Prosecution Bulletin no. 4/2020

Summary

- On 7 February 2020, a company pleaded guilty to one offence of carrying out an environmentally relevant activity without an environmental authority, contrary to section 426(1) of the *Environmental Protection Act 1994* (EP Act).
- The company had manufactured a product that is used in explosives for blasting at mines, quarries and in civil construction. It held licences under the *Explosives Act 1999*, but also required an environmental authority (EA) for the activity, which it did not have.
- The company was fined $30,000 and ordered to pay $1,500 in legal costs and $1,212.13 for investigation costs. No conviction was recorded.

Facts

Between 30 June 2017 and 1 July 2018, a company operating on a disused clay pit mine site at Ipswich mixed chemicals to form an 'explosive precursor'—a substance that is not, itself, an explosive, but can be further mixed with chemicals to form an explosive. This activity is an environmentally relevant activity (ERA) and an EA is required in order to lawfully carry out the activity.

The company held an EA for clay and shale mining on the site, but this did not include the relevant ERA for chemical manufacturing. The company also held licences under the *Explosives Act 1999* for the manufacture, storage, sale and import of explosives.

Since 2015, both the Ipswich City Council and the Department of Environment and Science (the department) communicated with the company indicating that it may require other permits and authorities for its activity. The company denied this and suggested that its activities were ancillary to the mine on the site. It later indicated that it believed the licences under the *Explosives Act 1999* were all that it required in order to lawfully carry out the activity.

In April 2018, the department commenced an investigation. Shortly afterwards, the company applied to the council for a development permit, including an application to the department for an EA.

In November 2019, the company was charged with one offence of carrying out an ERA without an EA contrary to section 426(1) of the EP Act.

In December 2019, the EA was granted.

Outcome

On 7 February 2020, the company pleaded guilty to one offence of carrying out an ERA without an EA contrary to section 426(1) of the EP Act before the Ipswich Magistrates Court.

The company was fined $30,000 and ordered to pay $1,500 in legal costs and $1,212.13 for investigation costs. No conviction was recorded.

In sentencing the company, the magistrate balanced the apparent honest misunderstanding of the company about the need for an EA against the fact that the company had been put on notice from as early as 2016 that it may require an EA.

The magistrate also considered:

- the company's cooperation with the investigation and the steps it took to apply for an EA
- that the company had avoided paying in the order of $30,000 in annual fees for an EA.

The penalty is a reminder that operators must make diligent enquiries about their legal position, and ensure they comply with their obligations under the EP Act.

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