

**IN THE DISTRICT COURT
AT HAMILTON**

**I TE KŌTI-Ā-ROHE
KI KIRIKIROA**

**CRI-2018-075-000748
[2020] NZDC 23854**

WORKSAFE NEW ZEALAND
Prosecutor

v

WASTE MANAGEMENT NZ LIMITED
Defendant

Hearing: 16 November 2020
Appearances: A Longdill and N Self for the Prosecutor
P White for the Defendant
Judgment: 16 November 2020

NOTES OF JUDGE D M WILSON QC ON SENTENCING

[1] In a reserved judgment which I delivered on 20 August 2020, I have entered a verdict of guilty against Waste Management New Zealand Limited on a charge of contravening various sections of the Health and Safety at Work Act 2015.

[2] The charge was brought following an investigation into a workplace accident in which Mr Kanui Ramanui sustained injuries, including circumferential degloving and fractures to his left arm, at the defendant's tyre processing site at Kerepehi while he was attempting to clear an obstruction to a conveyer belt on the site's only tyre shredder.

[3] Various particulars were alleged, and with the exception of the allegation that they had failed to get suitable guarding verified by a competent person, I found each of those particulars established. Waste Management at the hearing responsibly filed admissions under s 9 of the Evidence Act 2006, and these admissions professionally offered and accepted made for a more efficient running of the hearing.

[4] The main purpose of the Health and Safety at Work Act 2015 is to provide for a balanced framework to secure the health and safety of workers and workplaces by protecting the workers and other persons against harm to their health, safety and welfare, by eliminating or minimising risks arising from work or from prescribed high-risk plant; securing compliance with the Act through effective and appropriate compliance and enforcement procedures; and providing a framework for continuous improvement and progressively higher standards for work and safety.

[5] Regard must be had to the principle that workers and other persons should be given the highest level of protection against harm to their health, safety and welfare from hazards and risks arising from work or from specified types of plant, as is reasonably practicable.

[6] In this case, the approach to sentencing is well understood, and in fact both counsel have adopted similar approaches to their submissions. The first point to consider is a reparation order for emotional harm. Here, I have had the advantage of reading the restorative justice conference report. I have heard Mr Ramanui read out his victim impact statement in court at the commencement of sentencing. I have had regard to the actual harm he suffered, and to the photos which were annexed to the victim impact statement, and to the authorities which are mentioned in the prosecution submissions at paragraph [5], where a series of authorities were brought to my attention where reparation had been ordered for various forms of broadly similar injuries, pain, dislocation and downstream emotional trauma.

Emotional Harm

[7] I am satisfied by reference to those authorities, including *Worksafe New Zealand Ltd v John Austin Ltd*, *Worksafe New Zealand v Miller Foods Ltd*, and

Worksafe New Zealand v Cropp Logging Ltd, that the proposition of the prosecutor, and indeed of Mr White, that the sum of \$50,000 should be allowed for emotional harm.¹ It is of relevance to reflect that that sum was being offered at the restorative justice conference before the position of the prosecutor was known. I am satisfied that in terms of the Act and the authorities that have been cited under it, that that figure is appropriate, and I order that accordingly².

[8] There is also jurisdiction under s 152(1) of the Health and Safety at Work Act 2015 to make an award of a sum which is just and reasonable towards the cost of prosecution. In that case, Ms Longdill submitted that an appropriate sum was \$26,628.92. There is no dispute from Mr White as to the appropriateness of that sum, and accordingly that sum is awarded.

[9] The sentencing criteria are agreed. They include the criteria that are set out in the Act under s 151, so that the usual sentencing criteria under the Sentencing Act 2002 in ss 7 to 10 inclusive apply; as do the purpose of the Act, the risk of and potential for illness, the fact of serious injury actually occurring, and regard must be had to the safety record of Waste Management Limited as well. In that regard, there are two historic prosecutions many years ago in the early 1990s, and Ms Longdill did not suggest that those matters should aggravate or be added to any penalty that was imposed. Mr White submitted that given the history of involvement by Waste Management in what may be regarded as occasionally hazardous occupations such that the safety record is a factor that they are entitled to call on. There is no financial capacity issue here.

[10] What are those factors? Under the Sentencing Act, the defendant must be held accountable for harm. It is important to promote responsibility and acknowledgment of that harm, and to provide for deterrence, general and specific. The s 8 principles direct my attention to gravity and culpability, seriousness in comparison to other offences, consistency with decisions that are broadly similar, the effect on the victim, which I have referred to, and indeed the outcomes of restorative justice.

¹ *Worksafe New Zealand Ltd v John Austin Ltd* [2016] NZDC 6797; *Worksafe New Zealand v Miller Foods Ltd (t/a Remarkable Tortillas)* [2018] NZDC 5948; *Worksafe New Zealand v Cropp Logging Ltd* [2018] NZDC 20232.

² To Mr. Kanui Ramanui.

[11] Aggravating features under s 9 include loss, damage and harm, victim vulnerability.

[12] In regard to mitigation, while the first apology of which there is any record occurred in the context of the restorative justice conference on 3 November just earlier this month and the injury date was 21 November 2017, it is also to be acknowledged that that apology was open and genuine and accepted; and that since, Waste Management has tried to assist Mr Ramanui with ACC claims, arranging counselling services for him specific to his needs, including budgeting and financial planning, physiotherapy, and one of their people was going to investigate claimants from ACC. There is in this case no claim for direct financial recompense to Mr Ramanui apart from the emotional harm payment that I have mentioned.

