



THE PERILS OF SEWERAGE DISCHARGE

Marty Logan LLB

The writer recently appeared for a commercial fishing company which was convicted of unlawfully discharging sewerage from one of its vessels into the Lyttelton Harbour in contravention of the provisions of the Resource Management Act. As far as the Court and Counsel could tell, this was a first conviction of its type in New Zealand and serves to highlight the increasing attention focussed on sewerage discharge from vessels. If their vessels do not have suitable sewerage holding tanks then skippers need to be alert to the restrictions on discharging sewerage into the sea.

The facts of the particular case I appeared on were relatively simple. The vessel was an older style commercial trawler which did not have sewerage tanks on board and therefore the crew used portable toilet facilities when the vessel was in port. The vessel moved to a bunkering wharf shortly prior to leaving for sea and due to a last minute change in berthage and personnel the vessel was left without portable toilet facilities while it was bunkering. The crew used the on board toilets and there was a discharge direct from the vessel into the harbour which was noticed by Regional Council staff. The vessel operator was charged under sections 15B(1) and 338(1B)(A) of the Resource Management Act with discharging a contaminant to water in the coastal marine area. Evidence presented by the prosecution showed that not only is a discharge of raw sewerage a danger to health but it is also offensive to Maori cultural values. The discharge was relatively small and the Judge indicated that the normal fine would be in the region of \$1,000. In this case the defendant was fined slightly higher as it was a second discharge offence.

The Canterbury Regional Council alleged that the defendant had failed to take all reasonable steps to avoid the contamination by not fitting sewerage holding tanks. It was pointed out that Fullers Ferries had recently fitted its fleet with such tanks. This raised the issue of whether at least one regional council

was in effect insisting that all vessels operating within its jurisdiction install holding tanks. Ultimately this submission was not accepted by the Court but it was accepted that those who operate vessels without such holding tanks need to be especially vigilant about discharges and bear the risk of prosecution even if the spill was inadvertent.

The fact that central and regional governments are increasingly concerned with these types of discharges is reflected in the Resource Management (Marine Pollution) Regulations which came into force in 2001. These deal with dumping and discharging waste from vessels. These regulations provide that no person may discharge sewerage into the coastal marine area from a ship unless the discharge occurs:

- (a) more than 500 metres (0.27 nautical miles) seaward from mean high water springs; and
- (b) more than 500 metres (0.27 nautical miles) from a marine farm; and
- (c) in water depths greater than 5 metres; and
- (d) more than 200 metres (0.108 nautical miles) from a marine reserve; and
- (e) more than 500 metres (0.27 nautical miles) from a mataitai.

The recent prosecution and the comments of the Judge show that regional councils take these discharges seriously and will enforce the Resource Management Act and the regulations where they have proof of offending.

May 2005