

Taranaki Regional Council Marine Oil Spill Tier 2 Response – AWE/Prosafe FPSO Spill - Okato Beaches – October 2007



Introduction

1. In October 2007 a crude oil spill of approximately 23 tonnes was washed up on Okato beaches, extending from Bayley Road in the south and Perth Road in the north and affecting almost 15 kilometres of coastline.
2. The spill was sourced to Umuroa Floating Loading Storage and Off-loading (FPSO) facility, operated by Prosafe, for the Tui oilfield. The field is managed by Australia Worldwide Exploration (AWE) 60 kilometres off the coast of Taranaki (Figure 1).

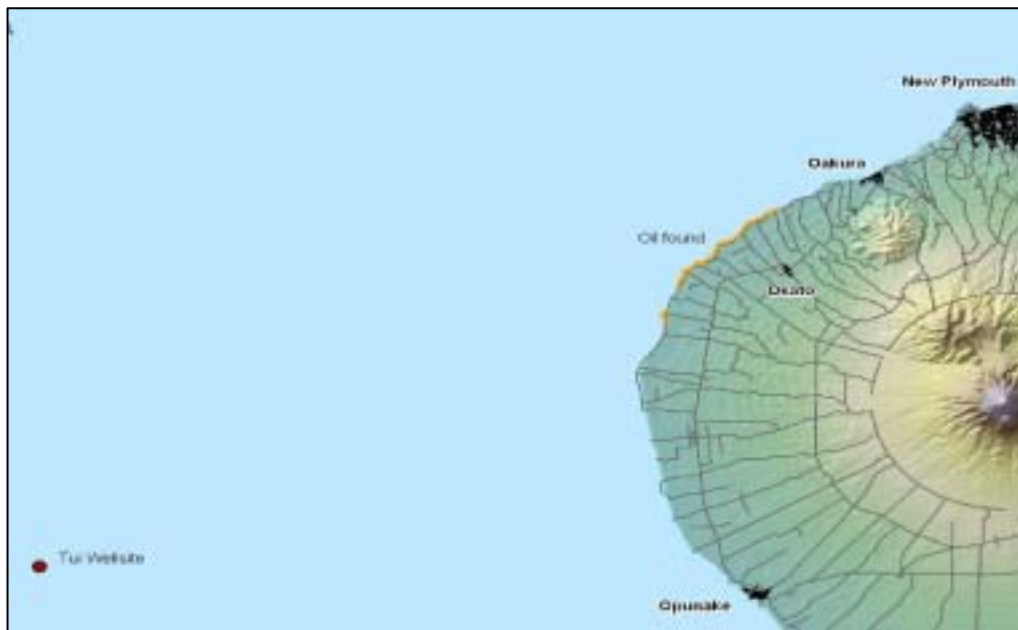


Figure 1: Tui Oilfield location and area affected by FPSO spill

3. This report covers the progression of the investigation and response associated with the marine oil spill from 23 October 2007 until the end of the enforcement action. Details of the spill and the Council's response; monitoring undertaken and environmental impact; and community liaison are provided.
4. The spill was a Tier two spill under the Regional Oil Spill Response Strategy managed by the Taranaki Regional Council On-scene commander under the direction of Maritime New Zealand (MNZ). Had the spill been reported earlier when it was outside the 12 mile limit then the response would have been a Tier Three response and managed by MNZ.

Spill

5. The spill occurred on one of Taranaki's harshest coastal environments. This was the largest ever crude oil spill in New Zealand and the third largest oil spill of any type in New Zealand in recent history.
6. The oil affected nearly 14 kilometres of sand and rocks along the coast.

7. The consistency of the oil was waxy, mostly in the form of small tar balls that melted in temperatures above 23 °C.

Photograph 1 – Oil on beach at Komene Road 24 October 2007



8. The initial spill report was received at 3.20 pm on Tuesday 23 October 2007 and Council staff began clean up planning within 2 hours of the report.
9. Ground and aerial inspections were undertaken on 24 October 2007. During these inspections the first priority was to establish the extent of the spill and collect evidence for possible future enforcement action (samples and photographs). The second priority for Council staff was to instigate physical clean-up operations.
10. These clean-up operations occurred within the initial response period of four days. A response action plan was developed. The purpose of the plan was to clean-up large quantities of oiled beach areas to prevent the oil from melting and penetrating deep into the sandy beach areas. The priority therefore was to concentrate all clean-up efforts on the beach areas and to leave the rocky foreshore areas to weather and dissipate, as any clean-up action in these areas would have required physical disturbance and caused more environmental damage than the effects of the oil.
11. While the oil spill was an unwelcome reminder of the coastlines environmental vulnerability, quick action and fortunate timing kept long-term effects to a minimum. The oil came ashore on a spring tide which meant that most oil was deposited at the highest point possible on the beach, well away from the zone where marine life is active. The waxy blobs were quickly scooped off the beach surfaces which prevented the fast-melting oil penetrating deep into the sand. If this had happened a far more extensive and expensive clean-up operation would have been needed.

Sequence of oil spill response

12. The following is a detailed account of the progression of the clean-up from the initial complaint to the final monitoring results showing the area was 'clean'.

Tuesday 23 October 2007 – Day 1

13. The initial complaint regarding oil on the beach at the end of Komene Road, Okato was received at 3.20 pm from a member of the public. This complaint was received by Administration Officer, Flo Blyde and was forwarded onto Investigating Officer, Bevan Chapman.
14. Mr Chapman proceeded to the beach at the end of Komene Road and arrived at 5:35 pm where oil and 'tar balls' were observed on the beach between the high and low tide marks.
15. A sample of the oil (Sample No.072310) was taken from a point at the end of Komene Road (GPS 2580473e-6224691n) along with a series of photographs.
16. The length of the beach between the Stony River to the north and the Werekino Stream in the south was inspected. It was noted that the oil was evident for the entire length of the beach and in places was considered to be quite heavy.
17. Compliance Manager Bruce Pope was contacted and the extent of the spill was outlined. A photograph of the oil was also sent to Mr Pope by phone. Due to the lateness of the day no further field work could be safely undertaken, however an immediate response action plan was formulated.

Wednesday 24 October 2007 – Day 2

18. At 8.00 am a meeting was held between Compliance Manager Bruce Pope, Director – Resource Management Fred McLay and Investigating Officer Bevan Chapman to discuss the extent of the spill.
19. At this meeting a sub sample of the oil sample collected on Tuesday was produced along with photographs of the oil on the beach.
20. Bruce Pope phoned Nick Quinn, Maritime New Zealand, at 8.30 am to notify MNZ of the spill and to discuss the incident and possible responses.
21. Mr Pope then directed a number of Council staff to prepare field equipment, including the spill trailer and 4-wheel transport.
22. An aerial observation of the shoreline was undertaken by Investigating Officers Tim Payne and Bruce Colgan at 9.30 am. They observed the shoreline from Oakura to Cape Egmont and also flew out over the Tasman Sea. No oil slicks were evident in the sea from the air.
23. Inspection of the beaches at the end of Kaihihi and Komene roads were immediately undertaken and this found that oil on the beach at Komene Road was quite heavy and the oil on the Kaihihi beach was noticeable but not nearly as heavy.