[13] Importantly, of course, the main purpose of the Act, the one that I have mentioned, and the furtherance of that, is the purpose that must take predominant place in weighing up responsibility. Mr White has pointed to a number of measures that Waste Management has undertaken to make amends. Apart from the co-operation with the original prosecution and the offers that were made in the context of the restorative justice conference, there is also the offer of reparation that I have mentioned, some top up of wages in the sum of \$2,510.06, offers of ongoing employment, and those matters are entitled to be considered.

Fixing the fine

[14] The issue then comes down to assessing the quantum of the fine. Here, I adopt, as indeed Ms Longdill did, the orthodox sentencing approach set out in *R v Taueki*: fixing a starting point based on culpability, and then adjusting upwards or downwards for aggravating or mitigating circumstances.³ That approach has been adopted in *Stumpmaster v Worksafe New Zealand*.⁴

[15] There are four bands for culpability. Low culpability, and no one suggests that is this case. Medium culpability, where the range starting point in the region of

³ *R v Taueki* [2005] 3 NZLR 372 (CA).

⁴ *Stumpmaster v Worksafe New Zealand* [2018] NZHC 2020, [2018] 3 NZLR 881.

\$250,000 to \$600,000, and then there are progressions for high culpability, starting from \$600,000, and very high culpability, starting at a million and more. The real issue here is both sides accept that the culpability here falls into the medium range, and then counsel have both referred to a number of cases in which the quantum of the fine has been considered.

[16] In the course of my reserved judgment I made findings about the reasonably practicable steps that Waste Management could have taken and reflected on the risk of harm that flowed from those. The Court in *Stumpmaster* noted that although necessarily the risk under s 48 prosecutions will always be at least of causing harm or illness, it is still important to have regard to exactly what the risk was, how many people did it involve, for example, and might a worker have been killed.

[17] In this case, of course, there were a number of workers exposed to the unguarded tyre shredder: not only Mr Ramanui, but the two other men who were working with him. This departure from industry standards was a significant one: that was the ongoing operation of the tyre shredder without the guard being in place. It is an obvious hazard, and the defendant could have ensured that the tyre shredder was locked out and not operated, but did not do so. There is plenty of industry guidance on these issues.

[18] The cases that I have been referred to are of broadly similar circumstances. There are cases in the High Court including an appeal by Niagara Sawmilling Co Ltd, *Worksafe New Zealand v Alliance Group Ltd*, *Worksafe New Zealand v Allflex Packaging Ltd*, *Worksafe New Zealand v Furntech Plastics Ltd*, and others, including *Worksafe New Zealand v Alto Packaging Ltd*.⁵

[19] Both counsel, however, focussed particularly on *Worksafe New Zealand v Let's Bale Ltd*.⁶ In that case, the victim was operating an Equifibre machine and attempted to clear residual product that had built up near to the chain when her gloved

⁵ *Worksafe New Zealand v Niagara Sawmilling Co Ltd* [2018] NZDC 3667; *Worksafe New Zealand v Alliance Group Ltd* [2018] NZDC 20916; *Worksafe New Zealand v Allflex Packaging Ltd* DC Manukau CRI-2017-092-014520, 15 October 2018; *Worksafe New Zealand v Furntech Plastics Ltd* [2018] NZDC 18150; *Worksafe New Zealand v Alto Packaging Ltd* [2019] NZDC 14809.

⁶ *Worksafe New Zealand v Let's Bale Ltd* [2020] NZDC 4538.

right hand became trapped between the moving cog and the stationary chain, suffering injuries to her hand which required two weeks in hospital. No guard was in place, because a new bracket had been fabricated days earlier, so the earlier guard was no longer suitable. The defendant had engaged an engineer to fabricate a new guard, and advised workers that no guard was in place, instructing them to keep their hands well clear of the machine and to be particularly careful. There were aspects of that case which led to a fine starting point of \$425,000. The other cases I referred to had respectively fine starting points of \$500,000, \$550,000, \$480,000, \$500,000 in both the *Furntech* and *Alto* cases.

[20] This submission by Mr White that that is the appropriate one, and furthermore, that the situation here was less serious, with respect, ignores my specific finding that there was no direction to workers not to use the unguarded machine. I remember Mr Ramanui's statement: "monkey see, monkey do." What he was doing in reaching into the machine was simply what he had seen others do.

[21] There is no factual basis for a submission, according to my findings, that Mr Linthwaite gave any instruction to the on-site supervisor. It is particularly so that Mr Harwood accepted no responsibility to safety matters, including guards. He saw those as Mr Linthwaite's responsibility and not his. I refer to this in paragraph [66] and following of the reserved judgment. I pointed out then too that it was never his responsibility to make sure that guarding was on the machine when it was operating, and that there was nothing in the employment contract between Waste Management and Mr Harwood's company which placed any responsibility for compliance with the Act on Mr Harwood and his company, and he most certainly never accepted such responsibility.

[22] As a further point, the injury in the present case was more serious than *Let's Bale Ltd*. There, the victim was appropriately experienced, inducted and trained, and, as I found in the context of the reserved judgment, the induction and training of Mr Ramanui, who was brought in to work on the tyre shredder when driving work was not available to him, was inadequate, and the documentary record of it showed that it was inadequate.

[23] For those reasons, the appropriate fine here I find to be \$500,000. I should acknowledge that in the course of his submissions before me in court, Mr White submitted that the figure starting point should be \$450,000. That is not significantly below the appropriate figure, in my view.

[24] There are matters of mitigation that need to be taken into account. There are no aggravating matters that need to add to that. There is the fact that Waste Management took part in the restorative justice conference, and co-operated with prosecution. Those are acknowledged by Ms Longdill for Worksafe as entitling a deduction of 10 per cent and then five per cent, a total of 15 per cent.

