of s 15(1)(b). Mr Win was employee of Accurate Earthmovers. Win had tried to mitigate.  Other defendants were convicted and fines were imposed.	Win - Conviction and discharge	Pre 1/10/2009

<sup>60</sup> This table does not include cases where related defendants e.g. were both sentenced and where Court took global approach and one defendant was fined and another was convicted and discharged.

<sup>61</sup> 8/12/2011, Judge Thompson, DC Wellington, CRI-2011-035-1291.

<sup>62</sup> 8/09/2010, Judge Smith, DC Tauranga, CRI-2010-070-3645.

<sup>63</sup> 14/05/2012, Judge Dwyer, DC Palmerston North, CRI-2011-054-2599 & CRI-2011-054-2601.

<sup>64</sup> 17/08/2010, Judge Smith, DC Auckland, CRI-2009-084-344.

## Appendix 3: Identification of sector for the thirty highest fines in the fourth period (excluding the top four)

Case	Total Fine <sup>65</sup>	Sector	Sub-Sector	Details	Offence – pre or post 1/10/2009
5 Waikato Regional Council v Hillside Farms Ltd, Allan Crafar, Frank Crafar & Elizabeth Crafar <sup>66</sup>	\$90,000	Agriculture	Dairy	<p>The three Crafars are Directors of Hillside Farms Ltd. The company owned the farm. Discharge of dairy effluent on various dates from a number of sources and breach of abatement notice.</p> <p>Defendants pleaded not guilty.</p> <p>Elizabeth Crafar was convicted on four charges and fined \$1,500. The other three defendants were each convicted on ten charges and were each fined \$29,500.</p> <p>Relevant factors in setting the fine - moderately large farm of 386 ha, defendants inextricably linked, Court identified starting point for offending and then apportioned between related defendants to avoid risk of double counting. Level 3 of <i>Chick</i>. Starting point of \$80,000. No discount for work to revamp system as this was done too late. No remorse as defendants blamed others. Previous convictions of entities within Crafarm's Group was considered aggravating.</p> <p>Crafars appealed conviction and sentence. High Court dismissed appeal.</p>	Pre 1/10/2009

<sup>65</sup> If the fine was reduced on appeal the final sentence is recorded in Appendix 3.

<sup>66</sup> 28/08/2009, Judge Newhook, DC Hamilton, CRI-2008-019-002997. 13/09/2010, Andrews J, HC Hamilton, CRI-2009-419-67, 68 & 69.

Case	Total Fine <sup>65</sup>	Sector	Sub-Sector	Details	Offence – pre or post 1/10/2009
6 Otago Regional Council v Summit Dairying Ltd, BD De La Rue & SM Smit <sup>67</sup>	\$88,000	Agriculture	Dairy	<p>Guilty plea by three defendants to three charges each for discharge of dairy effluent. Owner of farm. Company and two directors.</p> <p>30/09/09 &amp; 13/10/09 – discharge from irrigator with significant ponding but did not enter water and unlikely to enter groundwater</p> <p>13/10/09 – effluent discharged from effluent hydrant, flowed overland into stream. Company – fined total of \$52,000. De La Rue &amp; Smit each fined total of \$18,000</p>	Both Pre & Post 1/10/2009
7 Canterbury Regional Council v White Gold Ltd <sup>68</sup>	\$85,000	Agriculture	Dairy	<p>Late guilty plea two charges for discharge of dairy effluent. Owner of farm. 350 cows. White Gold Ltd owns two other farms and has total herd of 1700.</p> <p>Relevant factors in setting the fine – history of non-compliance, nearly 45,000 litres of effluent discharged onto land over three days, discharge to groundwater and farm drains, late guilty plea, did not exercise reasonable care, poor effluent and management systems, no systems for management.</p> <p>Convicted and fined \$55,000 for discharge from pipe and \$30,000 for discharge from irrigator and costs of \$5,251 towards Council costs.</p>	Post 1/10/2009

<sup>67</sup> 6/09/2010, Judge Kellar, DC Oamaru, CRI 2010-012-001316.

<sup>68</sup> 18/06/2012, Judge Doherty, DC Christchurch, CRI-2011-009-004949.

Case	Total Fine <sup>65</sup>	Sector	Sub-Sector	Details	Offence – pre or post 1/10/2009
8 <i>Bay of Plenty Regional Council v PF Olsen Ltd</i> <sup>69</sup>	\$72,800	Commercial	Forestry Contractor	<p>Clearance work in forest in very steep terrain.</p> <p>Guilty plea to two charges. Guilty plea vacated because of jurisdictional argument. Pleas of guilty re-entered.</p> <p>Charge under s 9(3)(a) relates to the accumulation of the piles of slash and debris in breach of resource consent. Charge under s 15(1)(b) relates to the discharge of the debris into streams as a result of slips.</p> <p>Relevant factors in setting the fine: 8,000 – 10,000 m<sup>3</sup> of debris discharged. Significant adverse effects, wilful failure by defendant to heed warnings from Council and knowledge of fragility of area and risks. Starting point of \$40,000 for 9(3) and \$100,000 for 15(1)(b).</p> <p>Significant improvement in systems post offence but major corporation – two factors cancelled each other out and thus no uplift to starting point.</p> <p>One of the two previous convictions considered relevant - uplift of 20%.</p> <p>Discount of \$60,000 for \$250,000 spent on remediation.</p> <p>End sentence of \$32,000 and \$48,000.</p> <p>Defendant appealed sentence. Fines reduced by High Court to \$28,000 and \$44,800</p>	Post 1/10/2009

<sup>69</sup> 16/03/2010, Judge Smith, DC Tauranga, CRN 08063501462 & 466. 14/09/2012, Brewer J, HC Hamilton, CRI-2010-463-023.

Case	Total Fine <sup>65</sup>	Sector	Sub-Sector	Details	Offence – pre or post 1/10/2009
9 <i>Bay of Plenty Regional Council v Armer Farms (N.I.) Ltd</i> <sup>70</sup>	\$72,200	Agriculture	Dairy	<p>Late guilty plea (after election of jury trial) to one charge for discharge of dairy effluent from spill in irrigation pipe. Disputed facts hearing.</p> <p>Defendant owns total of 16 dairy farms.</p> <p>Defendant leased farm on which offence occurred. 540 cows.</p> <p>Relevant factors in setting the fine – inadequate system. Starting point of \$80,000. 5% reduction for previous good character and absence of any significant history of non-compliance and 5% for late guilty plea.</p>	Post 1/10/2009
10 <i>Manawatu-Wanganu Regional Council v D B and A E Cheetham Ltd &amp; Duncan Bruce Cheetham</i> <sup>71</sup>	\$72,000	Agriculture	Dairy	<p>Not guilty plea to two charges against each defendant for breach of abatement notice. Guilty plea to six charges against each defendant for discharge of dairy effluent. Disputed facts hearing.</p> <p>Convicted on all charges.</p> <p>Defendant company owns farm. B Cheetham is Director.</p> <p>Relevant factors in setting the fine – no supervision of farm manager (Woods) and therefore high degree of culpability.</p> <p>Start point of \$100,000. Total fine of \$72,000 split into \$36,000 for each defendant divided between eight fines each.</p>	Post 1/10/2009
11 <i>Otago Regional Council v Megaw Farms Ltd &amp; AW Megaw</i> <sup>72</sup>	\$68,000	Agriculture	Dairy	<p>Guilty plea to three charges against each defendant for discharge of dairy effluent.</p> <p>Company fined \$20,000 &amp; 25,000. Megaw fined \$8,000 &amp; \$15,000</p>	Post 1/10/2009

<sup>70</sup> 10/08/2011, Judge Wolff, DC Tauranga, CRI-2011-070-805.