24. Clean-up on this first day concentrated on the heavy areas on the Komene Road beach area.

Photograph 2 – Clean up on beach at Komene Road 24 October 2007



25. Mr Chapman surveyed beaches and other points of access on the coastline to ascertain the extent of affected beach areas, starting at Opunake Beach and moving north along the shoreline to Hampton Road.
26. At 10.15 am Opunake Beach was inspected. There was no evidence of any oil on the beach.
27. At 10.30 am a further complaint was received from surfers at the end of Rongomai Road, Puniho of an oil slick in the sea, heading south from that point. Further inspection of this area failed to find any trace of an oil slick. However, there was a significant amount of oil on the rocks in this area.
28. The Council's hydrology section was contacted and wind conditions checked. At the time of the notification the wind direction was from 275^o (westerly) at 20 knots.
29. At 10.40 am the Sandy Bay subdivision area at the end of Tai Road was inspected. There was no evidence of any oil on that beach.
30. At 11.00 am the beach at the end of Paora Road was inspected. Tar balls and oil was evident amongst rocks at the high tide mark and further down the beach. The beach area was inspected to a stream to the north located at GPS 2578903e 6223512n.
31. At 11.35 am the beach area at the end of Rongomai Road was inspected. Large tar balls were evident along with a large volume of oil with a consistency of grease. A sample of the oil (Sample No.072314) was taken from a point at the end of Rongomai Road (E2577987 N6221902) along with a series of photographs. The beach was inspected to a headland to the south of Rongomai Road.

32. At this time it was noted that the oil deposited onto and into the rocks was becoming liquid and flowing with the heat of the sun.
33. At 12.45 pm the survey of the shoreline was then undertaken to the north of Komene Road beach area at Hampton Road. Liquefied oil and small tar balls were evident along this beach. A series of photographs were taken. This beach area is approximately 4.5 km north of Komene Road.
34. At 1.35 pm the beach area at the end of Bayley Road to the south of Komene Road was inspected, including the boat ramp. An isolated patch of oil was found on the boat ramp; however this may have been brought ashore by boats rather than through wind and tide action.
35. The coast line along Coast Road, located between Bayley Road and Pungarehu Road, was inspected at a number of sites. No evidence of oil was found.
36. At 2.05 pm the beach area at the end of Tipoka Road was inspected. No evidence of oil was found.
37. At 2.50 pm GPS co-ordinates for the beach areas where oil was located on the coast line was forwarded to MNZ staff.
38. From these surveys it was ascertained that approximately 13.5 kilometres of shoreline had been affected.
39. Fred McLay phoned Kevin Waldron, Taranaki Iwi, to inform him that an oil spill had occurred and that we were undertaking works to clean-up the oil. Mr Waldron asked Mr McLay to notify Keith Manukonga who was a contact point for the local hapu of the affected area. Mr McLay tried to contact him and left a message with his wife at 5.00 pm. Mr McLay also phoned the Nga Mahanga office and left message there and on a personal cell phone about spill. Mr McLay also contacted the Department of Conservation and let them know what was happening via the receptionist.
40. Bruce Pope received a sample of condensate from the Maui Field at the Shell Todd Oil Services Ltd building in New Plymouth, at 7.30 pm.

Thursday 25 October 2007 – Day 3

41. Samples were collected and normal chain of custody procedures were followed at all times. Samples were delivered to the Council's Laboratory at 10.50 am and signed for by Laboratory Manager John Williams.
42. Clean-up operations continued on the beaches at the end of Komene and Kaihihi roads, using Council staff, contractors, Council equipment and tractors hired from local farmers. Recovered oily sand was stockpiled in several sites at road ends to be disposed of at a later date.
43. Follow up surveys of the extent of the oil spill were conducted by Mr Chapman. The beach areas at the end of Paora and Rongomai roads were re-inspected. The tar balls and visible deposition of oil were still evident. It was noted that staining of rocks had occurred where oil had become liquefied and flowed over/into the rocks. Photographs

were taken. Aged tar balls were seen to be washed ashore and a significant amount of oil and tar balls were evident between the rocks.

Photograph 3 – Oil on beach at Komene Road 25 October 2007



44. Bruce Pope received a composite sample from the Tui Oil Field at 10.00 am from Dennis Washer at the Genesis building in New Plymouth.
45. At 12.30 pm the beach at the end of Perth Road was inspected. Again well aged tar balls were evident, however these were generally small (less than 1 cm) and contained a large amount of sand. The Perth Road beach area is approximately 6.4 km north of the Komene Road. Larger visible areas of oil were found to the south of a small tributary at the end of Perth Road. A number of photographs were taken.
46. A further sample of the tar balls was taken at the end of Perth Road and delivered to the Council's Laboratory via normal chain of custody procedures.

Friday 26 October 2007 – Day 4

47. Clean-up operations continued on the beaches at the end of Komene and Kaihihi roads, using Council staff, contractors, Council equipment and tractors hired from local farmers. Recovered oily sand was stockpiled at several sites to be disposed of at a later date.
48. A further survey of the shoreline and beach areas was undertaken.
49. At 8.20 am Opunake Beach was re-inspected. No oil was evident.

50. At 8.40 am the Sandy Bay beach at the end of Tai Road was inspected. No oil was evident.
51. At 9.00 am the beach at the end of Kahui Road was inspected. No oil was evident.
52. At 9.25 am the beach area at the end of Pungarehu Road, extending along Coast Road, to Bayley Road was inspected. No oil was evident at these sites. The Bayley Road boat ramp was also inspected and no oil was evident. Local white-baiters were approached and stated that they had not noted any oil in the area.
53. At 10.00 am the beach midway along Lower Petone Road and Greenwood Road was inspected. No oil was evident. A white-baiter was approached and he said that he had seen no oil in the area.

Saturday 27 October 2007 – Day 5

54. Bruce Pope and Bruce Colgan undertook a full inspection of the Komene Road and Kaihihi Road beach areas.
55. Oil was still evident on these beaches at the high tide mark.
56. At this stage AWE, had accepted responsibility for the spill and agreed to supply further personnel and equipment to carry out the manual clean-up operation on the beach and rocky shoreline areas under the supervision of Council staff. This occurred during that day and clean-up teams remained on the beach until 5 pm, supervised by Bruce Pope, Glen Candy, Bruce Colgan and Mike Nager.

Photograph 4 – Clean up team on the beach



Sunday 28 October 2007 – Day 6

57. Bruce Pope and Tim Payne undertook a full inspection of the Komene Road and Kaihihi Road beach areas.
58. Oil was still evident on these beaches at the high tide mark.

59. AWE clean-up teams continued the clean-up operation of the beach and rocky shoreline areas under the supervision of Bruce Pope, Glen Candy, Tim Payne and Mike Nager.

Monday 29 October 2007 – Day 7

60. A de-brief of the incident and initial clean-up was conducted at the Council's office with all staff involved in clean-up operations.
61. It was decided that routine monitoring of the shoreline and supervision of AWE personnel be continued.
62. AWE personnel continued with clean-up operations of both the beaches and rocky shoreline areas.
63. Glen Candy and Robin Hughes carried out the onsite monitoring and supervision of the personnel.
64. Oil was still evident on the beaches and on the rocky areas.

Tuesday 30 October 2007 – Day 8

65. Investigating Officer Bevan Chapman undertook a monitoring survey of the coastline between Pungarehu and Perth roads. He found that the oil had not spread any further than the initial 13.5 kms of shoreline.
66. At the time of inspecting beach areas at Kaihihi Road and Brophy Road, Investigating Officer Bevan Chapman found that representatives of ProSafe, including an Environmental Manager from Singapore, were undertaking an internal investigation into the spill and its environmental effects.
67. Investigating Officer Tim Payne undertook an aerial shoreline observation flight and also visited the Umuroa FPSO. No oil was evident in the Tasman Sea during this flight.
68. AWE personnel continued with clean-up operations of both the beaches and rocky shoreline areas.
69. Glen Candy and Robin Hughes continued with monitoring and supervision.
70. Oil was still evident on the beaches and on the rocky areas.

Wednesday 31 October 2007 – Day 9

71. Bruce Pope and Tim Payne carried out an inspection along the beaches at the end of Komene, Kaihihi and Paora roads. Oil was still evident on the beaches and on the rocky shoreline areas but the quantities had reduced significantly and the oil that remained on the beach appeared to be breaking down and naturally dispersing.