[25] In addition to that, Mr White points to the significant remedial steps that have been taken and the overall good safety record. He asks for a further deduction of five per cent on each account. He points out that Waste Management closed the Kerepehi site. It had intended to relocate, but that relocation was awaiting a time when the new site would be ready. Waste Management closed it early, it seems in response the situation with the tyre shredder. That is entitled to a degree of further deduction.

[26] In my view, the overall deduction from the starting point of \$500,000 should be a deduction of 20 per cent. Accordingly, I fix the fine as one of \$400,000.

Judge DM Wilson QC
District Court Judge

Date of authentication: 10/12/2020

In an electronic form, authenticated pursuant to Rule 2.2(2)(b) Criminal Procedure Rules 2012.

From: [Andre Baldock](#)
To: [Will Hewitt](#); [Dina Tuduc](#); [Danielle Stephens](#)
Subject: FW: Your scan (Scan to My Email)
Date: Tuesday, 29 September 2020 1:19:58 p.m.
Attachments: [scan_abaldock_2020-09-29-12-38-22.pdf](#)
[image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)

Hi **s9(2)(a)**

Attached is the signed PDF of the Waste Management triage report – for you to save over the top of the Word version in the M&I files.

I have created the INCA investigation case and updated the details – and have saved the PDF into its documents in Objective.

I have moved it to Surveillance/Watch List phase. Can you guys please set up the monitoring event/reminder to obtain the judgment once it is out.

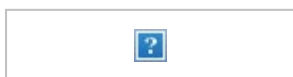
I will assign it to **s9(2)(a)** as it is intended to sit with M&I until after the judgment is obtained. After which it can be re-triaged.

Let me know if you have any questions.

Thanks
Andre

Andre Baldock ([he/him](#))
Senior Investigator Enforcement
Overseas Investment Office

abaldock@linz.govt.nz | DDI 04 831 1680



Wellington Office, Level 7, Radio New Zealand House, 155 The Terrace
PO Box 5501, Wellington 6145, New Zealand
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From: Andre Baldock <ABaldock@linz.govt.nz>
Sent: Tuesday, 29 September 2020 12:39 p.m.
To: Andre Baldock <ABaldock@linz.govt.nz>
Subject: Your scan (Scan to My Email)

From: s9(2)(a)
To: [Overseas Investment Office Monitoring](#)
Subject: GOOD CHARACTER REPORTING - WASTE MANAGEMENT NZ LIMITED (Company Number 1795427)
Date: Wednesday, 23 September 2020 5:58:12 p.m.
Attachments: [image001.gif](#)
[image004.gif](#)
[image005.gif](#)
[image006.png](#)
[NZPRN02_PRN-AKL-318EASTTAMAKI-RD02_3683_001.pdf](#)

Good evening

Please find **attached** good character reporting.

Should you have any questions please do not hesitate to contact me.

Regards

s9(2)(a)

Waste Management NZ Limited
318 East Tamaki Road, East Tamaki, Auckland 2013

s9(2)(a)

www.wastemanagement.co.nz



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Released under the Official Information Act 1982



21 September 2020

Overseas Investment Office

P O Box 5501

Wellington 6145

By Email to: oiomonitoring@linz.govt.nz

GOOD CHARACTER REPORTING - WASTE MANAGEMENT NZ LIMITED (Company Number 1795427) ("Waste Management")

In respect of:

(Standard Condition 4) **Decision 201420046** relating to the acquisition of 50% shareholding in Living Earth Limited;

(Standard Condition 8) **Decision 201610125** relating to the acquisition of Tirohia landfill;

(Standard Condition 7) **Decision 201620068** relating to the Puketutu lease extension for Living Earth Limited;

(Standard Condition 5) **Decision 201720110** relating to the lease by Waste Management NZ Limited of the premises at East Tamaki;

(Standard Condition 5) **Decision 201900389** relating to Waste Management NZ Limited's purchase of land at 1232 SH1 Wayby Valley Wellsford; and

(Standard Condition 5) **Decision 201720096** relating to Waste Management NZ Limited's Project Polaris including acquisition of Springhill and Matariki land.

Together "the **Decisions**".

In accordance with the Standard Conditions specified in the Decisions, Waste Management has a requirement to provide information to the Office in respect of any offences committed by Waste Management and any offences or contraventions that it is charged with (among other things).

Waste Management was charged with contravening s36(1)(a) and s48(1) and (2)(c) of the Health and Safety at Work Act 2015 ("the **Charges**"). This followed an investigation into an incident on 16 November 2017 in which a worker, sustained injuries to his left arm while working at a tyre processing site in Kerepehi owned by Waste Management.

Although Waste Management had appropriate safety systems and guarding on the tyre shredder, on the day of the incident these safety systems were not followed by workers on site and this failure caused the incident. The court found that certain Waste Management managers knew that on

occasion the safety systems were not being followed and could have taken reasonable steps to address that risk. Accordingly, their knowledge was attributed to Waste Management, which has been found guilty of the Charges.

Waste Management permanently closed the Kerephi site following the incident.

Judge DM Wilson has indicated that sentencing will include restorative justice and the possibility of a fine. Sentencing is expected in November 2020.

