

Prosecution Bulletin no. 3/2014

Summary

- A registered operator carrying out extractive industries in Central Queensland, as well as the contractor who carried out crushing and screening activities on its behalf, have both been separately fined \$45,000 each and ordered to each pay costs of \$2,285 including \$1,535 for investigative costs for breaching a development condition of a development approval.
- The sentences were delivered in the Gladstone Magistrates Court on 22 November 2013 and 18 December 2013 respectively.
- The registered operator was charged with two offences against section 435B of the *Environmental Protection Act 1994* (the Act) for failing to ensure that the contractor complied with the development conditions of the development approval.
- The contractor was charged with two offences against section 435(2) of the Act for contravening two development conditions of the development approval.

Facts

A development approval over the site in Yarwun near Gladstone permits several environmentally relevant activities (ERAs) on the land, including extraction, crushing and screening activities.

At the time of the offences, the registered operator held a registration certificate which authorised it to carry out the listed activities on the land.

The registered operator informally subcontracted the ERAs that took place on the site to the contractor, who engaged in crushing and screening on behalf of the registered operator, and operated under the registered operator's registration certificate.

Condition 6 of the development approval required persons engaging in environmentally relevant activities to conduct those activities in a way which prevents any potential or actual release of contaminants to land.

Condition 8 of the development approval required all contaminant storage containers to be banded.

The Department of Environment and Heritage Protection (EHP) received a complaint to its pollution hotline in early November 2012 alleging that the contractor had released contaminants to the land. Upon an inspection of the Yarwun site, EHP officers discovered that there had been several spills of contaminants to the land, there were a

large number of unbanded waste and contaminant containers, and that there were several damaged or overflowing containers of waste oil spread throughout the site.

After consistent weekly follow-up inspections by EHP officers throughout both November and December 2012, the registered operator and contractor cleaned up the site. This included the removal of a large amount of contaminated soil, banding of containers and construction of hard stand areas to prevent future contamination.

Outcome

On 20 November 2013, the registered operator and contractor both pleaded guilty to both sets of charges before the Gladstone Magistrates Court. Each defendant was fined an amount of \$45,000. The court also ordered that each defendant pay legal costs of \$1,500 and investigative costs of \$1,895. No conviction was recorded against either defendant for the offences.

The defendants' early pleas and full cooperation with EHP were mitigating factors considered by the court. The court considered that the continuing nature of the offences, the failure to take steps to address the contraventions and the potential for serious environmental harm from the contaminant spills were aggravating factors.

The court made particular note of the need for general deterrence in sentencing the defendants, as the court noted that it is very important for both current and future generations to ensure that the environment is protected. The court also significantly stated that it is important to note that the community clearly expects persons undertaking environmentally relevant activities to do so in a way which prevents or minimises harm to the environment.

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