72. A meeting was then held with Council and AWE personnel. It was considered that a presence of AWE personnel clean-up team needed to be maintained for at least the next two days and a further survey was to be carried out on Friday 2 November 2007 to ascertain the level of continued response.

Thursday 1 November 2007 – Day 10

73. Bruce Pope and Glen Candy inspected the beaches at the end of Komene, Kaihihi and Paora roads in the morning and afternoon.
74. AWE personnel continued with clean-up operations of both the beaches and rocky shoreline areas.
75. Oil was still evident on the beaches and on the rocky areas. Rags were used to clean the rocks.

Friday 2 November 2007 – Day 11

76. Bruce Pope and Tim Payne inspected the beaches at the end of Komene and Paora roads in the afternoon. This inspection was to ascertain the level of any further response.
77. It was found that further oil had migrated from the rock areas onto the sandy beaches. Tidal and other coastal action had redistributed the oil from the rocks to the beach. It is expected that this will continue to happen as the weather conditions become warmer.
78. AWE personnel continued with clean-up operations of both the beaches and rocky shoreline areas.
79. To date 63 tonnes of contaminated sand and waste material had been disposed of at the Colson Road Landfill.

Saturday 3 November 2007 – Day 12

80. Bruce Pope inspected the beaches at the end of Komene and Paora roads in the afternoon. Some oil was evident on the beaches.
81. AWE personnel continued with clean-up operations of both the beaches and rocky shoreline areas.

Sunday 4 November 2007 – Day 13

82. Bruce Pope inspected the beaches at the end of Komene and Paora roads in the afternoon. Some oil was evident on the beaches.
83. Weather conditions were bad and it was considered that it was too dangerous for staff to be undertaking clean-up along this area of the coastline.

Monday 5 November 2007 – Day 14

84. Bruce Pope inspected the beaches at the end of Komene and Paora roads in the afternoon. Some oil was evident on the beaches.

Tuesday 6 November 2007 – Day 15

85. AWE personnel continued with clean-up operations of both the beaches and rocky shoreline areas.

Wednesday 7 November 2007 – Day 16

86. Bevan Chapman undertook an inspection of the beaches and rocky areas from Perth Road to Bayley Road. He found that small spots of oil continued to be present on the beach in the area of Perth Road. The Hampton Road beach area was clear of oil. At the Kaihihi Road beach AWE staff were found to be continuing with clean-up of the oiled areas. A waste skip was located at the end of the road. Oil staining on the beach was similar to that found at Perth Road. At Komene Road it was noted that the waste stock pile had been removed from the end of the road. An AWE clean-up crew was still operating in this area and staff outlined that oil was still coming ashore. Well aged tar balls were present; however there also appeared to be fresh oil deposited on the beach. The beach areas at the end of Paora and Rongomai roads were also checked. Surfers were noted off the end of Paora Road. Fresh deposits of tar balls were present on the beach in amongst the rocks. Inspection of the Bayley Road area and boat ramp found staining on rocks similar to that previously reported on Friday 2 November 2007.

Photograph 5 – Oil on rocks Paora Road 7 November 2007



Thursday 8 November 2007 – Day 17

87. A meeting was held between Bruce Pope (TRC), Nick Quinn (MNZ), and AWE Staff and contractors at the Genesis building in New Plymouth. The purpose of the meeting was to discuss future oil spill clean-up operations. Also to discuss the options of storage and disposal of contaminated produced water from the Umaroa FPSO.

88. A debrief was also held for Council staff in the Council's boardroom. All staff who were part of the response plus Nick Quinn and Julia Lang (Media Advisor), from MNZ, attended the debrief. The purpose of the debrief was to assess the spill clean-up operation, to clarify any points of interest and update MNZ staff and management regarding the progression of the clean-up operation.
89. AWE personnel continued with clean-up operations of both the beaches and rocky shoreline areas.

Friday 9 November 2007 – Day 18

90. Bruce Pope inspected the beaches at the end of Komene and Paora roads in the afternoon. Some oil was evident on the beaches.
91. Bruce Pope also met with David Jones, the local hapu representative.
92. AWE personnel continued with clean-up operations of both the beaches and rocky shoreline areas.

Saturday 10 November 2007 – Day 19

93. Bruce Pope inspected the rocky foreshore areas at the end of Paora and Puniho roads in the afternoon. Some oil was evident in the rocky areas.
94. AWE personnel continued with clean-up operations of both the beaches and rocky shoreline areas.

Sunday 11 November 2007 – Day 20

95. A community meeting was held at the Puniho Pa. Fred McLay attended, representing MNZ and TRC. Local stakeholders expressed their concern about the spill and the response.
96. AWE personnel continued with clean-up operations of both the beaches and rocky shoreline areas.

Monday 12 November 2007 – Day 21

97. Bruce Pope inspected the beaches at the end of Komene and Kaihihi roads in the afternoon. Some oil was evident on the beaches.
98. Contact was again made with David Jones.
99. AWE personnel continued with clean-up operations of both the beaches and rocky shoreline areas.

Tuesday 13 November 2007 – Day 22

100. AWE personnel continued with clean-up operations of both the beaches and rocky shoreline areas.

Wednesday 14 November 2007 – Day 23

101. A meeting was held with local user groups at Paora Road. Present were representatives of the Council, MNZ, local Hapu, local farmers, and surfers.
102. AWE personnel continued with clean-up operations of both the beaches and rocky shoreline areas.

Thursday 15 November 2007 – Day 24

103. AWE personnel continued with clean-up operations of both the beaches and rocky shoreline areas.

Friday 16 November 2007 – Day 25

104. Bruce Pope attended a meeting with senior AWE staff to update the situation and to discuss an ongoing monitoring programme.
105. AWE personnel continued with clean-up operations of both the beaches and rocky shoreline areas.

Monday 19 November 2007 – Day 28

106. Bruce Pope inspected the beaches at the end of Komene and Kaihihi roads in the afternoon. Some oil was evident on the beaches.
107. AWE personnel continued with clean-up operations of both the beaches and rocky shoreline areas.

Friday 23 November 2007 – Day 32

108. Bruce Pope inspected the beaches at the end of Komene and Kaihihi roads in the afternoon. Some oil was evident on the beaches.
109. AWE personnel continued with clean-up operations of both the beaches and rocky shoreline areas.

Tuesday 27 November 2007 – Day 36

110. Bruce Pope inspected the beaches at the end of Komene and Kaihihi roads in the afternoon. Some oil was evident on the beaches.
111. AWE personnel continued with clean-up operations of both the beaches and rocky shoreline areas.

Friday 30 November 2007 – Day 40

112. Bruce Pope inspected the beaches at the end of Komene and Kaihihi roads in the afternoon. Some oil was evident on the beaches.

113. A meeting was held with local user groups at Paora Road. Present were representatives of the Council, MNZ, local Hapu, local farmers, and surfers.
114. AWE personnel continued with clean-up operations of both the beaches and rocky shoreline areas.

Thursday 6 December 2007 – Day 47

115. Bruce Pope inspected the beaches at the end of Komene and Kaihihi roads in the afternoon. Some oil was evident on the beaches.
116. AWE personnel continued with clean-up operations of both the beaches and rocky shoreline areas.

Tuesday 11 December 2007 – Day 52

117. A meeting was held with AWE regarding the termination of the oil spill response. Discussion was centred around end point criteria being met on the beaches and rocky areas. It was agreed that further assessment of end point criteria would be undertaken after the next high tide on 27 December 2007. Also a further meeting would be held with both AWE and the user groups to obtain their input and agreement to the end point criteria.
118. AWE personnel continued with clean-up operations of both the beaches and rocky shoreline areas.