Waste Management defended the charges on the basis that, as a company, it takes its health and safety obligations seriously, has implemented requisite health systems, and in the circumstances had taken all practicably reasonable steps to eliminate risk. Despite that defence being unsuccessful, it is far from the case that Waste Management has been found to have acted deliberately or committed serious wrongdoing to a degree that is good character might be in issue. Waste Management therefore believes it (and the individuals who control it) continues to meet the condition of remaining in good character.

s9(2)(ba)(i)

Should you have any questions please do hesitate to contact s9(2)(a)

s9(2)(a)

Yours sincerely

s9(2)(a)

Waste Management NZ Limited

Triage Report

202000621/201420046/201610125/201620068/201720110/201900389/201720096 – Waste Management NZ Limited - good character issues re tyre processing site in Kerepehi

Key information

Incident date	30 June 2023
Triage date	4 July 2023
Incident officer	Andre Baldock
Source of referral	Enforcement Manager (Simon Pope)
Confidentiality requested?	No
Suspected breach type	Breach of condition

Summary

1. On 22 June 2023, LINZ received a follow-up Official Information Act request from Cecile Meier related to investigation documentation concerning Waste Management NZ Limited (WMNZ) and Enviro NZ (DOIA 23-226 - <http://inca/#/ca/80153>).
2. The scope of this request covers information relating to our September 2020 investigation into any good character issues arising from a workplace health and safety incident at its tyre processing facility in Kerepehi.
3. In preparing the OIA response an internal administrative error was identified. Waste Management reported the charges under the Health and Safety Act, and the fact they had been found guilty of the charges. At that time, however, the Judge had yet to sentence Waste Management. On that basis, the Screening Group recommended referring the matter back to Monitoring to place it on a watch list while awaiting the sentencing notes, and to prepare a new Triage Report once they had received the sentencing notes. Unfortunately, there appears to have been a breakdown in our internal process as the sentencing notes were added to our systems on 6 January 2022,¹ but the matter was not re-triaged and the monitoring file was closed. Therefore, the matter was not reconsidered by Enforcement with the benefit of the sentencing notes.
4. The Enforcement Manager requested that the matter be re-triaged as a matter of priority.

Asset concerned

5. WMNZ has obtained multiple consents under the Overseas Investment Act 2005 (the Act) to date – case numbers 201420046, 201610125, 201620068, 201720096, 201720110, 201900389.

¹ See case 202000621 ([73505](#)).

Information in and attached to this report may be legally privileged

6. WMNZ holds multiple consents under the Act. Under each consent decision, WMNZ is required to report on good character matters and requirement to remain of good character. The relevant list of consent decision and reporting conditions are:
 - (a) (Standard Condition 4) Decision 201420046 relating to the acquisition of 50% shareholding in Living Earth Limited;
 - (b) (Standard Condition 8) Decision 201610125 relating to the acquisition of Tirohia landfill;
 - (c) (Standard Condition 7) Decision 201620068 relating to the Puketutu lease extension for Living Earth Limited;
 - (d) (Standard Condition 5) Decision 201720096 relating to Waste Management NZ Limited's Project Polaris including acquisition of Springhill and Matariki land.
 - (e) (Standard Condition 5) Decision 201720110 relating to the lease by Waste Management NZ Limited of the premises at East Tamaki;
 - (f) (Standard Condition 5) Decision 201900389 relating to Waste Management NZ Limited's purchase of land at 1232 SH1 Wayby Valley Wellsford; and

(Together "the Decisions".)

Person/s concerned

7. Waste Management NZ Limited (WMNZ) is a New Zealand incorporated company and is NZ's largest resource recovery and waste management services provider, with vertically integrated operations across the country.
8. At the time of the original issue and investigation (2020) WMNZ was ultimately owned by Beijing Capital Group Company Limited (China, People's Republic of 83.12%, Hong Kong (SAR) 16.88%).
9. Based on the 2018 assessment report for consent number 201720110, the relevant ROP's and IWC of WML were:

Relevant overseas person

23. We have determined that the 'relevant overseas person' (collectively) is:

- (a) Waste Management NZ Limited; and
- (b) Beijing Waste Management Capital NZ Limited.

Individuals with control

24. We have determined that the 'individuals with control of the relevant overseas person' are:

- (a) the directors of Waste Management NZ Limited, who are for the time being:
 - (i) Hans Evan Geoffrey MAEHL;
 - (ii) Hengjie ZHANG; and
 - (iii) Thomas Harvey NICKELS.
- (b) the directors of Beijing Waste Management Capital NZ Limited, who are for the time being:
 - (i) Lishun WU;
 - (ii) Guoxian CAO;
 - (iii) Bin YANG;
 - (iv) Meng ZHANG;
 - (v) Hengjie ZHANG;
 - (vi) Graham David MULLIGAN; and
 - (vii) Thomas Harvey NICKELS.

Information in and attached to this report may be legally privileged

10. On 22 August 2022, OIA consent was granted to Tui Bidco Limited (Tui Bidco) to acquire up to 100% of the shares in Beijing Capital Group NZ Investment Holding Limited (the immediate parent company of WMNZ).²
11. Tui Bidco is ultimately owned by First Sentier Investors (Australia) RE Limited (Australia (63.83%), Canada (16.69%), Japan (13.51%), Europe Region (1.31%), Cayman Islands (0.07%), Various (0.1%)).
12. The "relevant overseas persons" (ROPs) and "individuals with control" (IWCs) changed in 2022 when consent was granted.
13. The Tui Bidco Assessment Report shows that the ROPs and IWCs are now as follows:

6.1 The 'relevant overseas person' is (collectively):

Relevant overseas person	Role
Tui Bidco Limited	Applicant and acquiring entity
First Sentier Funds	Owner of the holding entities of the Applicant

Relevant overseas person	Role
First Sentier Investors (Australia) Infrastructure Managers Pty Ltd (FSI AIM)	Manager of First Sentier Funds
First Sentier Infrastructure Managers (International) Limited (FSI MIL)	Manager of First Sentier Funds
First Sentier Investors (Australia) Infrastructure Holdings Ltd (FSI AIH)	Parent company of FSI AIM and FSI MIL and Manager of First Sentier Funds
First Sentier Investors (Australia) RE Ltd (FSI ARE)	Trustee of First Sentier Funds

