

Prosecution Bulletin no. 2/2013

Summary

An employee of an Australia-wide waste transportation company operating in Central Queensland was fined \$12,000 for 3 offences of providing misleading documentation in relation to the transport of process water. The sentence was handed down in the Mackay Magistrates Court on 26 March 2013.

Facts

The defendant was employed by the waste transportation company to manage the transportation operations for the Central Queensland region. In June 2010, an underground coal gasification company operating a project west of Dalby, procured the waste transportation company to transport between 115,000 and 120,000 litres of 'process water' to a small waste receiver company in Emerald.

The waste receiver company operates a composting facility and holds an authority to receive and dispose of wash down water at its site. It does not hold an authority to receive and dispose of process water.

Process water consists of groundwater that has been contaminated by the chemical properties of the surrounding porous rock and the chemicals produced during the underground coal gasification process.

Process water from the underground coal gasification industry typically contains contaminants such as: organic carbon, dissolved solids, boron, arsenic, benzene, toluene, ethylbenzene, xylene, phenols, dimethylphenol, cresols, polyaromatic hydrocarbons (e.g. naphthalene, benzopyrene, anthracene and phenanthrene) and ammonia. Several of these contaminants occur at levels far greater than what would occur naturally and are known to have acutely toxic effects on plants, fish, crustaceans, insects and algae. Process water is classed as 'regulated waste'.

The department has a Waste Tracking Database System to record and verify information about the transportation of certain regulated waste from the place of production or storage to the place of receipt. The objective of waste tracking is to ensure all parties from waste generators to waste receivers, transport and manage the waste appropriately to prevent waste dumping and environmental harm.

Waste handlers are required to give information about regulated waste to the department on an approved form known as a Waste Transport Certificate.

All waste generators and receivers must supply the department with copies of the Waste Transport Certificates after the waste transaction.

On 3 June 2011, the defendant arranged to transport 40,000L of process water from the underground coal gasification site to the composting facility in Emerald—despite receiving documentation from the underground coal gasification company that identified the waste as 'process water'. The defendant instructed the driver of the waste transport vehicle to classify the waste as 'wash down or wash pad water' when completing the Waste Transport Certificate.

Wash down or wash pad water is the waste water from the wash down pads used to clean trucks and heavy equipment used in mining and quarrying operations. The underground coal gasification company in this matter does not have wash down facilities at their site.

On 7 June 2011, the defendant arranged to transport 38,000L of process water to the composting facility. An additional 39,650L of process water was transported to the composting facility on 9 June 2011. On both occasions the defendant instructed the driver to classify the waste water as 'wash pad water' on the Waste Transport Certificates.

The offences were discovered by the department's officers during an inspection of the underground coal gasification site on 9 June 2011. Further investigation revealed that the composting facility had applied the process water to some of its composting material. The department issued the composting facility with an environmental protection order on 15 June 2012 which required them to isolate the affected material and cease use of it for up to 14 weeks to allow the contaminants from the process water to degrade.

Outcome

The defendant was charged with 3 offences of aiding the underground coal gasification company in providing misleading documentation, contrary to s.480 of the *Environmental Protection Act 1994*, in relation to the transport of process water on 3, 7 and 9 June 2011.

The aggravating factors considered by the court were:

- the seriousness of the offences, which is recognised by the maximum penalty that may be imposed
- that there was real potential for environmental harm

- that the consequences for the waste receiver were substantial and involved a great deal of clean up.

On 26 March 2013, the defendant pleaded guilty to the charges before the Mackay Magistrates Court and was fined \$12,000. No conviction was recorded for the offences.

The defendant's early plea (indicative of remorse), cooperation with the department, lack of criminal history, and well respected status in both the waste industry and the community were mitigating factors considered by the court during sentencing.

The department emphasises that it is the duty of operators in the regulated waste industry to lawfully generate, transport and dispose of regulated waste and to accurately report the movement of regulated waste to the department.

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