Friday 28 December 2007 – Day 69

119. Bruce Pope inspected the beaches at the end of Komene and Kaihihi roads in the morning. Some oil was evident on Kaihihi Beach.

Photograph 6 – Oil still evident on Kaihihi Beach 28 December 2007



120. AWE personnel continued with clean-up operations on Kaihihi Beach.

Saturday 29 December 2007 – Day 70

121. Bruce Pope inspected the beach at the end of Komene Road in the morning. No oil could be found on the beach.

122. AWE personnel continued with clean-up operations on Kaihihi Beach.

Friday 11 January 2008 – Day 83

123. Bruce Pope inspected the beaches at the end of Komene and Kaihihi roads, and the rocky foreshore areas at the end of Puniho and Paora roads, in the morning. Some oil was still evident on Kaihihi Beach.

124. AWE personnel continued with clean-up operations on Kaihihi Beach.

Friday 1 February 2008 – Day 102

125. Bruce Pope, Peter Ledingham (TRC), Neil Rowarth (MNZ), Alison Lane (MNZ) and Danny Govier (Cawthron Institute) inspected the beaches at the end of Komene and Kaihihi roads, and the rocky foreshore areas at the end of Paora Road, in the morning. Some oil was evident on Kaihihi Beach.

126. A meeting was held with the local user group at the Stony River Hotel. Present were Bruce Pope, Danny Govier, Alison Lane, Neil Rowarth, Kate Giles, David Jones, Fay Mulliagan, Gordon Cavey, Peter Ledingham, and Jackie Crean. Danny Govier (Cathron Institute) gave a presentation on the environmental report prepared for AWE. Alison Lane (MNZ) and Bruce Pope also update the oil spill response and reported on the Council's monitoring.

127. AWE personnel continued with clean-up operations on Kaihihi Beach.

Tuesday 26 February 2008 – Day 127

128. Bruce Pope inspected the beaches at the end of Komene and Kaihihi roads, and the rocky foreshore areas at the end of Puniho and Paora roads, in the morning. Some oil was still evident on Kaihihi Beach.

129. AWE personnel continued with clean-up operations on Kaihihi Beach.

Sunday 2 March 2008 – Day 133

130. A public meeting was held in the Okato Community Hall. Bruce Pope, Fred McLay, Kate Giles and Peter Ledingham attended. AWE made a presentation and answered questions. The oil spill response was summarised by way of presentation.

Photograph 7 – Public meeting held in Okato 2 March 2008



Thursday 10 April 2008 – Day 172

131. Bruce Pope inspected the beaches at the end of Komene and Kaihihi roads, and the rocky foreshore areas at the end of Puniho and Paora roads, in the morning. Some oil was evident still on Kaihihi Beach.
132. AWE personnel continued with clean-up operations on Kaihihi Beach.

Tuesday 13 May 2008 – Day 205

133. Bruce Pope inspected the beaches at the end of Komene and Kihiki roads, and the rocky foreshore areas at the end of Puniho and Paora roads, in the morning. Some oil was evident still on Kaihihi Beach.
134. AWE personnel continued with clean-up operations on Kaihihi Beach.

Tuesday 10 June 2008 – Day 132

135. Bruce Pope, Nick Quinn (MNZ), Neil Rowarth (MNZ) and Alan Butt (AWE) inspected the beaches at the end of Komene and Kaihihi roads, and the rocky foreshore areas at the end of Puniho Road, in the morning. Some oil was evident on Kaihihi Beach.
136. A decision was made to terminate the Tier 2 oil spill response.

Tuesday 19 August 2008

137. Kate Giles made arrangements for sediment and shellfish sampling to be undertaken by Taranaki Dive Shop, to be undertaken during fine weather. The local Hapu had placed a rahui on collecting kaimoana in the area until the environmental monitoring showed the area was uncontaminated.

Tuesday 26 August 2008

138. Kate Giles undertook water column sampling at Greenwood Road (control), Kaihihi Beach, Komene Beach, the end of Paora and Manihi roads (controls). Results showed there were no elevated levels of hydrocarbons.

Photograph 8 – Water sampling



Monday 21 October 2008

139. A meeting was held at Komene Road with Tracey Feland and Jason Peacock (both AWE), a Prosafe representative, and Hapu representatives, David Jones and Fay Mulligan. The companies were going to invest in local environmental projects associated with the Komene Lagoon, a regionally significant asset. A biodiversity plan to be developed by the Council was discussed. The companies made other local community investments.

17 December 2008

140. AWE applied to the Council for a resource consent to discharge treated produced water from the Umarao. A tanker had been hired to bring the contaminated water to Port Taranaki where it was to be stored, treated and discharged. A short term consent was granted on 21 December and the exercise of the consent closely monitored by Council staff. A monitoring report was prepared and it showed consent compliance.

Monitoring programme

141. A comprehensive monitoring programme was established in the initial stages of the spill response. This involved visual assessments, along with sand, water, subtidal kaimoana and sediment samples. Testing for hydrocarbons and metals, being possible contaminants from the oil spill was to be undertaken. Monitoring was undertaken by the Council and AWE.
142. The monitoring undertaken and results are described in a separate detailed report by K Giles, the Council's Marine Ecologist. The results of the monitoring undertaken are shown in the table below. AWE commissioned their own monitoring and the results of both monitoring programmes are consistent and show minimal to negligible environmental effects. However, there were effects on cultural values that were outlined during sentencing submissions before the Court.

KAIHIHI	DATE	SAMPLE TYPE	HYDROCARBONS	METALS
	7-11-2007	Sediment	Below detection	Not sampled
	28-11-2007	Seawater	Below detection	Not elevated/safe levels**
	1-2-2008	Subtidal Sediment	Below detection	Not elevated/safe levels**
	26-08-2008	Seawater	Below detection	Not sampled
	12-12-2008	Subtidal Sediment	Below detection	
	12-12-2008	Kaimoana *	Below detection	Not sampled
KOMENE	DATE	SAMPLE TYPE	HYDROCARBONS	METALS
	7-11-2007	Sediment	Below detection	Not sampled
	28-11-2007	Seawater	Below detection	Not elevated/safe levels**
	30-11-2007	Sediment	Below detection	Not sampled
	1-2-2008	Subtidal Sediment	Below detection	Not elevated/safe levels**
	1-2-2008	Kaimoana *	Below detection	Not sampled
	26-08-2008	Seawater	Below detection	Not sampled
	12-12-2008	Subtidal Sediment	Below detection	Not elevated/safe levels**
12-12-2008	Kaimoana *	Below detection	Not sampled	
MANIHI	DATE	SAMPLE TYPE	HYDROCARBONS	METALS
	28-11-2007	Seawater	Below detection	Not elevated/safe levels**
	30-11-2007	Sediment	Below detection	Not sampled
	1-2-2008	Subtidal Sediment	Below detection	Not elevated/safe levels**
	1-2-2008	Kaimoana *	Below detection	Not sampled
	26-08-2008	Seawater	Below detection	Not sampled
	12-12-2008	Subtidal Sediment	Below detection	Not elevated/safe levels**
12-12-2008	Kaimoana *	Below detection	Not sampled	
P A	DATE	SAMPLE TYPE	HYDROCARBONS	METALS

