

Prosecution Bulletin no. 9/2015

Summary

- A Queensland quarrying company has been fined \$250,000 in the Brisbane Magistrates Court after pleading guilty to nine (9) offences under the *Environmental Protection Act 1994*, including serious environmental harm, providing a false Annual Return to EHP and breach of permit offences about erosion and sediment control, recording complaints and failure to notify EHP.
- The offences related to a quarry where aggregate discharged from the quarry into Browns Creek through Landholder's properties.
- In delivering his sentence on 4 September 2015, Magistrate Gardiner said the defendant had a clear obligation to supervise and manage its employees and it was a significant concern that a company of the defendant's size could so profoundly fail to meet its obligations.

Facts

On 4 October 2013, the Department of Environment and Heritage Protection (EHP) received complaints from downstream neighbours about aggregate discharging from the quarry to Browns Creek through their properties since 2007, especially after significant rain events.

EHP inspected the quarry site and downstream areas and observed considerable aggregate in the creek and significant non-compliance with the permit conditions including inadequate erosion and sediment control measures, no sediment basins, stockpiles of aggregate with inadequate bunds and aggregate in the creek.

Reviews of the defendant's complaints register and Annual Returns identified further permit non-compliances and the provision of a false and misleading Annual Return to EHP.

On 17 October 2013, EHP issued an EPO to the defendant requiring the discharge of aggregate to cease, the removal of aggregate, the rehabilitation of Browns Creek and implementation of erosion and sediment

control measures.

Expert reports concluded that the aggregate released has filled the living spaces of aquatic life (platypus, fish, turtles and plants) so that the creek no longer serves the ecological or environmental functions of a stream.

To date, the costs known to EHP for aggregate removal in Browns Creek and consultants are \$101,816.50 plus \$34,319.00 for remediation works on the defendant's site.

Landholders have suffered loss and damage as a result of lack of water and because aggregate has prevented areas being used for horse training and grazing. Landholders have also suffered significant amounts of stress and anxiety.

On 3 September 2015, EHP issued a further EPO to the defendant for aggregate removal and remediation of Browns Creek.

Outcome

On 4 September 2015, the defendant pleaded guilty to:

- One (1) charge of causing serious environmental harm;
- One (1) breach of permit offence about the failure to notify EHP after the January 2013 flood;
- Three (3) breach of permit offences relating to erosion and sediment control
- Three (3) breach of permit offences about the failure to properly record complaints; and
- One (1) offence for providing a false and misleading annual return to EHP.

The Brisbane Magistrates Court fined the defendant \$250,000 and ordered the payment of \$100,000 in investigation costs and \$33,000 in legal costs. No conviction was recorded.

From the total fine amount, the Magistrate ordered that \$25,000 be paid to the Returning Riparian Rainforests on the North Pine River, \$30,000 be paid to Weed Management for the Koala Corridors Project and \$20,000 be paid to Bells Creek Catchment Green Army Project.

The Magistrate also ordered that a total of \$27,154 of the fine be paid to three downstream landholders as a compensation order.

In sentencing, the Court took into account the following:

- The aquatic environment was smothered;
- The impacts on the downstream landholders,
- The duration of environmental harm, as there was a period of at least 3 years where the creek had filled and then re-filled with aggregate;
- The harm is likely to persist for some years;
- The defendant should have acted as soon as it aware of the issue;
- The failure to build erosion and sediment control measures existed since 2008;
- The defendant's early plea of guilty;
- The defendant engaged consultants and had done hundreds of hours work in removing aggregate;
- The defendant implemented training, governance changes, inspections and risk assessments;
- The defendant improved their stormwater systems;
- The defendant is a good corporate citizen; and
- The defendant cooperated with EHP.

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