

Prosecution Bulletin no. 3/2015

Summary

- A Gold Coast company has this week been fined \$40,000 and ordered to pay legal costs and investigative costs of \$2,835 for willfully failing to comply with an environmental protection order
- The sentence was delivered in the Southport Magistrates Court on 24 August 2015 by Magistrate Magee.
- The company had been charged with 5 offences against section 361 of the *Environmental Protection Act 1994*.

Facts

The company held an environmental authority to carry out crushing, milling, grinding or screening activities, as well as waste transfer station activities in Southport. The environmental authority contains conditions relating to air noise, and water quality and control.

The Department of Environment and Heritage Protection had received a number of complaints since 2004 that the company's operations were not in accordance with the conditions of the environmental authority. The company had been issued with four official warnings and five penalty infringement notices as a result.

In March 2013, due to ongoing complaints about the company's activities, the Department issued an Environmental Protection Order (EPO) to the company. The EPO required the company to satisfy air and noise conditions by 1 May 2013, and to comply with water conditions by 1 September 2013.

Between April 2013 and November 2013, officers from the Department attended the property to conduct several site inspections to ensure that the conditions of the EPO were being complied with. The inspections revealed non-compliance with the requirements of the EPO.

As a result, the company was charged with 5 offences of wilfully breaching the requirements of an EPO, contrary to section 361 of the *Environmental Protection Act 1994*.

Outcome

On 24 August 2015, the company pleaded guilty to the charges before the Southport Magistrates Court and was fined \$40,000. The court also ordered the company to pay legal and investigative costs of \$2,835.

In sentencing the company, Magistrate Magee took into account a number of factors including the early plea of guilty, the company's attempts to comply with the EPO, eventual compliance with one condition of the EPO, and that the company had been experiencing both project and legal difficulties.

However, Magistrate Magee found that the offending was serious and had occurred over a long time, and noted that the Department had given the company every opportunity to reach compliance. The Court took into account that it is incumbent on companies to be vigilant in adhering to the conditions of any environmental authority, and that there is significant trust put in industry to comply and report any issues.

This case is an important reminder that failure to comply with an Environmental Protection Order is considered a serious offence and will not be taken lightly by the Court.

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