

Prosecution Bulletin no. 10/2015

Summary

- A Queensland truck driver has been convicted and fined a total of \$5,000 by the Maroochydore Magistrates Court after pleading guilty to one (1) charge of unlawfully causing material environmental harm contrary to section 438(2) of the *Environmental Protection Act 1994* (the 'EP Act'), and one (1) charge of disposing of contaminated soil from a site listed on the environmental management register ('EMR') without a soil disposal permit, contrary to section 424(1) of the EP Act.
- The offences relate to contaminated soil sourced from a redeveloped service station site being transported by truck and deposited on a residential property at Noosa's North Shore.
- The soil was contaminated with hydrocarbons (diesel and petrol), and was placed within a State significant wetland; however it was removed from the area before environmental harm was observed.
- In delivering his sentence on 10 September 2015, Magistrate Madsen took into account that the Defendant was an undischarged bankrupt, and therefore had severely limited capacity to pay any fines.

Facts

In July 2013, the Defendant approached the site foremen working on a site in Doonan to obtain soil for fill at a residential property. The site foremen allowed the Defendant to remove stockpiled soil from the site after he signed a 'waiver' that purported to transfer legal responsibility for the lawful disposal of the soil to the Defendant.

Using his truck over a number of days, the Defendant then transported soil from the Doonan site to a residential property located on the Noosa North Shore and deposited it in low lying land adjacent to a State significant wetland for the purpose of building a house pad. The Doonan site foremen also contracted another company to assist the Defendant to transport the loads of soil.

The owner of the Noosa North Shore property had no knowledge of the source of the soil supplied by the Defendant.

The Doonan site previously operated as a service station, and so was listed on the EMR as a 'notifiable activity'. The soil was not tested for contamination prior to being removed by the Defendant. One contracted truck driver noticed that the soil had a strong hydrocarbon odour when it was being deposited on the Noosa North Shore property. The Defendant and the company redeveloping the Doonan site had no soil disposal permit for the removal of the soil from the site.

Sunshine Coast Regional Council officers first alerted the Department to the possible unauthorised disposal of the soil from the Doonan site in early August 2015. Departmental officers attended the Noosa North Shore property and undertook sampling of the soil deposited there. The sampling revealed that the soil was contaminated with hydrocarbons above ecological screening levels for ecologically significant areas, and for urban and public open space.

Pursuant to a statutory notice, the soil was removed by the company redeveloping the Doonan site within a week of the soil sampling.

Outcome

On the first day of a three day hearing the Defendant changed his pleas to 'guilty' for both charges.

The Maroochydore Magistrates Court fined the Defendant \$4,000 for the material environmental harm charge, and \$1,000 for the disposal of soil without a permit charge. The Defendant was further ordered to pay witness expenses and legal costs of \$2,000, and investigations costs of \$750. The Court ordered that no conviction be recorded.

In sentencing, the Court took into account the following:

- The Defendant's timely plea of guilty;
- The fact that the Defendant is an undischarged bankrupt and so has an extremely limited capacity to pay any fine;
- In this case, the fines imposed do not reflect the need for general deterrence due to the specific personal circumstances of the Defendant;

- Whilst the Defendant demonstrated some naivety in committing the offences, the EP Act required a greater level of diligence than what the Defendant exhibited; and
- There may be other parties that have a greater level of culpability for the events than the Defendant.

September 2015

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