<sup>71</sup> 20/08/2012, Judge Dwyer, DC Palmerston North, CRI-2012-054-000376.

<sup>72</sup> 1/11/2010, Judge Kellar, DC Dunedin, CRI-2010-017-000373 & 4879.

Case	Total Fine <sup>65</sup>	Sector	Sub-Sector	Details	Offence – pre or post 1/10/2009
12 <i>Taranaki Regional Council v Ravensdown Fertiliser Co-Operative Ltd &amp; AA Contracting Ltd &amp; GA Blackstock</i> <sup>73</sup>	\$67,500	Industrial	Fertiliser Plant	<p>Guilty plea by three defendants to discharge of hydrolysed urea in breach of s 15(1)(b). Hydrolysed urea is waste product from fertiliser plant. Taken by employee of Blackstock (contractor) to cleanfill operated by AA Contracting Ltd.</p> <p>Relevant factors in setting the fine for Ravensdown: 4,000 – 5,000 fish killed including five “at risk” species. High degree of carelessness. No uplift for previous convictions because not similar offending and not recent. Ravensdown fined \$67,500.</p> <p>(AA Contracting Ltd fined \$30,00 Blackstock fined \$30,000)</p>	Post 1/10/2009

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<sup>73</sup> 15/12/2011, Judge Dwyer, DC New Plymouth, CRI-2011-043-002426, 3193, 3192.

Case	Total Fine <sup>65</sup>	Sector	Sub-Sector	Details	Offence – pre or post 1/10/2009
13 <i>Northland Regional Council v Mark Allen Stanaway &amp; Kylie Wendy Stanaway</i> <sup>74</sup>	\$67,000	Agriculture	Dairy	<p>Early guilty plea to 8 charges against each defendant in relation to discharges of dairy effluent, a discharge of silage leachate and one breach of an abatement notice in September 2009.</p> <p>Defendants are farm owners (husband and wife). Farm operated pursuant to permitted activity criteria in Plan. Disputed facts hearing after which farm manager (Karl) was discharged without conviction.</p> <p>Relevant factors in setting the fine: Blame for state of affairs leading to charges must rest almost entirely with the Stanaways, responsibility of Karl described as minimal. "...a classic situation of a farmer running a herd many times the size that the effluent system would cope with, and frankly all the other problems stemmed from that." History of problems, quality of water upstream was good, discharges were toxic. Offences in level 3 of Chick. Total start point for both defendants \$100,000. 33% discount for early guilty plea. Fine of \$4,187.50 imposed on each charge.</p>	Pre 1/10/2009
14 <i>Northland Regional Council v Pendre Farms Ltd, MJ Griffiths &amp; GJ Dassler</i> <sup>75</sup>	\$65,000	Agriculture	Dairy	<p>Guilty plea by company and director to two charges for discharge of dairy effluent, continuing offences.</p> <p>Dassler – contractor pleaded guilty to charge relating to breach of wall of effluent pond.</p> <p>Relevant factors in setting the fine: History of non-compliance Discharge visible 4.5 km downstream, neighbours could not take water for stock. Level 3 of Chick. First incident – Cumulative starting point of \$50,000. Second incident – Cumulative starting point of \$80,000. Griffiths and company each fined \$12,500 &amp; \$20,000. (Dassler fined \$1,500 because of poor financial position, employed ad hoc on labour only basis to drive digger)</p>	Pre 1/10/2009

<sup>74</sup> 20/02/2012, Judge Newhook, DC Whangarei, CRN10011500123 - 129, 132, 136 & 10011500088 - 092, 094, 096, 108.

Case	Total Fine <sup>65</sup>	Sector	Sub-Sector	Details	Offence – pre or post 1/10/2009
15 <i>Waikato Regional Council v Hillside Farms Ltd</i> <sup>76</sup>	\$65,000	Agriculture	Dairy	<p>Late guilty plea to 4 charges for discharge of dairy effluent &amp; breach of abatement notice.</p> <p>Relevant factors in setting the fine: history of non-compliance, cavalier attitude. Part of Crafarms Group. Soundly not take into account financial circumstances as not information filed. Defendant in receivership.</p> <p>Start point of \$60,000, uplift of \$12,000 for prior convictions and 10% reduction for late plea. Global sum of \$65,000 for four offences.</p>	Pre 1/10/2009
16 <i>Taranaki Regional Council v Terence Edward Yates</i> <sup>77</sup>	62,000	Agriculture	Dairy	<p>Early guilty plea to three charges for breach of s15(1)(b). Discharge from holding pond on 1/10/2009, discharge from irrigation pipe on 1/10/2009, continuing offence of discharge from irrigation pipe between 10/08/2009 and 30/09/2009.</p> <p>Relevant factors in setting the fine – Level 3 of <i>Chick</i>. Ongoing, if intermittent discharge from irrigation pipe for 7 weeks. Discharge was highly toxic and foreseeable due to proximity of containment area to stream.</p> <p>Start point of \$35,000 for discharge from pond and \$35,000 globally for 2 discharges from irrigator. Uplift of 33% to start point for previous conviction negates discount for early guilty pleas.</p> <p>Defendant appealed sentence. Fines reduced by High Court to \$62,000</p>	Pre & Post 1/10/2009

<sup>75</sup> 7/10/2008, Judge Newhook, DC Whangarei, CRN 7011500129 & 132, 122 & 127 & 118.

<sup>76</sup> 12/02/2010, Judge Newhook, DC Hamilton, CRN 08069500119, 120, 122 & 133.

<sup>77</sup> 11/02/2010, Judge Dwyer, DC New Plymouth, CRI 2009-043-004643. Appeal 14/05/2010, MacKenzie J, HC New Plymouth, CRI-2010-443-008.

Case	Total Fine <sup>65</sup>	Sector	Sub-Sector	Details	Offence – pre or post 1/10/2009
17 <i>Taranaki Regional Council v PJ Sullivan</i> <sup>78</sup>	\$60,000	Agriculture	Dairy	<p>Not guilty plea to discharge of dairy effluent on one date from two sources. Convicted on two charges.</p> <p>Defendant is farm owner.</p> <p>Relevant factors in setting the fine: significant adverse effects but for short distance, lack of supervision of new sharemilker, problems with effluent system.</p> <p>Fined \$30,000 on each charge.</p> <p>Appeal filed against conviction and sentence. At date of report – awaiting hearing date for appeal.</p>	Post 1/10/2009
18 <i>Taranaki Regional Council v Trevor Rex Jane</i> <sup>79</sup>	\$60,000	Agriculture	Dairy	<p>Early guilty plea to four charges of discharge of dairy effluent from four sources.</p> <p>Defendant is farm manager. Farm is owned by his family trust.</p> <p>Relevant factors in setting the fine: extreme carelessness, cumulative effect. Start point of \$80,000. 25% discount for early guilty plea.</p> <p>Fined \$5,000, \$35,000, \$10,000 and \$10,000.</p>	Post 1/10/2009
19 <i>Taranaki Regional Council v MR Andrews &amp; Tony Van Kerssen</i> <sup>80</sup>	\$60,000	Agriculture	Dairy	<p>Guilty plea to two charges - discharge of dairy effluent &amp; silage leachate.</p> <p>Disputed facts hearing on role of farm worker, Van Kerssen. See Appendix 2 for details of Van Kerssen's discharge without conviction.</p> <p>Andrews is farm owner.</p> <p>Relevant factors in setting the fine: history of non-compliance, two distinct discharge, high degree of carelessness, significant adverse effects.</p> <p>Fined \$30,000 on each charge.</p>	Pre 1/10/2009

<sup>78</sup> 21/08/12, Judge Dwyer, DC New Plymouth, CRI-2012-021-000267.