6.2 The 'individuals with control of the relevant overseas person' are:

Individuals with control	Role
Gavin William Kerr	Director of Tui BidCo Limited
Marc Lindsay Benschler	
Elizabeth Ann Hastilow	Director of FSI AIH and FSI ARE
Scott Patrick Lennon	Director of FSI AIM and FSI MIL
John Daniel Dorrian	
Asieh Mansour	
Susan Ho	
Bachar Beaini	
Diloshini Indika Seneviratne	
Philip John Williams	Director of FSI AIH
Mark Steinberg	Director of FSI ARE
Brian John Hollingworth	
Suzanne Clare Evans	
David Martin Allen	

² The purchaser has acquired OIA consent – see case number & assessment report: <https://linzone/id:A4996636>

Information in and attached to this report may be legally privileged

Recommendation

14. Based on my review of the information, I recommend:

Recommendation	Tick	Basis for answer
The Incident progress to Assessment phase.	Y	Further work needs to be done to review the judgment and assess what, if any, affect it has on WMNZ's compliance with its good character conditions.
No further action be taken and the Incident be closed		
An Enforcement Tool be deployed [link to Enforcement Approach] and then the Incident be closed		

s9(2)(a)

Pedro Morgan / s9(2)(a)
Principal Advisor Enforcement

Agree:
 Disagree:
 Amend as marked:

Date:

s9(2)(a)

Simon Pope
Manager Enforcement

Agree:
 Disagree:
 Amend as marked:

Date:

Notes for Assessment Team

Questions	Notes
Assessment team member(s)	
Date to report back to Screening Group (20 working days)	

Questions	Notes
<p>Comments or guidance on areas to review</p>	<p><u>Pedro's view:</u> The conditions of consent applied to the individuals with control of the relevant overseas person. Waste Management's acts and omissions occurred <i>prior</i> to Tui's investment. Nothing suggests that the current individuals with control have any connection to those acts or omissions. If that is so, then it follows that the acts and omissions and resulting conviction couldn't impact upon their character or their compliance with either the good character condition or investor test.</p> <p>To the extent that the investor test also applies to Tui, Waste Management's acts and omissions predate Tui's investment, and therefore could not make Tui "unsuitable to own or control any sensitive New Zealand assets".</p> <p>My initial view is that no assessment is required and the file should be closed.</p> <p><u>Simon View</u> I agree the conditions of consent applied to the individuals with control at the date of the incident and cannot be attributed to the new individuals with control following Tui's subsequent investment. Also, upon reviewing the sentencing notes there is no reference to the previous individuals with control or any suggestion that their conduct may have contributed to the incident. On this basis, I agree the file should be closed.</p>

Released under the Official Information Act 1982

Triage Report – Monitoring Incident

20200062 – Waste Management NZ Ltd

Key information

Incident date	23 September 2020
Triage date	29 September 2020
Referral person	s9(2)(a)
Suspected breach type	Good Character

Details of asset and date consented

1. Waste Management NZ Ltd (WM) has obtained a number of consents relating to the purchase or leasehold of sensitive land in New Zealand. WM operates waste collection and processing facilities located throughout New Zealand.

Consent holder

2. The consent holder's assets are primarily held by Beijing Capital Group New Zealand Investment Holding Limited.

Brief summary of information reviewed/inquiries made

3. WM contacted OIO on 21 September 2020 to report on a potential breach of good character, following a charge of contravening s36(a)(a) and 2(c) of the Health and Safety at Work Act (2015). A worker injured their arm while working at a tyre processing plant in Kerephei (near Paeroa). The consent holder states the plant was closed in 2017, following the incident.
4. Checks indicate that consent from the OIO was not necessary at the time for the consent holder to operate the plant on the land.
5. The land is owned by the Bay of Plenty Group Limited, and the nature of the lease arrangement is unknown.
6. Media reports indicate the consent holder was also cautioned against the number of tyres stored on the land, which was deemed an environmental hazard by the Waikato District Council. An abatement notice was issued in October 2017, with orders given to remove the tyres from the property (see Appendix B).
7. This is the first time the consent holder has notified the M&I Team of the processing plant, the event that occurred on the plant, and the subsequent investigation and charges.

Assessment

8. On the basis of the information currently available:

Question	Y/N	Basis for answer
Does there appear to have been a breach of a condition of consent?	Y	Potential breach of good character requirement under the Act

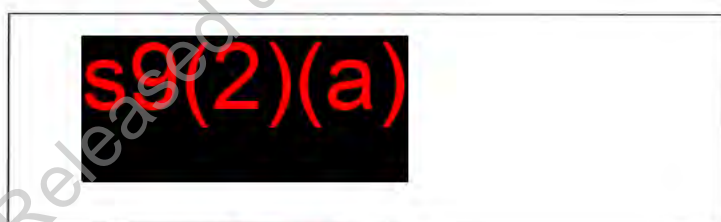
Information in and attached to this report may be legally privileged

Question	Y/N	Basis for answer
Is the breach likely to impact on the delivery of key benefits/commitments?	N	Non-compliance is not likely to affect the delivery of any benefits and commitments of Waste Management's assets
Is the Incident within the limitation period?	Y	Ongoing requirement for consent holder to remain of good character (s 45)
Is the investor complying with the other conditions of this consent?	Y	Consent holder generally complied with the requirements of their consents
Has the investor complied with their OIO obligations generally?	Y	Yes
Is there another regulatory or disciplinary body that has more appropriate jurisdiction or powers than the OIO to consider this?	Y	Work Safe NZ

Recommendation

9. Based on my review of the information, I recommend:

Recommendation	Tick	Basis for answer
The Incident progress to Assessment phase. <i>[This may be recommended where we need further information or a further assessment of the potential breach is required].</i>	see comments	<i>Include brief reason for assessing further, including what further steps/information may be required.</i>
No further action be taken and the Incident be closed		<i>Include brief reason for closing.</i>
An Enforcement Tool be deployed and then the Incident be closed		<i>Include brief reason for deploying a tool. Refer Resource 6, Appendix 1 Enforcement Manual.</i>

