

Prosecution Bulletin no. 4/2018

Summary

- On 9 April 2018, a jury found Linc Energy guilty of five counts of wilfully and unlawfully causing serious environmental harm.
- On 11 May 2018, the Brisbane District Court sentenced Linc Energy. The judge imposed fines of \$700,000 for each of counts 1, 2 and 3 on the indictment, and \$1.2 million for counts 4 and 5 on the indictment, making a total fine of \$4.5 million.
- A conviction was recorded.

Facts

Linc Energy's (Linc) underground coal gasification pilot project was located in the Hopeland area, approximately 20 kilometres south east of Chinchilla, Queensland. It first operated between 1999 and 2002. Under new management, Linc recommenced the project and continued operations until 2013. The project moved into a phase of decommissioning in November 2013.

Underground coal gasification (also known as UCG) involves the fracturing of coal seams. During the process, the coal seam is ignited and an oxidant (in Linc's case, mainly air) is injected into the coal allowing the oxidation process to produce various gases. The gases produced are known as 'synthesis gas' or 'syngas' and can be used for power generation and for making synthetic fuels. The focus of Linc's operations was on making synthetic fuels through a gas to liquids ('GTL') process.

The company, through its operation of the site from 2007 to 2013, contravened obligations under the *Environmental Protection Act 1994* as it allowed contaminants to escape into the surrounding landform.

Committal proceedings took place before the Dalby Magistrates Court on dates in October, November and December 2015. In March 2016, Linc Energy was committed to stand trial in the District Court.

The investigation and prosecution of Linc Energy is the largest and most complex ever conducted by the department.

The company was charged with five counts of wilfully and unlawfully causing serious environmental harm, contrary to section 437 (1) of the *Environmental Protection Act 1994*.

Outcome

On 11 May 2018, the Brisbane District Court (the Court) sentenced Linc Energy. The judge imposed fines of \$700,000 for each of counts 1, 2 and 3 on the indictment, and \$1.2 million for counts 4 and 5 on the indictment, making a total fine of \$4.5 million.

By the time of the trial Linc Energy had gone into liquidation and the company's liquidators had obtained orders from the Supreme Court under the *Corporations Act 2001* (Cth) allowing them to not defend the proceedings.

As a result, the prosecution case was required to be 'strictly proved' meaning that a significant volume of documentary evidence needed to be tendered, and approximately 80 witnesses needed to be called. The judge noted that the non-appearance caused particular difficulties during the trial and also had an impact on sentencing proceedings.

In sentencing, the court took into account the utility of imposing a financial penalty on a corporation in liquidation. The need for denunciation or general deterrence of specific criminal conduct were noted to be matters justifying the penalty.

In relation to the UCG process, the Court found that the company was well aware of the dangers of contamination from the process and the principles to be applied, both in the safe operation of the project and its shut-down and remediation after it had ceased.

A significant feature of count 5 was that prior to the commencement of Gasifier 5, the company had applied to the regulator to amend its environmental authority. That application was to extend the limits of possible contamination to an area much larger than had been previously acknowledged.

The judge noted that was a clear indication that Linc was well aware of the damage that was being done and was attempting to hide it from the regulator—a particularly aggravating feature.

The impacts of the offences have been serious and extensive. The impacts have extended well beyond the boundaries of the Linc site. The groundwater is used by local farmers for stock, and the monitoring wells that needed to be put in place in terms of monitoring the impact on that groundwater are extensive. It will cost many millions of dollars to deal with the contamination impact.

Drilling costs to investigate the extent of contamination are extremely expensive, as are the investigation works that have been required to address the risks of explosive gas and exposure to carcinogens that are a by-product of the UCG process.

In the Court's view, the company put its commercial interests well above its duty to conduct its processes in a way that safeguarded the environment. This was shown by its continued efforts to be seen as a successful GTL producer on a commercial scale. To achieve this, Linc operated its gasifiers above the surrounding groundwater pressures, well knowing that contaminants were escaping widely. In its 2007 gasification campaign, Linc also injected air into the landform at pressures that caused significant fracturing of the landform and the cement surrounding well infrastructure.

In the Court's view, in relation to counts 1 to 3, Linc ignored the obvious risks and continued on, but in relation to the two later offences (counts 4 and 5), the Court's view was that the company acted with clear knowledge of the environmental damage it was causing and made commercial decisions to proceed regardless. The company's attempts to amend its environmental authority in relation to the G5 process and its withdrawal when the regulator required its internal water monitoring data was evidence of this. It was compounded by the cessation of its own groundwater monitoring for a substantial period of time, apparently in an endeavour to stop producing data that could be accessed by the regulator that may indicate the extent of any contamination. The Court's view was that the purpose of this 'ecological vandalism' was purely commercial.

The Court noted that the value to be put on the protection of the environment during a commercial operation is a high one. Any departure from the clear duties placed on a corporation in relation to this should be met with salutary and deterrent penalties. Those penalties should not simply be another cost of doing business.

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