<sup>79</sup> 23/08/2012, Judge Thompson, DC New Plymouth, CRI-2011-043-001086.

<sup>80</sup> 16/07/2009, Judge Dwyer, DC New Plymouth, CRN 09043502602, 2610 & 2841.

Case	Total Fine <sup>65</sup>	Sector	Sub-Sector	Details	Offence – pre or post 1/10/2009
20 Wellington Regional Council v Patrick Roil & Roil Contracting Ltd <sup>81</sup>	\$60,000	Commercial	Clean fill operation	<p>Guilty plea to three charges each by company and director for use of land s 9(2), deposit of substance on river bed of s 13(1)(d) &amp; diversion of water s 14(2).</p> <p>Relevant factors in setting the fine: deliberate, commercial benefit. Global start point of \$90,000.</p> <p>Roil fined \$40,000 &amp; company fined \$20,000.</p>	Post 1/10/2009
21 Southland Regional Council v Niagara Sawmilling Ltd <sup>82</sup>	\$60,000	Industrial	Sawmill	<p>Not guilty plea to 15 charges for discharge of dust from sawing and processing of timber in breach of s 15(1)(c).</p> <p>Relevant factors in setting the fine: dust was extremely unpleasant for complainants. Moderately serious. Global start point of \$60,000. No reductions.</p> <p>Total fine of \$60,000 apportioned at \$6,000 for offences post 1/10/2009 and \$3,500 for offences pre 1/10/2009.</p> <p>Enforcement order requiring preparation by expert of air quality plan and other measures.</p>	Pre & Post 1/10/2009
22 Southland Regional Council v K Belling & R Raymond-Williams <sup>83</sup>	\$60,000	Agriculture	Dairy	<p>Guilty plea to four charges for discharge of dairy effluent and dumping stock.</p> <p>Relevant factors in setting the fine: real want of care. Start point of \$75,000 for effluent and \$10,000 for dumping stock.</p> <p>Belling - fined \$20,000, \$7,500, \$7,500 &amp; \$25,000</p>	Post 1/10/2009
23 Waikato Regional Council v Bayview Raglan Ltd <sup>84</sup>	\$59,500	Commercial	Subdivision	<p>Guilty plea to four charges – failure to install erosion and sediment controls &amp; breach of abatement notice. Offences over six month period.</p> <p>Defendant entered guilty plea but failed to appear in Court for sentencing.</p> <p>Relevant factors in setting the fine: high degree of negligence, multiple inspections by Council. Start point of \$70,000. Discount of 15% for plea.</p> <p>Fined \$14,875 on each charge.</p>	Pre 1/10/2009

<sup>81</sup> 11/08/2011, Judge Kelly, DC Porirua, CRI-2009-091-004827.

<sup>82</sup> 15/11/2010, Judge Borthwick, DC Invercargill, CRI-2010-025-000650.

<sup>83</sup> 10/06/2011, Judge Borthwick, DC Invercargill, CRI-2010-025-004368 & 4366.

Case	Total Fine <sup>65</sup>	Sector	Sub-Sector	Details	Offence – pre or post 1/10/2009
24 <i>Auckland Council v URS New Zealand Ltd, Brown Bros (NZ) Ltd, Gasoline Alley Services Ltd &amp; Fuelquip (NZ) Ltd</i> <sup>85</sup>	\$55,000	Commercial	Engineer	<p>Not guilty plea by URS (and two of the other defendants) to discharge of petrol into the ground. 10,000 litres of petrol escaped from motor vehicle service station.</p> <p>URS and Brown Bros found to have caused the discharge by accidentally drilling through an underground fuel line when carrying out soil tests.</p> <p>Relevant factors in setting the fine: dangerous nature of petrol, difficulty of controlling petrol once discharged underground, carelessness, specialist company that should have known better, extent of damage. Mitigation – each defendant only part of causation, unusual combination of factors, not due to faulty systems. Start point for URS of \$70,000.</p> <p>Enforcement order against URS and other defendants for remediation and URS to pay 30% of the \$205,000 costs paid by <i>Gasoline Alley Services Ltd</i> for “damage control” plus \$24,000 towards Council costs.</p> <p>Appeal. High Court hearing in October 2012. Waiting for decision.</p>	Pre 1/10/2009
25 <i>Northland Regional Council v MJ Pinny</i> <sup>86</sup>	\$54,000	Agriculture	Dairy	<p>Not guilty plea to discharge of dairy effluent from irrigator and cow standing pad. Convicted on three charges. Defendant is farm owner. (Farm Manager Bolton pleaded guilty, same charges.)</p> <p>Relevant factors in setting the fine: No actual adverse impact on tributary. History of non-compliance. Problems with system and failure to give instructions to manager.</p> <p>Total starting point of \$50,000 for two irrigation charges. Starting point of \$20,000 for cow standing pad charge. Discount for good character and remorse shown by improvements to system.</p> <p>Fined \$30,000, \$10,000 &amp; \$14,000.</p>	Post 1/10/2009

<sup>84</sup> 10/06/2009, Judge Harland, DC Hamilton, CRI-2007-019-009838.

<sup>85</sup> 23/07/2010, Judge McElrea, DC Auckland, CRI-2008-004-013603.

<sup>86</sup> 27/04/2011, Judge Whiting, DC Whangarei, CRI-2009-027-003265.

Case	Total Fine <sup>65</sup>	Sector	Sub-Sector	Details	Offence – pre or post 1/10/2009
26 <i>Northland Regional Council v PT Flood</i> <sup>87</sup>	\$53,000	Agriculture	Dairy	<p>Late guilty plea to two charges for discharge of dairy effluent from two feed pads and one of contravention of abatement notice.</p> <p>Disputed facts hearing.</p> <p>Relevant factors in setting the fine: history of non-compliance Court emphasised responsibility of farm owners, failure to exercise necessary care. Offences in lower to middle level 2 of Chick. Total start point for feed pads \$45,000. Total start point for breach of abatement notice \$20,000. 20% discount for good character and guilty plea.</p> <p>Flood initially asked for reduction under s 40 Sentencing Act, ordered to file declaration of financial position. Council instructed forensic accountant to prepare report. Flood accepted he could pay fine.</p> <p>Ordered to pay costs of \$4,945 for forensic accountant's report. Fined \$20,000, \$17,000 &amp; \$16,000.</p>	Pre 1/10/2009
27 <i>Bay of Plenty Regional Council v Glenholme Farms Ltd &amp; AP Atkinson</i> <sup>88</sup>	\$53,000	Agriculture	Dairy	<p>Not guilty plea by company and director to two charges for discharge of dairy effluent from irrigator.</p> <p>Relevant factors in setting the fine – actual effect was relatively minor. Start point of \$45,000. Uplift of 20% for previous conviction.</p> <p>Enforcement orders – install failsafe device and alarm system that will switch off the farm's effluent irrigator if it stalls or if there is a loss of pressure in the irrigation pipe and notify the operator; and provide an Effluent Management Plan to the Council which has been prepared by a suitably qualified person and which is considered satisfactory by the Council.</p> <p>Company fined \$36,000. Atkinson fined \$17,000.</p>	Post 1/10/2009

<sup>87</sup> 26/04/2012, Judge Whiting, DC Auckland, CRN 09011500212, 216 & 229.