	28-11-2007	Sediment	Below detection	Not sampled
	1-2-2008	Subtidal Sediment	Below detection	Not elevated/safe levels**
	1-2-2008	Kaimoana *	Below detection	Not sampled
	26-08-2008	Seawater	Below detection	Not sampled
	12-12-2008	Subtidal Sediment	Below detection	Not elevated/safe levels**
	12-12-2008	Kaimoana *	Below detection	Not sampled
PUNHO	DATE	SAMPLE TYPE	HYDROCARBONS	METALS
	1-2-2008	Subtidal Sediment	Below detection	Not elevated/safe levels**
	1-2-2008	Kaimoana *	Below detection	Not sampled
TAPUAUE REEF	DATE	SAMPLE TYPE	HYDROCARBONS	METALS
	1-2-2008	Subtidal Sediment	Below detection	Not elevated/safe levels**
	1-2-2008	Kaimoana*	Below detection	Not sampled
GREENWOOD (Control)	DATE	SAMPLE TYPE	HYDROCARBONS	METALS
	7-11-2007	Sediment	Below detection	Not sampled
	28-11-2007	Seawater	Below detection	Not elevated/safe levels**
	30-11-2007	Sediment	Below detection	Not sampled
	1-2-2008	Subtidal Sediment	Below detection	Not elevated/safe levels**
	1-2-2008	Kaimoana *	Below detection	Not sampled
	26-08-2008	Seawater	Below detection	Not sampled
	12-12-2008	Subtidal Sediment	Below detection	Not elevated/safe levels**
	12-12-2008	Kaimoana *	Below detection	Not sampled

143. In summary the monitoring results from both this Council and AWE showed:

- Hydrocarbons were below detection in all sediment samples
- Hydrocarbons were below detection in all kaimoana samples
- Hydrocarbons were below detection in all seawater samples
- Metals were well below safe levels in seawater and sediment samples.

144. The response action plan was modified to include end point criteria. The end point criteria were: no significant oil was visible on the beach that could cause harm to wildlife or kaimoana; and that oil was not noticeable on the beach. This meant that a monitoring survey of both Komene and Kaihihi beaches was to be undertaken after the highest tides (monthly) to ascertain if the end point criteria were being met.

145. A number of inspections were undertaken until 10 June 2008, when the end point criteria were met.

146. During the beach clean-up considerable litter was also collected and disposed of with the contaminated sand.
147. AWE has purchased a 4-wheel bike and trailer, and employed a part time person to continue with the monitoring and clean-up of small quantities of oil from Komene and Kaihihi beaches. Minor amounts of oil were still being redistributed by tides from the rocky areas to the beaches.
148. The Council's costs for responding to the oil spill totalled about \$120,000 and were recovered from the spiller.

Prosecution

149. MNZ took AWE and ProSafe to court over the oil spill under the Maritime Transport Act. A hearing, before Judge Stanley Thorburn in the District Court in New Plymouth, was held on 13 August 2008. Both companies pleaded guilty and the only real matter in dispute was the volume of oil spilled. MNZ considered about 33 tonnes had been spilled while the companies considered the amount to be about 23 tonnes.
150. Council officers provided evidence for the prosecution but unfortunately had no contact with MNZ enforcement staff.
151. The Court, after 11 months, finally released its decision and fined AWE and ProSafe \$52,250 each. The sentencing decision is attached to this memorandum and is positive about the defendants response to the spill and engagement with the community.

Debrief

152. A useful debrief is scheduled involving the Council, MNZ and AWE following the release of the Courts decision. Issues for this Council include: the management of media communications during the clean up creating an extremely high workload for the regional on-scene commander; and nil communication by MNZ Wellington during the investigation and enforcement action.
153. The spill came ashore on a very high tide and there were negligible environmental effects. Dispersants can be sprayed on oil at sea under suitable conditions to reduce the volume coming ashore if this is done in about the first 12 hours of the spill. Even with lower tides the environmental effects of the oil on the high energy western Taranaki shore line may not have caused adverse environmental effects and physical clean-up is likely to represent the most effective clean-up method should future spills occur. The use of dispersants needs to be carefully considered even though their use is provided for in the Council's Marine Oil Spill Contingency Plan for Taranaki.

Community input

154. During the spill response a local community user group was set up consisting of farming, surfing, Hapu, and local beach user representatives.
155. During the spill regular meetings were held to report progress to the user group. These reports included presentations from Council staff and from the Cawthron

institute regarding the monitoring programmes that were undertaken and their results. It should be noted that the user group had extensive input into the design of monitoring programmes and the location of the monitoring sites.

156. The Council was very grateful of local farmer support for the response by supplying equipment and access through their properties. It should be noted that coastal landowners were very co-operative, despite it being a busy time of year for dairy farmers. Without the co-operation of the landowners, the spill clean-up would have been a much more difficult operation.

Conclusions

157. Although the crude oil spill was the largest recorded in New Zealand, environmental effects were kept to a minimum due to a number of factors. These and other conclusions from the response are set out below:
- The oil was deposited over almost 14 kilometres of the beach on a spring tide, which meant most was deposited at the highest possible point on the beaches. The beach mainly comprised sand with some rocky areas. If the oil had come ashore on any other tide the environmental effects would have been more significant and the clean-up methods would have been completely different;
 - The clean-up operation was carried out quickly and effectively at a regional level under the Tier 2 provisions of the Marine Oil Spill Contingency Plan for Taranaki;
 - More than 80 tonnes of oil tar balls, contaminated sand and clean-up materials (rags and litter) were collected and disposed of at a landfill;
 - The spill occurred on a high energy coastline with minimal environmental effects. Most oil was collected before dispersing into the sand and water column which also minimised environmental effects. Rocky areas, which comprised 65 % of the area affected, proved more difficult to clean-up and oil was remobilised for several months from these areas to the sandy beach, considerably extending the clean-up period;
 - Oiled rocks were left to weather with minimal environmental effects expected;
 - There was much media interest in the spill which developed a high profile and kept the On-scene Commander very busy;
 - The local community, while initially very concerned about the spill, provided support for the clean-up and participated in the community group which the Council and others closely liaised with;
 - The valuable relationship between the Council and MNZ oil spill response section, lead by Nick Quinn, was recognised during the response particularly regarded media liaison; and

- The early admission of the spill from AWE/Prosafe and their complete cooperation in the clean-up and in engaging with the community is acknowledged and greatly helped in the spill responses.
158. The oil spill response was concluded on 10 June 2008 and on 17 June 2008 a media release informing the public of the termination of the response was issued.
 159. Although the response has been officially terminated further monitoring is still being undertaken by AWE staff. This Council is also continuing with the monitoring programme to ensure that no long term environmental effects occur and to provide information to assist the local hapu to decide when a rahui, which has been placed on the area, can be lifted. AWE is funding this work.
 160. The TRC monitoring and clean up costs will come to more than \$110,000. All of these costs have been recovered from AWE/Prosafe. The companies were also involved in clean-up activities and spent a total of \$US464,000 on the clean-up and a further \$US 1,967,000 on transporting ,by tanker , the problematic produced water from the FPSO to Port Taranaki for treatment and discharge. Further problematic produced water was tankered to shore in June 2009 for treatment and discharge. Process modifications are to be made to the FPSO to address treatment issues and allow the discharge from the FPSO under the provisions of the discharge management plan approved by MNZ.
 161. A successful prosecution has been carried out by Maritime New Zealand with a total fine of \$105,000. The maximum fine under the Maritime Transport Act 1994 is \$200,000.
 162. The response and enforcement action was a positive outcome for the Regional Oil Spill Response Team. The spill was handled at a Tier 2 level with advice being received from the National MNZ Oil Spill Response Team. A number of significant learnings from the spill have been included in the recent review of the Marine Oil Spill Contingency Plan for Taranaki.
 163. Positive feedback has been received from the community and MNZ regarding the Council's oil spill response. The experience gained from the response to the incident was stressful at times for staff but was invaluable. It will stand the Council and the region in good stead for any future responses, not that there is a desire for these to arise.
 164. In light of the spill MNZ and the oil industry have been working on monitoring regimes for FPSOs and other off shore activities. The regulatory regimes and operations undertaken off-shore should closely follow those undertaken on-shore to ensure an effective and consistent approach that is well understood by the industry and supported by the community that achieves its environmental purpose. The Council has been involved in early discussions with MNZ consultants in this regard and there should be ongoing contact with MNZ.

