

## Prosecution Bulletin no. 2/2014

### Summary

- An Australia-based mining company with major interests in Central Queensland has been fined \$35,000 and ordered to pay costs of \$3,395 including \$1,895 for investigative costs for breaching a development condition of a development approval.
- The sentence was delivered in the Gladstone Magistrates Court on 22 November 2013 by Magistrate Risson.
- The defendant had been charged with one offence against section 435(2) of the *Environmental Protection Act 1994* (the Act).

### Facts

The defendant engages in environmentally relevant activities authorised under a development approval at Yarwun in Gladstone. The defendant's main activity is the refining of bauxite into alumina. This process produces waste which is stored in a residue management area high hazard dam (the dam).

Condition E15 of the development approval required the defendant to meet a design storage allowance (DSA) for the dam on or before 1 November each year. The DSA is required to minimise the potential for a discharge from the spillway of the dam during the wet season each year.

The DSA of the dam required the spillway wall to be at a height of 78.7m, the dam wall to be at a height of 80m and the dam to have a storage capacity of at least 4,040,393m<sup>3</sup> by 1 November 2012.

The defendant contacted the Department of Environment and Heritage Protection (EHP) on or around 14 September 2012 to advise that it was behind schedule in the construction to raise the dam wall to meet the DSA for 1 November 2012. The defendant advised that as a result, it would not be able to meet the DSA requirement until 6 December 2012.

As at 1 November 2012:

1. a concrete parapet wall on the crest of the northern dam wall was in place to raise the dam level crest to 76.9m
2. an aerial survey of the dam reported that the dam spillway level was at 76.1m
3. due to the incomplete construction of the dam wall raise in 2011, the spillway was not raised to meet the DSA

4. according to the aerial survey, the spillway length did not comply with the DSA (152m as constructed compared to 160m as designed)
5. the DSA calculated to be achieved by 1 November 2012 required the dam to have a storage capacity of 4,040,393m<sup>3</sup>. The available storage of the dam as at 31 October 2012 was only 780,200m<sup>3</sup> which was well below the required storage volume.

On 26 January 2013, after a substantial rain event, the dam overflowed at the spillway into Gravel Creek. No environmental harm was identified as being caused by the event. The overflow was addressed through the grant of a temporary emissions licence.

It was not until 28 March 2013 that the DSA had been met, some five months after the timeline to do so.

### Outcome

The defendant was charged with one offence of breaching a development condition of a development approval, contrary to s435(2) of the Act.

On 20 November 2013, the defendant pleaded guilty to the charge before the Gladstone Magistrates Court and was fined \$35,000, of which half was ordered to be paid to the Quoin Island Turtle Rehabilitation Project by way of a public benefit order under s502 of the Act. The court also ordered the defendant to pay legal costs of \$1,500 and investigative costs of \$1,895. No conviction was recorded for the offences.

The defendant's early plea and full cooperation with EHP were mitigating factors considered by the court.

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