<sup>88</sup> 14/12/2011, Judge Smith, DC Tauranga, CRN11047500057, CRN11047500059.

Case	Total Fine <sup>65</sup>	Sector	Sub-Sector	Details	Offence – pre or post 1/10/2009
28 <i>Taranaki Regional Council v AV Moulard, C Archibald, BC Cudby, Ingrams Contracting Ltd, RE Ford Ltd &amp; Wallis Developments Ltd</i> <sup>89</sup>	\$50,000	Commercial	Landfill	<p>Guilty plea to two charges under 15(1)(b) and 15(1)(c) arising from operation of an illegal rubbish tip. Moulard's Family trust owns land used as dump site. Cudby assisted Moulard, see Appendix 1 for details. Other four defendants brought material onto land.</p> <p>Relevant factors in setting the fine against Moulard – deliberate, serious adverse effects, visible effects of burning.</p> <p>Start point of \$50,000. Credit for late guilty plea counterbalanced by deliberateness. Fined \$20,000 &amp; \$30,000.</p>	Pre 1/10/2009
29 <i>Taranaki Regional Council v BA Lilley &amp; Duffy</i> <sup>90</sup>	\$50,000	Agriculture	Dairy	<p>Not guilty plea by Lilley (farm owner) to one charge and late guilty plea to other charge. Both charges for discharge of dairy effluent</p> <p>Duffy the sharemilker entered guilty plea and was discharged without conviction, details in Appendix 2.</p> <p>Relevant factors in setting the fine: effluent system had shortcomings arose from inadequate capacity in sump. Six Council inspections since 2000 had identified overflows from sump, level 2 of Chick, credit for belated guilty plea for March 2010 offence and belated system upgrade.</p> <p>Fined \$25,000 &amp; \$25,000.</p>	Post 1/10/2009
30 <i>Hawkes Bay Regional Council v Morton Estate Wines Ltd</i> <sup>91</sup>	\$50,000	Agriculture	Vineyard	<p>Guilty plea to two charges for taking water during a ban and one charge for taking volume of water greater than permitted by resource consent.</p> <p>Relevant factors in setting the fine: deliberate. Start point for take during ban \$20,000 and start point for breach of consent \$15,000.</p> <p>Fined \$20,000, \$20,000 &amp; \$10,000.</p>	Pre 1/10/2009

<sup>89</sup> 17/07/2009, Judge Dwyer, DC New Plymouth, CRI-2009-021-150, 154, 149, 1238, 155 & 151.

<sup>90</sup> 14/12/2010, Judge Dwyer, DC New Plymouth, CRI 2010-043-003887 & 473.

<sup>91</sup> 17/03/2010, Judge Thompson, DC Hastings, CRI 2009-020-003185.

## Appendix 4: Appeals in the fourth period

	Case	Brief details	District Court – Outcome	High Court/Court of Appeal/Supreme Court
1	<i>Taranaki Regional Council v Yates</i> <sup>92</sup>	See Appendix 3.	Convicted. Total fine of \$70,000	<i>Yates v Taranaki Regional Council</i> <sup>93</sup>  Defendant appealed sentence. Fines reduced by High Court to \$62,000 because District Court erred in calculating the one third discount by reference to the starting point. The application of the discount is the final step in the process. The discount should have been applied after the uplift had been incorporated.
2	<i>Auckland Council v Lal's Transport Ltd</i> <sup>94</sup>	Continuing use of land between October 2009 and August 2010 as a transport depot for courier business in breach of District Plan.	15/11/2010: Convicted, fine of \$18,000  20/06/2012, decision on remission to District Court: \$18,000	<i>Lal's Transport Ltd v Auckland Council</i> <sup>95</sup>  Defendant appealed sentence. Sentence imposed by a process inconsistent with s 24 of the Sentencing Act 2002. Sentence quashed. Remit to DC for sentence to be reimposed.

<sup>92</sup> 11/02/2010, Judge Dwyer, DC New Plymouth, CRI 2009-043-004643.

<sup>93</sup> Appeal 14/05/2010, MacKenzie J, HC New Plymouth, CRI-2010-443-008.

<sup>94</sup> 15/11/2010, Judge Harland, DC Auckland, CRI-2010-044-000468 & 20/06/2012, Judge Smith, DC Auckland, CRI-2010-044-000468.

<sup>95</sup> 10/10/2011, Keane J, HC Auckland, CRI-2011-404-16.

	Case	Brief details	District Court – Outcome	High Court/Court of Appeal/Supreme Court
3	<i>Auckland Council v URS New Zealand Ltd, Brown Bros (NZ) Ltd, Gasoline Alley Services Ltd &amp; Fuelquip (NZ) Ltd</i> <sup>96</sup>	See Appendix 3	<p>Convicted.</p> <p>URS New Zealand Ltd: fined \$55,000, 30% of clean up costs of 205,000 and \$24,000 towards Council costs.</p> <p>Brown Bros (NZ): Ltd fined \$35,000 and 30% of clean up costs of 205,000 and \$16,000 towards Council costs.</p> <p>Gasoline Alley Services Ltd: fined \$40,000 and 20% of clean up costs of 205,000 and \$16,000 towards Council costs.</p> <p>Fuelquip (NZ) Ltd: fined \$30,000 and 20% of clean up costs of 205,000.</p> <p>An enforcement order against the four defendants requiring investigation to determine whether remediation is required and requiring remediation to be undertaken if required.</p>	Appeal. High Court hearing in October 2012. Waiting for decision.
4	<i>Auckland Council v Holmes Logging Ltd &amp; Kenneth Holmes</i> <sup>97</sup>	Not guilty plea to charges of discharge of sediment in breach of s 15(1)(b), use of land in breach of s 9 & breach of abatement notice.	<p>Dismissed</p> <p>Outcome when remitted to District Court fine of \$3,750 against each defendant.</p>	<p><i>Auckland Council v Holmes Logging Ltd &amp; Kenneth Holmes</i></p> <p>Council appealed.</p> <p>Appeal allowed in part. High Court held that District Court made errors of law in respect of s 9 charges but not in respect of s 15 charges. I</p> <p>Dismissal of the charges set aside. Remitted back to District Court.</p>
5	<i>R v WVG Conway &amp; CM Down</i> <sup>98</sup>	See Appendix 2, sentences of imprisonment.	<p>Conway &amp; Down convicted.</p> <p>Conway - Six and a half months imprisonment</p> <p>Down - 250 hours community work.</p>	<p><i>CM Down v R</i><sup>99</sup></p> <p>Defendant appealed on jurisdictional issue to Court of Appeal and Supreme Court.</p> <p>Appellant argued although offences could be tried by a jury, they were infringement offences to which s 21 of the Summary Proceedings Act 1957 applied.</p> <p>Court of Appeal and Supreme Court dismissed the appeal.</p>

<sup>96</sup> 23/07/2010, Judge McElrea, DC Auckland, CRI-2008-004-013603.

<sup>97</sup> 29/05/2008, Judge Thompson, DC Auckland, CRI-2008-004-007999 & 11/02/2011 & 1/04/2011, Judge Thompson, DC Auckland, CRI-2008-004-007999.