**IN THE DISTRICT COURT
AT NEW PLYMOUTH**

CRI-2008-043-002447

MARITIME NEW ZEALAND
Informant

v

PROSAFE PRODUCTION SERVICES PTE LIMITED
(CRN-08043500221)
AUSTRALIAN WORLDWIDE EXPLORATION LIMITED
Defendants
(CRN-08043500223)

Hearing: 13 August 2008

Appearances: Mr B D Vanderkalk for Informant
Ms L Wallace for Prosafe Production Services Pty Limited
Ms S Hughes QC for Australian Worldwide Exploration Limited

Judgment: 7 July 2009

RESERVED SENTENCING DECISION OF JUDGE S A THORBURN

Background

[1] Each defendant is separately charged under s.237(b) of the Maritime Transport Act 1994 (hereinafter referred to as “the Act”), that it did as an owner of an off-shore installation, discharge a harmful substance into the sea in contravention of s.226(a)(1) of the Act.

[2] Prosafe Production Services Pty Limited (hereinafter referred to as “Prosafe”) is a Singapore based company that owns and operates off-shore installation and bulk storage systems known as FPSO’s (Floating Production Storage Offloading), which are floating tankers into which off-shore oil drilling operators deposit the substance that is brought to the surface from sub-sea wells, which includes crude oil, sludge, contaminants, gas, etc. This substance is of course potentially a pollutant into the maritime environment and thus therefore needs to be carefully contained for processing in such facilities as an FPSO.

[3] Australian Worldwide Exploration Limited (hereinafter referred to as “AWE”) is an oil exploration and production company based in Australia but operating off the Taranaki coast, mining for oil and gas within the Tui Fields.

[4] AWE and Prosafe have a joint venture commercial agreement binding their mutual operations of mining substance from sub-sea wells and holding that substance safely whilst off-shore. Their protocol includes AWE having a technical representative permanently on board Prosafe’s FPSO to ensure that Prosafe’s processing of the subterranean material is undertaken in accordance with requirements of maritime rules and other regulatory provisions that ensure safety for the environment and proper purification before any discharge into the sea.

The incident & the law relating to the offence

[5] In the early hours of the morning (around 5.00 am) of 21 October 2007 an incident took place on the MV *Umuroa* an FPSO owned by Prosafe, which resulted in a large amount of what is known as “black water” being discharged into the sea. The discharge which took place over three minutes was not lawfully permissible due to contamination with subterranean well fluids, sulphate-reducing bacteria and crude

oil. The mixture coming from the sub-sea wells was being pumped into tank 4C on the *Umuroa*. The content of this tank is treated by a water *polishing* process known as a hydrocyclone and on the basis that that process separates out contaminants to a certain standard, the processed liquid or *produced water* can be discharged into the sea and the extracted contaminant diverted into another floating unit known as a slop tank which is towed ashore where its content is safely processed or disposed of. On the particular occasion, tank 4C reached capacity and the black water was being diverted to a slop tank instead. There was an alternative system if needed for black water to be passed through the *hydrocyclone* for monitored discharge from the slop tank. The defendant's though had not settled an operating procedure for this alternative situation and by virtue of a critical oversight, for 3 minutes unprocessed (unpolished) "black water" contaminant was discharged into the sea from 4C instead of safely making its way to the slop tank. The informant claims that 42 cubic metres or 33.6 tonnes of such substance was released overboard. The defendants dispute this assessment.

[6] Under the relevant regulations discharge of produced water is permitted provided there is less than 30 milligrams per litre of oil residue. Analysis of this is done by sensors which will automatically command the discharge valve to close if the readings exceed that, but on this occasion the sensor was malfunctioning and knowing this, the analysis was being undertaken manually. Records of the frequency of manual testing and the results are to be carefully kept of course, but whilst the defendants maintain that indeed records were kept, none have been found.

[7] Obviously commitment to protection of the environment is a prime consideration in any such operation and the Court was assured (and indeed accepts) that both defendants have a high degree of commitment and as part of the operational agreement between the defendants, AWE had a permanent representative aboard the *Umuroa* to amongst other things of course, maintain a presence to ensure quality control of Prosafe's operations.

[8] Paragraphs (c) & (f) of the long title to the Maritime Transport Act 1994 (hereinafter referred to as "the Act") describes its purposes *inter alia* as:

- (c) To ensure that participants in the marine transport system are responsible for their actions; and

.....

- (f) To protect the marine environment.

[9] The offence committed was against sections 226 & 237 of the Act, set out below:

226 Harmful substances not to be discharged into sea or seabed of exclusive economic zone or continental shelf

Harmful substances shall not be discharged or escape, otherwise than in accordance with the marine protection rules,—

- (a) From any ship, offshore installation, or pipeline—
 - (i) Into the sea within the exclusive economic zone of New Zealand; or
 - (ii) Onto or into the seabed below that sea; or
- (b) From any ship or offshore installation involved with the exploration or exploitation of the sea or the seabed, or any pipeline,—
 - (i) Into the sea beyond the outer limits of the exclusive economic zone of New Zealand but over the continental shelf of New Zealand; or
 - (ii) Onto or into the seabed below that sea; or
- (c) From any New Zealand ship—
 - (i) Into the sea beyond the outer limits of the exclusive economic zone of New Zealand; or
 - (ii) Onto or into the seabed below that sea; or
- (d) As a result of any marine operations,—
 - (i) Into the sea within the exclusive economic zone of New Zealand or beyond the outer limits of that exclusive economic zone but over the continental shelf of New Zealand; or
 - (ii) Onto or into the seabed below that sea.

237 **Discharge or escape of harmful substances into sea or seabed**

If any harmful substance is discharged or escapes into the sea or onto or into the seabed in breach of section 226 of this Act, the following persons commit an offence:

- (a) If the discharge or escape is from a ship, the master and owner of the ship:
- (b) If the discharge or escape is from an offshore installation, the owner of the offshore installation:
- (c) If the discharge or escape is from a pipeline, the owner of the pipeline:
- (d) If the discharge or escape is as a result of any marine operations, the person in charge of and the person carrying on such marine operations:
- (e) If the discharge or escape is of a kind referred to in paragraph (a) or paragraph (b) or paragraph (c) or paragraph (d) of this section, and results from intentional damage caused by a person not referred to in that paragraph, the person who committed the damage.

[10] The discharge is regarded by all as from an offshore installation (s 226(a)(i)) and it is agreed that by virtue of the scheme of the Act and reference to s.222(2)(b) and s.2 (b) both defendants are deemed to be “owners” and therefore liable under s 237(b). It is clear that both are quite rightly charged separately albeit for the same incident. In submissions, an issue was raised as to whether the approach of the Court ought to be to fix the appropriate level of fine for what was indeed one event, and then divide that equally between the defendants. Mr Vanderkalk for the informant submitted that to do so would be an error in principle, I think to mean that each defendant is independently culpable by virtue of its own discreet act or omission in the circumstances and that to determine culpability in a “pan” approach and then require each to meet half of the penalty would erode the significance of the informant’s ability to successfully prove separately and independently that each defendant that it had committed an offence. This will be returned to later.

[11] An FPSO such as the *Umuroa* is capable of taking up to 120,000 barrels of liquid per day for processing by its *hydrocyclone* and onboard equipment and the produced water can be released into the sea if the analyser confirms its level of purity. The contaminated remainder or black water, is normally diverted into the slop

tanks. The pumps can move fluid at the rate of 11,000 litres per minute, thus it is argued by the informant that 33,000 litres would have been discharged into the sea before it was stopped.

