

## Prosecution Bulletin no. 1/2015

### Summary

- A Queensland coal seam gas (CSG) company operating at a site north-east of Dysart in Central Queensland has been fined \$65,000 by the Mackay Magistrates Court after pleading guilty to four charges of contravening conditions of its environmental authority by unlawfully constructing CSG wells and a dam in environmentally sensitive areas.
- The Mackay Magistrates Court also ordered the company to publish advertisements in three Queensland newspapers outlining the company's offences in order to educate both industry and the community about the requirements of the *Environmental Protection Act 1994* (the 'Act') and the protection of environmentally sensitive areas.
- The sentence was delivered on 13 November 2014 by Magistrate Dwyer.

### Facts

Between 2009 and 2012, the CSG company contravened a condition of its environmental authority by constructing and operating three CSG wells and a dam within a regional ecosystem with a 'Biodiversity Status' listed on the Department's Regional Ecosystem Description Database (the 'REDD') as 'endangered'.

Under the company's authority, an 'endangered' regional ecosystem is categorised as an 'environmentally sensitive area'.

The CSG activities impacted approximately 2.5 hectares of the endangered regional ecosystem.

When searched, the REDD produces two classifications for any location: the 'Biodiversity Status'; and the *Vegetation Management Act 1999* 'Vegetation Management Class'.

The company said that it referred to the REDD in determining the regional ecosystem status of the locations where the offences were committed.

However, instead of referring to the 'Biodiversity Status' as is required under its authority, the company's officers referred to the 'Vegetation Management Class' and incorrectly determined that the areas were not an 'endangered' regional ecosystem, and therefore not an environmentally sensitive area.

The construction of the dam involved the complete removal of 0.75 hectares of vegetation within the 'endangered' regional ecosystem from the site, whilst the construction of the well pads and wells resulted in the removal of some 1.8 hectares of trees and shrubs.

The company reported the contraventions to the Department of Environment and Heritage Protection in its 2012 annual return and subsequently cooperated with the department's investigations. The company says it updated its practices and procedures, and employed qualified ecologists to ensure there would be no recurrence of the offence.

### Outcome

On 30 September 2014, the CSG company pleaded guilty to four offences of contravening a condition of an environmental authority, contrary to section 430(3) of the Act.

On 13 November 2014, the Mackay Magistrates Court fined the company \$65,000. The Court also ordered the company to pay legal costs of \$1750 and investigation costs of \$9241. No conviction was recorded against the company.

In addition to the fine, the Court ordered the company to publish advertisements in the *Queensland Country Life*, the *Daily Mercury* (Mackay), and the *Central Queensland News* to educate both industry and the community about the requirements of the Act and the measures that should be taken to protect environmentally sensitive areas.

The advertisements were the first to be ordered by a Queensland Court pursuant to section 502(2)(c) of the Act.

In sentencing, the Court took into account:

- the timely pleas of guilty
- the fact that the company had no prior convictions
- the seriousness of the offences
- circumstances surrounding the offence including:
  - that the offence was difficult to detect
  - only 30% of the remnant vegetation was remaining in the region
  - the offence occurred due to negligence of the company, although the negligence was not wilful
  - the company later employed appropriately qualified ecologists to prevent the recurrence of the offence
  - it would take up to 10 years for the vegetation to regenerate
  - the offending dam was decommissioned at the time of the sentence
  - \$1.1 million was intended to be spent rehabilitating the area at the time of sentence.

This prosecution is a timely reminder that companies operating under an environmental authority must ensure that their activities do not unlawfully encroach upon environmentally sensitive areas. Companies are encouraged to check their environmental authorities carefully, and if in doubt contact the department for advice on the classification of regional ecosystems before developing areas for resource activities.

The department takes the protection of our environment and compliance with Queensland's environmental laws very seriously and is undertaking increased satellite monitoring of resource development projects to ensure that impacts on environmentally sensitive areas are minimised. Any unauthorised clearing of, or activities within, environmentally sensitive areas will result in a strong enforcement response from the department.

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