	Case	Brief details	District Court – Outcome	High Court/Court of Appeal/Supreme Court
6	<i>Bay of Plenty Regional Council v PF Olsen Ltd</i> <sup>100</sup>	See Appendix 3.	s 9(3)(a) - fine of \$32,000 s 15(1)(b) - fine of \$48,000  Total of \$80,000	<i>PF Olsen Ltd v Bay of Plenty Regional Council</i> <sup>101</sup>  Defendant appealed sentence.  High Court set global starting point of \$130,000. Held 20% uplift by District Court for previous convictions should not have been imposed (lack of relevant connection between the companies, or for lack of temporal proximity). Deterrence has been achieved and no need to uplift sentence to account for the fact that the appellant, has a financial capacity greater than that of an average company. Discount for remediation should have been applied to both offences but District Court discount of 60% too high and 30% discount appropriate.  Appeal allowed. <ul style="list-style-type: none"> <li>• s 9(3)(a) - fine of \$28,000 (\$50,000 starting point, \$15,000 discount for remediation, \$7,000 discount for guilty plea);</li> <li>• s 15(1)(b) - fine of \$44,800 (\$80,000 starting point, \$24,000 discount for remediation, \$11,200 discount for guilty plea).</li> </ul> Total of \$72,800.
7	<i>Bay of Plenty Regional Council v JP Burns</i> <sup>102</sup>	Guilty plea to three charges for reclamation of foreshore in breach of s 12.	Convicted.  Total fine of \$7,000 plus costs of \$6,000 for Council investigation.	<i>JP Burns v Bay of Plenty Regional Council</i> <sup>103</sup>  Defendant appealed sentence.  High Court quashed sentence & substituted with fine of \$3,000 but left intact costs award.
8	<i>Canterbury Regional Council v Mainstream Forwarders Ltd</i> <sup>104</sup>	One charge of discharge of blue ink from freight depot in breach of s 15(1)(b)  Guilty plea.	Convicted.  Fine of \$18,000	<i>Mainstream Forwarders Ltd v Canterbury Regional Council</i> <sup>105</sup>  Defendant appealed sentence.  High Court quashed sentence & substituted with fine of \$8,750.

<sup>98</sup> 18/12/2009, Judge Harland, DC Auckland, CRI-2008-004-19495.

<sup>99</sup> 3/04/2012, Supreme Court, Elias CJ, Blanchard, McGrath, William Young & Gault JJ, SC48/2011 [2012] NZSC.

<sup>100</sup> 16/03/2010, Judge Smith, DC Tauranga, CRN 08063501462 & 466.

<sup>101</sup> 14/09/2012, Brewer J, HC Hamilton, CRI-2010-463-023.

<sup>102</sup> 13/11/2008, Judge Harland, DC Tauranga, CRI-2008-070-5090.

<sup>103</sup> 16/06/2009, Lang J, HC Tauranga, CRI-2009-470-16.

<sup>104</sup> 28/05/2009, Judge Borthwick, DC Christchurch, CRI-2009-009-001431.

<sup>105</sup> 1/10/2009, Fogarty J, HC Christchurch, CRI-2009-409-000105.

	Case	Brief details	District Court – Outcome	High Court/Court of Appeal/Supreme Court
9	<i>Manawatu Wanganui Regional Council v KW Thurston &amp; Tawera Land Company Limited</i> <sup>106</sup>	See Table 20  Thurston owned and controlled Tawera Land Company Limited.  There were two sets of charges: contaminated waste water discharged at a former meat works & dairy effluent discharged from a farm.	The appellants were ordered to pay in aggregate \$187,545 for both sets of charges.	<i>KW Thurston &amp; Tawera Land Company Limited v Manawatu Wanganui Regional Council</i> <sup>107</sup>  Defendants appealed sentence. High Court dismissed the appeal.
10	<i>Marlborough District Council v TL and NL Bryant Holdings Ltd</i> <sup>108</sup>	Not guilty plea. Convicted on two charges. Construction of stop bank without obtaining resource consent & Diversion.	Convicted. Total fine of \$20,000  Council at hearing when remitted to District Court acknowledged mistake in planning map which did not show area as riparian land. Withdrew construction of stop bank charge. Fined \$6,500 on charge of diversion.	<i>TL and NL Bryant Holdings Ltd v Marlborough District Council</i> <sup>109</sup>  Defendant appealed conviction and sentence. Partially successful appeal against conviction and sentence  Remitted to District Court.
11	<i>Nelson City Council v Southern Storm Fishing (2007) Ltd</i> <sup>110</sup>	Not guilty plea. Convicted on one charge of discharge of light fuel oil in breach of 15B(1).	Convicted. Fine of \$27,500	<i>Southern Storm Fishing (2007) Ltd v Nelson City Council</i> <sup>111</sup>  Defendant appealed conviction and sentence. High Court quashed sentence & substituted with fine of \$7,500.

<sup>106</sup> 20/05/2009, Judge Dwyer, DC Palmerston North, CRI-2007-054-2550, CRN06054501068, 1069, 1108 & CRN07054500558-61.

<sup>107</sup> 27/08/2010, Miller J, HC Palmerston North, CRI-2009-454-25, CRI-2009-454-27, CRI-2009-454-24.

<sup>108</sup> 28/07/2008, Judge Smith, DC Blenheim, CRI-2007-006-001041.

<sup>109</sup> 16/06/2008, Clifford J, HC Blenheim, CRI-2008-406-3.

<sup>110</sup> 7/07/2010, Judge Dwyer, DC Nelson, CRI-2009-042-002680.

<sup>111</sup> 15/12/2010, Young J, HC Nelson, CRI-2009-042-2680.

	Case	Brief details	District Court – Outcome	High Court/Court of Appeal/Supreme Court
12	<i>Nelson City Council v Diamond Offshore Netherlands BV</i> <sup>112</sup>	Not guilty plea to charge of dumping mussels and waste in coastal marine area. Charge dismissed. Held limitation period of six months in Summary Proceedings Act applied and did not have additional time as allowed in s 338(4) RMA.	Dismissed	<i>Nelson City Council v Diamond Offshore Netherlands BV</i> <sup>113</sup>  Council appealed. High Court dismissed appeal.
13	<i>Otago Regional Council v Paterson Pitts Partners (Wanaka) Ltd</i> <sup>114</sup>	Not guilty plea to two charges of diversion of water and taking of water in breach of s 14(3).	Dismissed.  District Court – distinction between the water in the five metre pipe and the water in the aquifer, so that the former is not “water” for the purpose of the RMA.	<i>Otago Regional Council v Paterson Pitts Partners (Wanaka) Ltd</i> <sup>115</sup>  Council appealed. High Court held that District Court decision was incorrect. Parties agreed that case should not be remitted back to District Court for further consideration because Council had achieved purpose of appeal (test finding of District Court).
14	<i>Southland District Council v Barney Barrett &amp; Judith Anne Barrett</i> <sup>116</sup>	Discharge of human effluent into ditch from house occupied by Barrett’s tenants. Not guilty plea. Mr Barrett convicted. Mrs Barrett convicted and discharged.	Convicted.  Fine \$3,000 & investigation costs of \$2,000 & enforcement order requiring Barrett to desist from using house until connection to sewer main.	<i>Barney Barrett v Southland District Council</i> <sup>117</sup>  Defendant appealed conviction and sentence. High Court dismissed appeal.
15	<i>Taranaki Regional Council v Peter Jude Sullivan</i> <sup>118</sup>	See Appendix 3.	Convicted. Total fine of \$60,000	Defendant appealed conviction and sentence. Awaiting hearing date

<sup>112</sup> 25/03/2009, Judge Dwyer, DC Nelson, CRN 08042500436.

<sup>113</sup> 20/05/2009, Young J, HC Nelson, CIV 2009-442-10.