The Offence

[12] On the night in question the Prosafe operator on *Umuroa* was distracted by a cargo offloading procedure which was being carried out at the same time. He did not shut the discharge valve and because the analyser was not working, the valve was not going to close automatically when the outspill began. The operator soon observed some discolouration in the water surrounding the vessel and shut the valve.

[13] The informant claims that 42 cubic metres or 33.6 tonnes was released overboard, based on a 24-hour manual volume measurement taken at midnight on 21 October and again on midnight 22 October, between which time the volume of held fluid reduced by such an amount. The inference is drawn that that reduction would equate to the amount of discharge – a logical inference on the face of it. Against this the defendant's maintain that there was a manual record of readings taken by the operator which was more indicative of a discharge of 23 cubic metres, but those manual records have been lost by the defendants and are thus unavailable for independent evaluation. In evidential terms therefore the proclamation of a discharge of 23 cubic metres is really no more than anecdotal. The defendants are bolstered a little however by the fact that in the facsimile of notification of spill that was made by AWE to Maritime New Zealand at approximately 9.00 am on 21 October, under "estimated quantity" 20 to 25m³ has been inserted, an assessment made at the time which must have been based on a report. This notification was handed to the Court at the hearing.

The amount of Discharge

[14] The Court was advised when it convened for these submissions that there was the potential for a fact hearing in respect to the evidence of the quantity of spill. The informant would seek a sentence that reflected a spill of 42m³ whereas the

defendants (particularly Prosafe) argued vigorously that the volume would have been less and any sentence should show that.

[15] As is clear, the informant's argument is simple being based on tank measurements between 2 points in time 24 hours apart. AWE makes a point that the pipes can hold 10m^3 of substance and so that ought to be deducted from the tank reading. What the Court doesn't know is what happened to that content. Was it sucked back into the tank? or did it leach into the sea. Is it permissible to prefer Prosafe's approach and work sentencing around say 23m^3 relying on the report that nominated $20\text{-}25\text{m}^3$ on the morning concerned, without the supporting documents? And no explanation was given by the defendants as to how the tank volume could decrease by 42 m^3 within 24 hours if only 23 m^3 was actually discharged. Then, the informant's summary of facts provides information that the capacity of the discharge pumps is "*...500 tonnes per hour or alternatively expressed as approximately 11,000 litres per minute*". A simple calculation shows that at that rate the pumps would discharge 31.2m^3 in a 3 minute period (calculation based on information given that 42m^3 is equivalent to 33.6 tonnes).

[16] Objectively, the informant's position is strong, but if there was a fact hearing, who knows how some of these other propositions might have impacted. In the circumstances pragmatism is called for, because the parties have clearly reached a point where being committed to the avoidance of further expense, inconvenience and delay and for the defendants, readiness to accept culpability, they have been prepared to leave their points of view before the Court albeit without concession to each other, and await the Court's approach.

[17] This discharge is a large one in New Zealand terms whether it be 25m^3 or 42m^3 . The adversarial nature of our system is infused with the assumption that an informant will pitch its position to the highest level responsibly arguable and the defendant's to the lowest, with the expectation that the judicial discretion is unlikely to tumble into unconditional acceptance of either. I have mentioned pragmatism. In a situation like this what else can the Court be other than pragmatic?

[18] Forty-two cubic metres is arguable. There is a rationale for it. It is reasonable to assume that there must be a rationale too, to the spill report of 20-25m³. Why would the Court doubt that 10m³ can sit in a pipe? What about the capacity of the discharge pumps to achieve 31.2m³ outflow in 3 minutes – somewhat less than the informant's 42m³?

[19] All things being considered, because a position must be taken, I will simply “go down the middle”. The midpoint between Prosafe's 23 and the informant's 42 is 32.5 and so for what it is worth this sentencing may be regarded as dealing with a discharge of at least 30m³.

Culpability

[20] AWE contacted Maritime New Zealand with a *notification of marine oil spill* (previously referred to) by fax at 9.00 am on the morning of the spill - some 4 or 5 hours after it occurred - but did not initiate any other notification to the Regional Council or environmental authorities or agencies. The spill was reported two or three days later by a member of the public who had noticed oil on the beach at Okato. The Taranaki Regional Council response team investigated and found tar balls being ashore over 13 kilometres of the Taranaki coastline. It was not until yet a further 3 days (and after the shore wash had become public knowledge) that AWE notified the Taranaki Regional Council. Then it thoroughly and intensively co-operated with the clean-up project and it and Prosafe have met all of the costs of that (\$120,000) incurred by the Taranaki Regional Council and others.

[21] The informant is critical of the defendants for not accepting responsibility for the spill until it became public knowledge, and maintains that they were taking a risk using the slop tanks to process the black water because they were driven by commercial goals to achieve daily output targets. This is vigorously denied by the defendants who advised the Court that remuneration was based on a flat daily rate and not upon production. In any event the informant's position is that use of the slop tanks was not “best practice” and as well (which is common ground) there was no operational protocol in place for their use in conjunction with the *hydrocyclone*.

[22] In my view culpability in this matter comes down to the following primary factors:

- (1) For whatever reason a process was being embarked upon for use of the slop tank which was not supported by operational guidelines.
- (2) This was being undertaken in full knowledge that the analysers were malfunctioning.
- (3) Integrity and safety was thus fully dependent upon human intervention, which lapsed.

[23] The informant endeavours to portray culpability as high because of a deliberate decision to proceed with the use of the slop tanks in full knowledge of the risks. It submits that culpability is “*greater than reckless but less than intentional*”.

[24] It further points to the six-day delay in the defendants accepting responsibility for the shore pollution and that that might suggest “a cone of silence” or “a wait and see” attitude.

[25] The defendants acknowledge carelessness of course, but not recklessness and maintain that the conduct behind the failure was at all times conduct of good faith and not overarched by commercial imperatives of output or risk taking. The onboard staff member responsible reacted by tendering resignation. The attitudes of the defendants upon notification of the shore pollution has been utterly exemplary and there is nothing more that either of them could have done to mitigate the damage, reimburse for costs, and foster goodwill with the local Tangata Whenua through apology and community gestures. In addition to reimbursement of the costs, AWE commissioned an environmental impact study which it has made available to Maritime New Zealand to provide a valuable resource for the future from the experience; it has purchased a defibrillator for the Okato Fire Brigade and paid for some extensions its premises; it donated an electronic “smart-board” to the Opunake Primary School; it donated 3000 native trees and plants to a native regional planting program and had some of its employees participate in the planting; and it sponsored

a school visit to an art exhibition at the Govett Brewster Art Gallery. These observations touch a number of the guidelines for sentencing in *Machinery Movers Ltd v Auckland Regional Council* [1994] 1 NZLR 492.

[26] It is further submitted for both defendants that they are well known for their high degree of commitment to standards and practices and indeed that does seem to be an acceptable submission. The event militates against the strength of that for it would have occurred because of a failure in standards and practice, but the Court is reasonably assured that these companies are soundly committed to best practice and what happened on this occasion is unfortunate to say the least and has been a chastening and humiliating rebuke to their reputations.

[27] Of course there always will be a question around the delay in taking responsibility and predictably so. Why would the defendant's not immediately acknowledge the likelihood of being responsible when the news came out? It was suggested that until it was known that there were no other vessels in the region at the time that could have been responsible, withholding acceptance of responsibility was perfectly understandable. I think that is a frail response for regardless of what other vessels might or might not have been in the region, these defendants had direct knowledge of a spill from their operation that could have been the cause and ought to have been disclosed readily. I take this too as another matter of embarrassment and chastening significance to the defendants as an error of judgement more than an indication of arrogance - because the open and candid admission immediately made when AWE was directly approached by the Taranaki Regional Council for an oil sample, and all of the aforementioned steps to reimburse, restore and repair the fallout, do tend to point towards companies of good faith. I proceed on the basis that what happened lies more comfortably with carelessness and oversight than recklessness and arrogance.