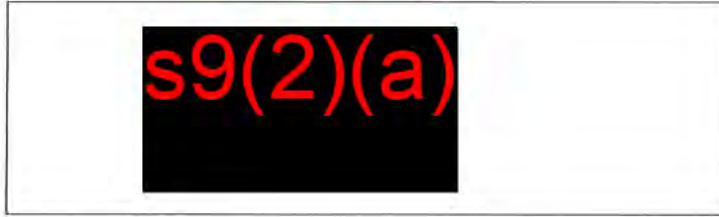


Pedro Morgan s9(2)(a)
Principal Advisor Enforcement

Agree:
Disagree:
Amend as marked:

Date: 29/9/20.

Information in and attached to this report may be legally privileged



Simon Pope
Manager Enforcement

Agree:
Disagree:
Amend as marked:

Date: 29/7/2026

Notes for Assessment Team [Screening Group to complete]

Questions	Notes
Assessment team member(s)	
Date to report back to Screening Group (20 working days)	
Comments or guidance on areas to review	To waiten list pending sentencing. M+I to prepare new report and re-triage.

Released under the Official Information Act 1982

APPENDIX A: Letter from Waste Management NZ Ltd dated 21 September 2020

GOOD CHARACTER REPORTING - WASTE MANAGEMENT NZ LIMITED (Company Number 1795427) ("Waste Management")

In respect of:

(Standard Condition 4) **Decision 201420046** relating to the acquisition of 50% shareholding in Living Earth Limited;

(Standard Condition 8) **Decision 201610125** relating to the acquisition of Tirohia landfill;

(Standard Condition 7) **Decision 201620068** relating to the Puketutu lease extension for Living Earth Limited;

(Standard Condition 5) **Decision 201720110** relating to the lease by Waste Management NZ Limited of the premises at East Tamaki;

(Standard Condition 5) **Decision 201900389** relating to Waste Management NZ Limited's purchase of land at 1232 SH1 Wayby Valley Wellsford; and

(Standard Condition 5) **Decision 201720096** relating to Waste Management NZ Limited's Project Polaris including acquisition of Springhill and Matariki land.

Together "the **Decisions**".

In accordance with the Standard Conditions specified in the Decisions, Waste Management has a requirement to provide information to the Office in respect of any offences committed by Waste Management and any offences or contraventions that it is charged with (among other things).

Waste Management was charged with contravening s36(1)(a) and s48(1) and (2)(c) of the Health and Safety at Work Act 2015 ("the **Charges**"). This followed an investigation into an incident on 16 November 2017 in which a worker, sustained injuries to his left arm while working at a tyre processing site in Kerepehi owned by Waste Management.

Although Waste Management had appropriate safety systems and guarding on the tyre shredder, on the day of the incident these safety systems were not followed by workers on site and this failure caused the incident. The court found that certain Waste Management managers knew that on

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occasion the safety systems were not being followed and could have taken reasonable steps to address that risk. Accordingly, their knowledge was attributed to Waste Management, which has been found guilty of the Charges.

Waste Management permanently closed the Kerephi site following the incident.

Judge DM Wilson has indicated that sentencing will include restorative justice and the possibility of a fine. Sentencing is expected in November 2020.

Waste Management defended the charges on the basis that, as a company, it takes its health and safety obligations seriously, has implemented requisite health systems, and in the circumstances had taken all practicably reasonable steps to eliminate risk. Despite that defence being unsuccessful, it is far from the case that Waste Management has been found to have acted deliberately or committed serious wrongdoing to a degree that is good character might be in issue. Waste Management therefore believes it (and the individuals who control it) continues to meet the condition of remaining in good character.

s9(2)(ba)(i)

Should you have any questions please do hesitate to contact s9(2)(a)

s9(2)(a)

Yours sincerely

s9(2)(a)

Waste Management NZ Limited

APPENDIX B: dated 21 September 2020

Tyre recycling: in a roundabout way

Matt Shand 05:00, Oct 21 2017

The wheels on the bus go round and round, so the song goes. But eventually they need to be replaced and the old tyres get put on a pile.

That pile grows by one tyre for every New Zealander each year, whether they drive or not and it never stops growing. Now it's reached the stage where the tyres, and the industry supposed to recycle them, keep going round and round in a game of musical chairs where the incentive is on shifting the problem and clipping the ticket rather than solving it.

Overseas old tyres are being turned into everything from synthetic fabric to roading surfaces. But it's a costly business and one which a country priding itself on a clean and green image just can't seem to make work.

Each tyre attracts a collection fee of between \$3 to \$5 for disposal. Tyre centres have bins full of tyres to be collected meaning all a tyre disposer has to do is drive by, collect them and send an invoice. Truck tyres cost even more to dispose of. It's a simple business case to pick them up and then worry about what to do with them. As one insider puts it, "there is no money in recycling tyres. There is only money in collecting them."

A string of court cases and ratepayers being left picking up the tab for failed tyre ventures has put a large black ring around the issue that's becoming increasingly hard to ignore.

In September, the owners of a Kawerau tyre pile, Alan and Angela Merrie, faced court for failing to adhere to an abatement notice issued by Bay of Plenty Regional Council asking them to remove a tyre mountain from Kawerau and Waihi.

Some of the tyres they had stored were collected from another failed tyre recycling yard in Frankton, Hamilton. This company collected a fee to store tyres before it went bust. Hamilton City Council picked up the tab and paid the Merrie's company, EcoVersion, \$286,000 to collect 150,000 tyres. The ticket was clipped. These tyres ended up in a quarry at Waihi as EcoVersion was already in breach of the terms of use of its Kawerau site. The quarry owners were to receive a storage fee also. Another ticket clipped.