<sup>114</sup> 16/09/2009, Judge Dwyer, DC Dunedin, CRI-2008-059-1390.

<sup>115</sup> 29/07/2010, Fogarty J, HC Dunedin, CRI 2010-412-000004.

<sup>116</sup> 24/09/2008, Judge Smith, DC Invercargill, CRI-2008-025-001031 & 32.

<sup>117</sup> 30/03/2009, Lang J, HC Invercargill, CRI-2008-425-33.

<sup>118</sup> 21/08/12, Judge Dwyer, DC New Plymouth, CRI-2012-021-000267.

	Case	Brief details	District Court – Outcome	High Court/Court of Appeal/Supreme Court
16	<i>Waikato Regional Council v Wallace Corporation Ltd, BJ Dew &amp; NK Cross</i> <sup>119</sup>	Contravention of s 15(1)(d) – burial of electrical capacitor containing polychlorinated biphenyls (PCBs).	Convicted. Wallace Corporation Ltd: fine \$35,000 & enforcement order to locate and remove contaminants regardless of the cost. Dew: fine \$45,000 Cross: fine \$45,000	<i>Wallace Corporation Ltd, BJ Dew &amp; NK Cross v Waikato Regional Council</i> <sup>120</sup> Defendants appealed sentence & conviction. Wallace Corporation also appealed enforcement order. High Court allowed appeals. Quashed the enforcement order and substituted with an enforcement order requiring implementation of a monitoring system and upon decommissioning of plant to locate and remove buried capacitors.  <i>Wallace Corporation Ltd, BJ Dew &amp; NK Cross v Waikato Regional Council</i> <sup>121</sup>  Subsequent decision on costs. Order that Waikato Regional Council pay to the appellants' costs of \$270,282 & costs of experts of \$146,240.  <i>Wallace Corporation Ltd v Waikato Regional Council</i> <sup>122</sup> Appeal on jurisdictional issue to Court of Appeal and Supreme Court (dealt with together with <i>Down v R</i> appeal in Supreme Court)
17	<i>Waikato Regional Council v Calford Holdings Ltd, Tirau Earthmovers Ltd &amp; RT Park</i> <sup>123</sup>	Earthworks to convert forestry land to dairy farm. Guilty plea to charges for use of land, disturbance of bed of river.	Convicted. Calford: fine \$33,000 & solicitor's costs of \$23,453 Tirau: fine \$24,000 Park: 300 hours community work	<i>Calford Holdings Ltd, Tirau Earthmovers Ltd &amp; RT Park v Waikato Regional Council</i> <sup>124</sup> Appeal by two of the defendants, Calford & Park against sentence. High Court quashed order for costs & Park's sentence of 300 hours community work and substituted 100 hours. Upheld fine imposed on Calford.
18	<i>Waikato Regional Council v CW Wilfredo Aguila</i> <sup>125</sup>	Discharge of dairy effluent. Farm worker. Not guilty plea. Convicted on three charges.	Convicted. Total fine of \$15,000	<i>CW Aguila v Waikato Regional Council</i> <sup>126</sup> Defendant appealed sentence. High Court quashed sentence & substituted with fine of \$11,000.

<sup>119</sup> 17/11/2008, Judge McElrea, DC Hamilton, CRN05039500268, 272, 274, 277, 280, 283.

<sup>120</sup> 7/10/2010, Wild J, HC Hamilton, CRI 2008-404-000404 – 406.

<sup>121</sup> 22/06/2012, Wild J, HC Hamilton, CRI 2008-404-000404 – 406.

<sup>122</sup> 7/10/2010, Wild J, HC Hamilton, CRI 2008-404-000404 – 406.

<sup>123</sup> 11/11/2008, Judge Harland, DC Hamilton, CRI-2008-077-000090.

<sup>124</sup> 26/05/2009, Allan J, HC Hamilton, CRI-2008-419-94 & 97.

<sup>125</sup> 17/06/2010, Judge Harland, DC Hamilton, CRI-2008-073-2127. 23/08/11, Andrews J, HC Hamilton, CRI-2010-019-9746.

<sup>126</sup> 23/08/2011, Andrews J, HC Hamilton, CRI-2010-019-009746.

	Case	Brief details	District Court – Outcome	High Court/Court of Appeal/Supreme Court
19	<i>Waikato Regional Council v Hillside Farms Ltd, Allan Crafar, Frank Crafar &amp; Elizabeth Crafar</i> <sup>127</sup>	See Appendix 3.	Elizabeth Crafar was convicted on four charges and fined \$1,500. The other three defendants were each convicted on ten charges and were each fined \$29,500. Total fine of \$90,000.	<i>Allan Crafar, Frank Crafar &amp; Elizabeth Crafar v Waikato Regional Council</i> <sup>128</sup>  The three Crafars appealed conviction and sentence. High Court dismissed appeal.
20	<i>Wellington Regional Council &amp; Wellington City Council v Burrell Demolition Ltd &amp; Alexander James Burrell</i> <sup>129</sup>	Not guilty plea to discharge of waste material in breach of s 15(2) and s 9.	Convicted. Each defendant fined \$15,000 (total of \$30,000)	<i>Burrell Demolition Ltd &amp; Alexander James Burrell v Wellington Regional Council &amp; Wellington City Council</i>  Defendants appealed conviction. High Court dismissed appeal.  Defendants applied for leave to appeal to the Court of Appeal. Leave granted on 8 November 2012.

Note: Insufficient information is available on four appeals: Kereru Farms (Waikato RC), Barney Barret (Southland DC), Warwick Roger Harrington (Tasman DC), Aden Ltd (West Coast RC).

<sup>127</sup> 28/08/2009, Judge Newhook, DC Hamilton, CRI-2008-019-002997.

<sup>128</sup> 13/09/2010, Andrews J, HC Hamilton, CRI-2009-419-67, 68 & 69.

<sup>129</sup> 30/11/2010, Judge Kelly, DC Wellington CRN 1800, 1799, 1814 & 1815.

## Appendix 5: Prosecutions in the fourth period in which the restorative justice process has been used

Case	Brief details	District Court sentence
1 <i>Auckland Council v Avalanche Coffee Ltd</i> <sup>130</sup>	Late guilty plea to two charges of discharge of odour to air in breach of 15(1)(c) from coffee roasting business. Restorative justice process – no firm agreement.	Convicted and fined \$8,000.
2 <i>Auckland Council v Akarana Golf Club &amp; Treescape Ltd</i> <sup>131</sup>	Guilty plea to removal of trees in breach of s 9. Had been two other defendants UT Council had withdrawn charges against other two. Restorative justice process <i>Akarana Golf Club &amp; Treescape Ltd. As result of conference Council sought leave to withdraw charges.</i>	Leave granted to withdraw charges.
3 <i>Bay of Plenty Regional Council v John Rhys Thomas</i> <sup>132</sup>	Guilty plea to discharge to land over a period of 10 years, copper aluminium chloride leaked from drums & discharge to air related to the burning of polypropylene sacks which had contained fertiliser and sulphur. People affected had suffered from headaches, nausea and vomiting. Restorative justice process – agreed to pay reparation to neighbours and council's investigation costs. Site had been sold at mortgagee sale and defendant declared bankrupt.	Convicted 400 hours community work, reparation of \$1,600 & enforcement order to prevent defendant being involved in any business activity in future involving the storage or handling of trade wastes.
4 <i>Canterbury Regional Council v Deane Hogg</i> <sup>133</sup>	Guilty plea to breach of s 15(2)(a). Defendant leased land. Lessee dumped 600 tonnes of waste on land. Defendant set fire to material. Restorative justice process – defendant apologised to neighbours.	Convicted and fined \$5,000.
5 <i>Canterbury Regional Council v Cresslands Farms Ltd</i> <sup>134</sup>	Guilty plea to discharge of dairy effluent. Restorative justice process – defendant to coordinate public seminar to highlight issues about dairy effluent disposal.	Convicted and fined \$7,000.