[28] Both companies have a good reputation and neither have any previous convictions.

Sentencing Act 2000

[29] It is accepted that the provisions of the Sentencing Act 2002 apply to the Act. However, the informant has pointed out that under s.244 of the Act, in addition to any fine that is imposed the Court may order payment of such costs incurred in respect to –

.... removing, containing, rendering harmless, or dispersing any harmful substance discharged as a result of the offence.
(s.244(1)(b)).

[30] Clearly, it was the Legislature's intention to import a power into the Act to compel an otherwise uncooperative or unwilling defendant to take responsibility for offending. Notably in this case the defendants would not fall into that category and so clearly no such order is necessary. With the Act being subject to the provisions of the Sentencing Act 2002 the question arises then as to the relevance of the provisions directing the Court to a defendant's attitude to making amends. The informant submits that the defendants are not entitled to credit for meeting the costs of cleanup because of s244(1)(b) of the Act and its express philosophy that the power to order payment is *in addition to any fine*. Naturally the defendants turn to the Sentencing Act 2002 and submit that their voluntary payments and additional gestures for the benefit of the community are matters that the Court should take into account for credit.

[31] Section 9(f) of the Sentencing Act 2002 makes it mandatory for the Court to take into account..... *any remorse shown by the offender, or anything as described in section 10.*

Section 10 provides:

Court must take into account offer, agreement, response, or measure to make amends

(1) In sentencing or otherwise dealing with an offender the court must take into account—

- (a) any offer of amends , whether financial or by means of the performance of any work or service, made by or on behalf of the offender to the victim:
 - (b) any agreement between the offender and the victim as to how the offender may remedy the wrong, loss, or damage caused by the offender or ensure that the offending will not continue or recur:
 - (c) the response of the offender or the offender's family, whanau, or family group to the offending:
 - (d) any measures taken or proposed to be taken by the offender or family, whanau, or family group of the offender to—
 - (i) make compensation to any victim of the offending or family, whanau, or family group of the victim; or
 - (ii) apologise to any victim of the offending or family, whanau, or family group of the victim; or
 - (iii) otherwise make good the harm that has occurred:
 - (e) any remedial action taken or proposed to be taken by the offender in relation to the circumstances of the offending.
- (2) In deciding whether and to what extent any matter referred to in subsection (1) should be taken into account, the court must take into account—
- (a) whether or not it was genuine and capable of fulfilment; and
 - (b) whether or not it has been accepted by the victim as expiating or mitigating the wrong.
- (3) If a court determines that, despite an offer, agreement, response, measure, or action referred to in subsection (1), it is appropriate to impose a sentence, it must take that offer, agreement, response, measure, or action into account when determining the appropriate sentence for the offender.
- (4) Without limiting any other powers of a court to adjourn, in any case contemplated by this section a court may adjourn the proceedings until—
- (a) compensation has been paid; or
 - (b) the performance of any work or service has been completed; or
 - (c) any agreement between the victim and the offender has been fulfilled; or

- (d) any measure proposed under subsection (1)(d) has been completed; or
- (e) any remedial action referred to in subsection (1)(e) has been completed.

[32] A perusal of this provision makes utterly clear that it is the duty of the Court to take into account a wide array of factors that are connected with an offender's attitude to repair and restoration, remorse and the genuineness of same, and the receptiveness of victims to attitudes of the offender.

[33] Furthermore, section 40 of the Sentencing Act 2002 completes a trilogy of statutory emphasis on the mandatory obligation of the Court to take these things into account reiterating in subs (1) (emphasis mine) that *In determining the amount of a fine, **the Court must take into account, in addition to the provisions of sections 7 to 10, the financial capacity of the offender.***

[34] The Court must take into account the defendants' responses as mitigating factors because the Sentencing Act 2002 directs so, and thus therefore disagrees that the existence of a discreet power to order recovery of cleanup costs somehow erodes or overrides the discretion of the Court to take responses into account. Logically too, the existence of the power to order cleanup costs must exist as an enforcement tool where there is a defendant of different attitude than those in this case. That power has no relevance in our case.

To apportion the penalty or not

[35] What then of the fixing of and imposition of penalty? Should the fine be assessed as it could be for one offence only on the basis of a single actus reus and then divided between the defendants, or should penalty be imposed on each defendant at a level that holds each individually culpable as if it was the only defendant?

[36] In submissions (although without any case law), Mr Vanderkalk suggested that to set one penalty and apportion it would be wrong in principle (see para 10 above), and suggested that a fine of \$150,000 to \$180,000 be imposed on each

defendant. The defendants submit a fine of \$80,000 to \$100,000 would be in an appropriate range and taking the alternative view, say that that should be apportioned.

[37] The maximum fine is \$200,000. Standing back and looking at the offence objectively as one incident, and appreciating as counsel have advised that this is a unique case insofar as off shore drilling is concerned with no other case histories to draw upon, I would put this fairly high on the band of fine setting because of the immense need in this area for the Court to be assertively denouncing and promulgate a message of deterrence. Thirteen kilometres is a substantial length of coastline to be contaminated and signifies the immense risk of dreadful environmental damage that even a few minutes of discharge can create, and although there are no cases for comparison, it seems appropriate to the Court to classify the scale of this incident on its facts as serious. Therefore I am comfortable with a starting figure for penalty in range of \$150,000. For the reasons I have touched on that arise from the provisions of the Sentencing Act 2000 and general principles as to credit for pleading, I consider mitigating factors warrant a 30% reduction and thus I settle on \$105,000 as an appropriate figure for the imposition of penalty.

[38] The Environment Court has had occasion to address penalty where there are multiple defendants charged for an offence arising out of one incident, under the Resource Management Act 1991. In *Northland Regional Council v Australia Direct New Zealand Direct Line Ltd & Anglo Eastern Ship Management Ltd* (CRN 9088018862 etc; Whangarei District Court 28 June 2000: Judge Whiting) and *Northland Regional Council v Thalassic Steamship Agency Inc; Panela Corpn; Capt Ferentinos* (CRN 2088016091-3; Whangarei District Court 28 June 2000: Judge Whiting) and *Canterbury Regional Council v Trans Pacific Fishing Ltd & Dae Hyun Agriculture and Fisheries Company Ltd* 9CRN2006-009-500326 & 321; Christchurch District Court 30 June 2006: Judge Smith) the approach was taken that the offending should be looked at in its totality; In *Thalassic* the Judge said at para 22:

As I have said, I am required to look at the totality of offending and assess what I consider to be a fair, proper and adequate penalty for the offending. I

must then apportion that penalty between the three defendants having regard to their respective culpability.

[39] Following that approach, and in the absence of any pronouncement to support a different one I will apportion the fine that I consider appropriate equally between the 2 defendants and declare that each will be fined the sum of fifty two thousand five hundred dollars (\$52,500). Each defendant will be ordered to pay Court costs of \$130.

Costs

[40] The informant seeks costs at a level greater than that provided for in the schedules to the Costs in Criminal Cases Act 1967. It is entitled to costs of course and I direct that its claim be particularised in a Memorandum for the Court, to be filed and served with upon the defendants within 21 days. The defendants in anticipation of such a claim have indicated willingness to abide the decision of the Court in this matter, but in case there is a response the defendants have a further 14days thereafter to file a memorandum.

[41] I direct the Registrar to place the file before me then for a decision fixing costs.

[42] Under section 68(2) & (3) of the Summary Proceedings Act 1957, I direct the Registrar to release this decision to the parties and fix a time and place for that purpose.

Signed at Auckland this 7th day of July 2009 at _____ am/pm

S A Thorburn
District Court Judge