After court proceedings the tyres were moved to another tyre yard just one kilometre away from the Kawerau site. Another collection fee was paid to store the tyres. Clip.

The Bay of Plenty Regional council will need to consider if the tyres need to be moved again but it is estimated there would be a \$500,000 to \$700,000 bill to pay if they were to be dumped in landfill. Another ticket to potentially be clipped. The cost to the Merries for breaching the abatement notice could be \$30,000, but that's the cost of collecting just a thousand of the millions of tyres collected in the saga.

Another yard illustrates the scale of the tyre issue.

Owned by Waste Management it sits near the rural town of Kerepehi on the Hauraki Plains. Here, approximately three million used tyres - three fifths of the old tyres New Zealand discards every year - have been stored.

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The yard represents up to \$15 million worth of waste tyres. But with the sort of collection fees being paid for tyres, a source in the industry says it doesn't cover the costs of operating the machines needed to break the tyres down into another reusable form.

Waste Management was issued an abatement notice in early October ordering the tyres to be restacked into smaller, safer piles and to eventually be removed.

According to the Companies Office website, Waste Management Ltd is owned by Beijing Capital Group, a Chinese state-owned enterprise.

The source said the number of tyres stored there had been heading up. "The number of new tyres going there has just gone through the roof. "On an average day they will would get about 2000 new tyres delivered," the source said. "It can be as high as 4000."

The company was setting up a warehouse in Auckland, which should be operational by the end of this year and a tyre shredding plant will take care of them. One of the big risks for tyres clumped in large numbers is a fire risk. Tyre fires can be nearly impossible to extinguish and have devastating environmental effects.

Hamilton Fire Service's Roy Breeze said tyres are an ongoing problem for the fire service. While not able to comment on specific tyre yards he said the biggest frustration is that they keep appearing. "It is easy money to get tyres and chuck them in a big pile then not do anything about getting rid of them," he said. "You issue an abatement notice and the problem is just moved around. They keep turning up."

It's an irony that fear of tyre fires, and the toxic gasses they would produce bring abatement notices but the ultimate end for most recycled tyres in New Zealand is to be turned into fuel and burned.

Owen Douglas was prosecuted in 2006 by then-Environment Waikato after he failed to comply with an abatement notice around tyre storage. He says burning tyres is the only practical solution to the landfill issue and he wants to see the cost to do so added to the cost of buying a tyre. Douglas purchased a tyre shredder and began making tyre-derived-fuel. This is where the steel beading is removed from the tyres with the remainder cut into shards. These shards are shipped to concrete manufacturers where they are mixed with coal and burned. Tyre derived fuel can burn at 1250 degrees destroying the tyre but creating greenhouse gasses.

"You cannot recycle a tyre in New Zealand," he said. "You can only repurpose it.

"There is no money in tyres. There is money in collecting tyres but there is no money in shredding them. You can only burn them to get rid of them. The only problem is concrete places will not pay for it, or pay so little it is not worth producing." He thinks a \$10 charge on the cost of new tyres would cover both the cost of collecting and processing old tyres.

Until that happens, it's business as usual on the tyre-go-round. "Mountains of tyres pile up until they become a fire risk," he said. "Abatement orders are issued to move the tyres away so they are shipped to the next landfill and the cycle just continues. "Operators who are paid to collect the tyres keep stacking them on, going 'bankrupt' and the problem is moved to somebody else. By the time the tyres are finally destroyed it is hard to know how many people have 'clipped' their ticket storing them." But the sort of industrial scale that can gather millions of tyres at Kerepehi could get others closer to a recycling solution, even if it's not entirely clean and green.

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Earlier this year Waste Management announced a new recycling scheme this year for end-of-life tyres. Waste Management General Manager Upper North Island Mike McSaveney, said further investment in new tyre shredding technology, which was supported with funding from the Ministry for the Environment, will result in a recycling solution through tyre-derived fuel.

"We are now pleased to see our further investment, combined with Government support, has resulted in a New Zealand-based solution for the re-use of end-of-life tyres," he said.

This tyre 'recycling' solution is paid for by the taxpayer. Golden Bay Cement was awarded a \$13 million grant from the Waste Minimisation Fund to set up the infrastructure needed to incinerate old tyres. Waste Management was awarded \$3.8 million to purchase the shredders needed to 'recycle' the tyres.

Others prefer not to see the future or recycling through a haze of burning tyre waste.

"Tyre rubber is a resource we have plenty of so we need to figure out how to do something with it rather than just burning it," material scientist Marc Gaugler said. Science research centre Scion, where Gaugler works, has also been awarded a grant under the Waste Minimisation Fund to research other solutions for old tyres as the piles continue to grow across New Zealand.

One aspect of their research project is investigating a process to devulcanise tyres to allowing the rubber to be used for other purposes. In vulcanising a 'linker', usually sulphur, is added to the rubber in tyres to increase the molecular bonds and make the tyre stronger. While this process makes for an incredibly durable tyre it also creates a problem where the finished product is nearly indestructible. In the United States devulcanised tyres are used to create roading and other building materials but the process is difficult in New Zealand due to a lack of infrastructure to perform the process. "Once the rubber is devulcanised it can also be added to virgin product and revulcanised to create more tyres." Gaugler said Scion has managed to create several plastics using recycled rubber that are flexible and have several practical applications. "The big problem will be eliminating the odour," he said.

Waikato University Professor Alexander Gillespie said the government needs to help create a recycling market in order to encourage companies to do the right thing. "The first step is to create a demand for recycled tyres," he said. "America uses recycled tyres for motorways so there is demand for the end product. (In New Zealand) There is no money to be made at the moment."