<sup>130</sup> 28/04/2010, Judge Smith, DC Auckland, CRI-2009-004-010556.

<sup>131</sup> 14/07/2008, Judge McElrea, DC Auckland, CRI-2007-004-012712 & 713.

<sup>132</sup> 16/03/2010, Judge Smith, DC Tauranga CRN 09070501550 – 1554.

<sup>133</sup> 27/07/2011, Judge Borthwick, DC Christchurch, CRI-2010-009-017937.

<sup>134</sup> 1/09/2010, Judge Borthwick, DC Christchurch, CRI-2010-061-000035.

Case	Brief details	District Court sentence
<p>6 <i>Northland Regional Council v Fulton Hogan Ltd, Cates Bros Ltd &amp; North End Contractors Ltd, Whangarei District Council &amp; T Perkinson</i><sup>135</sup></p>	<p>Offence – pre 1/10/2009.</p> <p>Guilty plea by five defendants to one representative charge for discharge of soil, vegetation and demolition material and other waste in breach of section 15(1)(b) in relation to operation of unconsented landfill.</p> <p>Volume was estimated at 4,000 m<sup>3</sup>. At sentencing hearing estimate reduced to 780 m<sup>3</sup> which was within permitted activity volume of 1,000 m<sup>3</sup> but defendants aware that others were dumping at site and combination of material dumped would have exceeded 1,000 m<sup>3</sup>.</p> <p>Restorative justice process – described by Judge as extremely positive. Outcomes included payment of council investigation costs and remediation of site and agreement with iwi groups about contributions by defendants for establishment of eco-nursery.</p>	<p>Fulton Hogan Ltd, Cates Bros Ltd &amp; North End Contractors Ltd, Whangarei District Council – all discharged without conviction.</p> <p>Perkinson convicted and fined \$400</p>
<p>7 <i>Northland Regional Council v Allan Hamilton</i><sup>136</sup></p>	<p>Offence – pre 1/10/2009.</p> <p>Guilty plea to one charge for disturbance of foreshore by destruction of mangroves in breach of section 12(1)(c). Disputed facts hearing. Findings in favour of Council.</p> <p>Restorative justice process – described by Judge as positive. Outcomes included retrospective resource consent and planting by defendant.</p>	<p>Convicted and fined \$7,500</p>

Note: Insufficient information on three prosecutions (all from Canterbury RC): Stephen Graham, Accord Dairies, Simon Roy

<sup>135</sup> 13/10/2009 & 6/05/2010, Judge Newhook, DC Whangarei, CRN 09088500008, 023, 028 – 034 & 039.

<sup>136</sup> 15/10/2008, Judge Newhook, DC Whangarei, CRN 7004503763.

## Appendix 6: Unsuccessful prosecutions in the fourth period

Case	Brief details	Cost award against Council
1 <i>Manawatu-Wanganu Regional Council v Downer EDI Works Ltd &amp; Tatana Contracting Ltd</i> <sup>137</sup>	Contravention of s 15(1)(a). Discharge of sewage. Dismissed charges because resource consent was not breached. Consent did not impose limit on rates, volumes, point or method of discharge.	Scale costs.
2 <i>Marlborough District Council v Goldridge Estate Ltd</i>	Contravention of s 13(1)(d), deposit of vegetation on bed of river. Defendant is developer and manager of vineyard. Established s 340 defence. Charge dismissed.	
3 <i>Nelson City Council v Diamond Offshore Netherlands BV</i> <sup>138</sup>	See Appendix 4	
4 <i>Northland Regional Council v WJ Pittam</i> <sup>139</sup>	Discharge of dairy effluent. Defendant is farm manager. Established s 340 defence. Charges dismissed.	Nil
5 <i>Southland Regional Council v Twin Peaks Farming Ltd &amp; LG McKenzie</i> <sup>140</sup>	Discharge of sediment to water and disturbance of bed of stream when stock accessed stream. Charges dismissed because insufficient evidence.	Nil
6 <i>Southland Regional Council v McNeills Poultry Farm (2006) Ltd</i> <sup>141</sup>	Contravention of s 15(1)(c). Discharge of gases and odour from poultry farm. Charges dismissed because the discharge was from production land and not from industrial or trade premises.	Nil
7 <i>Tasman District Council v WR Harrington</i> <sup>142</sup>	Used land for commercial activity, dance party. Charges dismissed. Court held that activity was permitted by District Plan as a recreational activity.	Nil
8 <i>Wallace Corporation Ltd, BJ Dew &amp; NK Cross v Waikato Regional Council</i> <sup>143</sup>	See Appendix 4	High Court - Waikato Regional Council to pay to the appellants' costs of \$270,282 & costs of experts of \$146,240.

<sup>137</sup> 25/09/2009, Judge Dwyer, DC Palmerston North, CRI-2008-031-000348. Decision on costs 26/11/2009 Judge Dwyer, DC Palmerston North, CRI-2008-031-000348.

<sup>138</sup> 25/03/2009, Judge Dwyer, DC Nelson, CRN 08042500436.

<sup>139</sup> 24/11/2011, Judge Harland, DC Whangarei, CRI-2011-011-000272.

<sup>140</sup> 18/11/2011, Judge Borthwick, DC Invercargill, CRI-2010-025-004367 & 70.

<sup>141</sup> 17/08/2010, Judge Dwyer, DC Invercargill, CRI-2009-025-002223.

<sup>142</sup> 23/08/2012, Judge Dwyer, DC Nelson, CRI-2011-042-002627 & 968.

<sup>143</sup> 7/10/2010, Wild J, HC Hamilton, CRI 2008-404-000404 – 406.

## Appendix 7: Response to questions on decision making about enforcement action

	Local authority	Q1	Q2	Q3	Undertaken prosecutions during fourth period
1	Ashburton District Council	A	B	B	No
2	Auckland Council	A	B	A	Yes
3	Bay of Plenty Regional Council	A	B	B	Yes
4	Buller District Council	A	A	A	No
5	Carterton District Council	A	A	DNS*	No
6	Central Hawkes Bay District Council	DNS	DNS	DNS	No
7	Central Otago District Council	A	A	B	No
8	Chatham Islands Council	B	A	B	No
9	Christchurch City Council	A	A	B	Yes
10	Clutha District Council	C	A	AB**	No
11	Dunedin City Council	A	A	A	No
12	Environment Canterbury	A	A	AB	Yes
13	Environment Southland	C	B	B	Yes
14	Far North District Council	DNS	DNS	DNS	No
15	Gisborne District Council	A	B	AB	Yes
16	Gore District Council	C	A	DNS	No
17	Greater Wellington Regional Council	A	B	AB	Yes
18	Grey District Council	A	A	A	No
19	Hamilton City Council	A	A	A	No
20	Hastings District Council	A	A	A	No
21	Hauraki District Council	B	A	DNS	No
22	Hawke's Bay Regional Council	B	B	B	Yes
23	Horizons Regional Council	A	B	B	Yes
24	Horowhenua District Council	A	B	B	No
25	Hurunui District Council	C	A	A	No
26	Hutt City Council	A	A	A	No
27	Invercargill City Council	A	A	A	No
28	Kaikoura District Council	C	A	B	No
29	Kaipara District Council	A	A	AB	No
30	Kapiti Coast District Council	A	A	A	No
31	Kawerau District Council	AB	DNS	DNS	No
32	Mackenzie District Council	B	A	A	No
33	Manawatu District Council	A	A	A	No
34	Marlborough District Council	A	B	AB	Yes
35	Masterton District Council	DNS	DNS	DNS	No
36	Matamata-Piako District Council	B	A	A	No

