Prosecution Bulletin no. 6/2014

Summary

- An Australian material management company has been fined $70,000 and ordered to pay legal and investigation costs of $5,151 for wilfully contravening conditions of its development approval.
- The sentence was delivered in the Ipswich Magistrates Court on 5 March 2014 by Magistrate Simpson.
- The company had been charged with 92 offences against section 435(1) of the *Environmental Protection Act 1994* (the Act).

Facts

The company operates a waste management and recycling facility at Swanbank in Ipswich. The facility commenced operation in March 2012. The company holds a development approval that allows it to conduct waste disposal activities at the site. Specifically it is able to dispose of, in a year, more than 200,000 tonnes of general waste or limited regulated waste. The conditions on the approval regulate the amount and type of waste that is allowed to be accepted as well as where and how waste is to be stored.

The company received waste at its facility shortly after it commenced operation. The landfill cells where this waste should have been stored had not yet been built. As a result, the company stockpiled the waste on site.

Departmental officers observed the stockpile during a site inspection in June 2012. The stockpile was estimated to be approximately 80 metres in length, 50 metres wide and 15 metres high at its highest point. Departmental officers instructed the company to dismantle the stockpile by September 2012.

A follow up inspection was carried out in September 2012 but the stockpile remained unchanged. Departmental officers again attended the site in November 2012 but the company had failed to address the stockpile.

As a result of the failure to manage the stockpile, departmental officers attended the site on 3 December 2012 to issue an environmental protection order (EPO). The EPO required the company to remove or dispose of the waste within three months. It also required the company to submit documentation in respect of fire management procedures.

The department was advised on 23 December 2012 that the stockpile was on fire. The fire continued to smoulder into January 2013. A number of complaints were received by the department about the smoke from the fire at the site. A clean up notice was issued in January 2013 which required the company to take measures to stop the fire from emitting smoke.

The manner in which the waste was stored in the stockpile and its location on site contravened a condition in the company's development approval. This breach was the subject of charge 1. The court considered this conduct to be very serious given the environmental risk, the fact that the risk was realised when the stockpile caught fire and the opportunities the company were given to rectify the issue.

In respect of the further charges, the company is permitted to accept primarily construction and demolition waste but can also accept limited asbestos and acid sulphate soils. Over the course of five months between September 2012 and January 2013, the company accepted on various days, multiple loads of flock waste at its site when it knew it was not permitted to receive flock waste.

Outcome

On 5 March 2014, the company pleaded guilty to the charges before the Ipswich Magistrates Court. The company was fined $40,000 for breaching the condition of its development approval in relation to the storage of waste and $30,000 for breaching the condition of its development approval in respect of the unlawful receipt of flock waste. The court also ordered the payment of investigations costs of $3401.65 and legal costs of $1,750. Convictions were not recorded.

In relation to the charge concerning the storage of waste, Magistrate Simpson said it was hard to ignore the fact that the company had been given three warnings concerning the risk that storing the waste in a stockpile posed.

The company's early pleas and cooperation with the department's investigation were mitigating factors taken into account by the court.

March 2014