Gillespie said some countries have mandates that phone books must be made from recycled papers. This in turn creates an opportunity for someone to profit from recycling while still providing a service. A similar approach could be used with waste tyres. "Burning tyres is one way to get rid of them and I have no problem with that if you can collect all the harmful emissions from doing so," Gillespie said. "Then you need to offset the carbon emissions you cannot collect because you can't filter those out."

A final solution is for the manufacturer of tyres to take responsibility for the product they produce. Essentially tyres are returned to the manufacturer for destruction once they reach the end of their useful life. "If they are building a product and having it turn back up on their doorstep for destruction they would pretty soon figure out a better way to create their product for disposal," Gillespie said.

In the meantime, the tyres go round and round.

Waikato Regional Councillor Kathy White said tyres need to be made a priority under the Waste Minimisation Act. "Tyres are the sleeping giant," she said. "Sadly, governments normally ignore

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the risks posed by tyre stockpiles until they go up in flames and emit vast amounts of carcinogenic material into the atmosphere.

White said without mandatory schemes the tyres are just dumped on land and waterways that do not have rules protecting them.

It's a merry-go-round with councils all individually spending time and money trying to manage the problem without actually finding a solution. All of this happens because the government has failed to acknowledge how big a problem this is."

Source: <https://www.stuff.co.nz/business/97379100/tyre-recycling-in-a-roundabout-way> accessed on 28/09/2020



CHRISTEL YARDLEY/STUFF

A stack of tyres at a Waste Management yard at Kerepehi pictured in Early October. An abatement notice was issued for the site.

From: s9(2)(a)
To: [Overseas Investment Office Monitoring](#)
Subject: RE: GOOD CHARACTER REPORTING - WASTE MANAGEMENT NZ LIMITED (Company Number 1795427)
Date: Wednesday, 18 November 2020 1:39:02 p.m.
Attachments: [image006.gif](#)
[image009.gif](#)
[image010.gif](#)
[image011.png](#)
[image012.png](#)
[image013.png](#)
[image014.png](#)
[image015.png](#)
[image002.png](#)

Good afternoon s9(2)(a)

As you know, Waste Management NZ Limited (**Waste Management**) was found guilty on 20 August 2020 of one charge of contravening Section 36(1)(a) and Section 48 (1) and (2)(e) of the Health and Safety at Work Act 2015 following an investigation into an incident on 16 November 2017 in which a worker sustained injuries including circumferential degloving and fractures to his left arm at a Waste Management tyre processing site in Kerepehi while attempting to clear an a tyre shredding machine.

We note that our Health, Safety, Environment and Quality (HSEQ) system that supports our operations was commended by Worksafe and was found to meet all requirements of the Health and Safety at Work Act 2015 and all relevant standards applicable to the operations.

That said, the Judge found in favour of WorkSafe in relation to charges concerning the guarding on the tyre shredder, the system of work for the shredder and the supervision and training provided by Waste Management on the operation of the shredder.

Waste Management provides the following updates regarding these matters since the time of the incident:

Following the incident, we immediately inspected the 14 sites where we have conveyor belts and confirmed they had guarding fitted in accordance with the AS/NZ 4024 Guarding Standard. This provided confidence that the missing guards on the conveyor which contributed to the incident at Kerepehi was an isolated occurrence.

In line with the continual improvement processes in our HSEQ system, all members of our team who deliver training have are now required to completed both either Unit Standard 7108 Deliver on Job Training and or Unit Standard 4098 Assessment of Candidates Performance. Since the incident we also engaged an external training provider, UpSkills, to deliver our bespoke Skills First programme designed to empower and build confidence in our wider team.

In 2018 we closed the Kerepehi site and opened a state-of-the-art tyre recycling facility in Wiri. This is managed by a Waste Management supervisor and staffed with permanent team members, removing any potential confusion regarding site supervision.

Finally, and more broadly, we have evolved our overarching approach to safety since 2017. We focus our executive, managers and team members on Critical Risks, as is now global best practice. This ensures we are identifying and spending our time and effort managing those risks most likely to result Significant Injuries or Fatalities, such as the risk of uncontrolled energy which caused this unfortunate incident. We feel this approach provides more robust protection for our team members and our company against future incidents of this kind.

Sentencing on this matter took place on **Monday 16 November**. Waste Management does not have a written sentencing report from the Judge yet. The Judge handed down a fine of \$400,000 and \$50,000 to be paid to the injured worker. In addition, Waste Management has met with the injured worker to apologise and offer him a role at Waste Management.

Should you have any further questions please do not hesitate to contact the writer.

Sincerely

s9(2)(a)

Waste Management NZ Limited
318 East Tamaki Road, East Tamaki, Auckland 2013

s9(2)(a)

www.wastemanagement.co.nz



From: Overseas Investment Office Monitoring <OIOmonitoring@linz.govt.nz>

Sent: Friday, 9 October 2020 2:59 PM

To: s9(2)(a)

Subject: GOOD CHARACTER REPORTING - WASTE MANAGEMENT NZ LIMITED (Company Number 1795427)

BEWARE: This email originated from outside Waste Management NZ. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good afternoon **s9(2)(a)**

The Overseas Investment Office (OIO) have now reviewed the letter Waste Management NZ Limited submitted to the OIO on 21 September 2020.

The OIO understands from the letter you provided that there is upcoming sentencing (November 2020) relating directly to charges under the Health and Safety at Work Act 2015. We request that you keep us informed of these proceedings within 20 days of the decision.

Please forward your update on these proceedings and any queries you may have to OIOmonitoring@linz.govt.nz

We look forward to your reply.

Regards,

s9(2)(a)

Advisor

Monitoring Team - Overseas Investment Office

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