37	Napier City Council	A	A	A	No
38	Nelson City Council	A	A	B	Yes
39	New Plymouth District Council	A	A	AB	No
40	Northland Regional Council	A	A	A	Yes
41	Opotiki District Council	A	A	A	No
42	Otago Regional Council	A	A	AB	Yes
43	Otorohanga District Council	B	A	A	No
44	Palmerston North City Council	A	A	A	No
45	Porirua City Council	A	A	A	No
46	Queenstown-Lakes District Council	B	A	A	Yes
47	Rangitikei District Council	DNS	DNS	DNS	No
48	Rotorua District Council	A	B	A	No
49	Ruapehu District Council	B	A	A	No
50	Selwyn District Council	A	A	A	Yes
51	South Taranaki District Council	B	A	B	No
52	South Waikato District Council	DNS	DNS	DNS	No
53	South Wairarapa District Council	DNS	DNS	DNS	No
54	Southland District Council	A	B	A	Yes
55	Stratford District Council	A	A	B	No
56	Taranaki Regional Council	C	B	AB	Yes
57	Tararua District Council	A	A	A	No
58	Tasman District Council	A	A	A	Yes
59	Taupo District Council	C	B	AB	No
60	Tauranga City Council	C	A	A	Yes
61	Thames-Coromandel District Council	A	A	A	No
62	Timaru District Council	A	A	A	No
63	Upper Hutt City Council	A	A	A	No
64	Waikato District Council	A	A	AB	No
65	Waikato Regional Council	A	B	A	Yes
66	Waimakariri District Council	C	A	DNS	No
67	Waimate District Council	A	A	A	No
68	Waipa District Council	A	A	B	No
69	Wairoa District Council	C	A	B	No
70	Waitaki District Council	A	B	A	No
71	Waitomo District Council	B	A	A	No
72	Wanganui District Council	A	B	B	No
73	Wellington City Council	A	A	B	Yes
74	West Coast Regional Council	B	A	A	Yes
75	Western Bay of Plenty District Council	DNS	A	B	No
76	Westland District Council	A	B	A	No
77	Whakatane District Council	A	A	A	No
78	Whangarei District Council	A	A	AB	No

\*DNS - Did Not Specify

\*\*AB - Both options A and B

# Appendix 8: Prosecution details about sub-sectors

Top 20

Sector	Sub-sector	Qty	% of total
Agriculture	Dairy	208	48.48%
Agriculture	Improvements to property	17	3.96%
Residential	Improvements to property	15	3.50%
Commercial	Earthworks Contractor	14	3.26%
Commercial	Contractor	13	3.03%
Agriculture	Stock	9	2.10%
Agriculture	Piggery	8	1.86%
Industrial	Rendering plant	7	1.63%
Commercial	Landfill operation	6	1.40%
Commercial	Subdivision	5	1.17%
Agriculture	Crops	4	0.93%
Agriculture	Vineyard	4	0.93%
Commercial	Cleanfill operation	4	0.93%
Commercial	Waste disposal	4	0.93%
Agriculture	Deer	3	0.70%
Commercial	Developer	3	0.70%
Commercial	Drilling Contractor	3	0.70%
Commercial	Fishing Vessel	3	0.70%
Commercial	Forestry Contractor	3	0.70%
Commercial	Oil Company	3	0.70%

Alphabetical by sector

Sector	Sub-sector	Qty	%of total
<b>Agriculture</b>	Burning tyres	1	0.23%
	Chicken farm	1	0.23%
	Crops	4	0.93%
	Dairy	208	48.48%
	Dairy Conversion	2	0.47%
	Dairy factory	1	0.23%
	Deer	3	0.70%
	Earthworks	1	0.23%
	Farmer	1	0.23%
	Gravel extraction	1	0.23%
	Improvements to property	17	3.96%
	Orchard	1	0.23%
	Piggery	8	1.86%
	Poultry farm	2	0.47%
	Stock	9	2.10%
	Stream works	1	0.23%
	Turnips for stock food	1	0.23%
	Vineyard	4	0.93%
<b>Commercial</b>	Agrichemicals	2	0.47%
	Agricultural Contractor	1	0.23%
	Airline	1	0.23%
	Arborist	1	0.23%
	Bus company	1	0.23%
	Cargo Ship	1	0.23%
	Cleanfill operation	4	0.93%
	Commercial development	2	0.47%
	Container storage depot	1	0.23%
	Contractor	13	3.03%
	Contractor - demolition	2	0.47%
	Contractor - removal of wastewater	1	0.23%
	Contractor & Engineer	1	0.23%
	Courier business	1	0.23%
	Dance Party	1	0.23%
	Developer	1	0.23%
	Developer	2	0.47%
	Drilling Contractor	3	0.70%
	Earthworks Contractor	14	3.26%
	Engine recycling	1	0.23%
	Engineer	2	0.47%
	Extraction of rock	1	0.23%
	Fishing Vessell	3	0.70%
	Forestry Contractor	3	0.70%
	Freight Depot	1	0.23%
	Fuel Company	1	0.23%
	General Contractor	1	0.23%
	Golf Club	1	0.23%

	Installation of underground works	1	0.23%
	Jet Boat	1	0.23%
	KFC	1	0.23%
	Landfill	1	0.23%
	Landfill operation	6	1.40%
	Logging Company	1	0.23%
	Logging Contractor	1	0.23%
	Motor vehicle sales	1	0.23%
	Oil Company	1	0.23%
	Oil Company Employee	2	0.47%
	Planners, Surveyors	1	0.23%
	Plumbing	1	0.23%
	Recycled goods	1	0.23%
	Roading	1	0.23%
	Scrap metal	2	0.47%
	Ship	1	0.23%
	Stock truck business	2	0.47%
	Stockpile	1	0.23%
	Storage	1	0.23%
	Subdivision	5	1.17%
	Surveyors	1	0.23%
	Transport	2	0.47%
	Transport Company	1	0.23%
	Tree cutting	1	0.23%
	Waste disposal	4	0.93%
	Waste Treatment	1	0.23%
	Contractor - disposal of contaminated material	2	0.47%
<b>Industrial</b>	Coffee roasting	1	0.23%
	Composting plant	2	0.47%
	Dairy factory	2	0.47%
	Electroplating	1	0.23%
	Fertiliser manufacture	3	0.70%
	Gold mine	1	0.23%
	Meat processing plant	2	0.47%
	Panel Beater	1	0.23%
	Rendering plant	7	1.63%
	Sawmill	1	0.23%
	Stock food processing	1	0.23%
	Tannery	1	0.23%
	Timber Treatment	1	0.23%
	Vehicle storage	1	0.23%
	Waste water treatment plant	1	0.23%
	Yeast plant	1	0.23%
	<i>(not specified)</i>	1	0.23%
<b>Local Authority</b>	Road Maintenance	1	0.23%
	Sewage treatment	2	0.47%
<b>Residential</b>	Contaminated land	2	0.47%
	Cooking	1	0.23%
	Improvements to property	15	3.50%

	Junk	1	0.23%
	Landfill	1	0.23%
	<i>(not specified)</i>	1	0.23%