

Prosecution Bulletin no. 1/2013

Summary

On 26 September 2012, a Toowoomba man was sentenced to 6 months imprisonment, fined \$40,000 and ordered to pay the Department of Environment and Heritage Protection's investigation and legal costs for 12 charges related to a 3 year period of unlawfully disposing of regulated waste on land outside Millmerran, south-west of Toowoomba.

Facts

During 2008-2011, the defendant transported truckloads of liquid and material waste onto privately owned land at Stonehenge outside Millmerran. Once on the land, the waste was drained into ponds or trenches or stacked in piles. The defendant made no attempt to ensure that the contaminants contained in the waste did not affect the surrounding environment.

The land is within the Brigalow Belt Bioregion which is recognised by the Commonwealth Government as a threatened ecological community and an important habitat for rare and threatened native wildlife. It is estimated that there are approximately 106 protected native wildlife species within a 10km radius of the land.

In February 2008, a neighbouring landholder noticed a smell similar to 'rank cooking oil' emanating from the land. The neighbour also observed that trees on the land were losing their foliage and dying. The landholder made a number of complaints to the local council about waste transporting trucks entering the property, the smell coming from the property and the death of a number of trees.

When asked by the council to identify the substances being disposed on the land, the defendant claimed it was liquid fertiliser.

In February 2010, the local council responded to further complaints and conducted an inspection of the land. The council officers observed piles of oil filters and oily rags, a significant number of 200 litre drums containing a black liquid, trenches of a black liquid and dying or dead trees.

In August 2010, the council passed the investigation of any potential offences to the department. In early October 2010, the department conducted an inspection of the land and detected heavy contamination of the land caused by harmful waste. Testing of samples taken from the land revealed that the black liquids were petroleum products such as motor oil, machine oil and oil grease.

On 2 December 2010 the department issued the defendant with an environmental protection order pursuant to the *Environmental Protection Act 1994* (EP Act). This order required the defendant to stop disposing of waste on the land and to contain the waste on the land to prevent it from moving further into the environment.

The department conducted a number of inspections of the land during 2011 and early 2012. Over this period, the defendant made no attempt to contain or clean up the waste being stored on the land.

On 18 April 2011, the department issued the defendant with a clean up notice under the EP Act. This notice required the defendant to rehabilitate and restore the contaminated areas of the land to a quality equivalent to the unaffected areas of land.

Shortly after this notice was issued, the department also issued the defendant with a notice to conduct an environmental evaluation. This notice required the defendant to engage an expert to identify the contaminants on the site, the effect those contaminants had on the environment and the options and cost of remedial work to address any adverse effects caused by the contaminants. The defendant was required to submit 2 reports to comply with this notice.

In September 2011, the department conducted an inspection of the property in order to assess compliance with the orders. This inspection revealed that the only work that had been carried out on the land consisted of moving a pile of waste to another location on the land and filling in a number of ponds of black liquid with vegetation and soil.

In December 2011, the department received a complaint that the land had been set alight one night and burnt for 2 weeks. Following this complaint the department attended the land and observed evidence of burnt material and that the ponds and trenches of black fluid had been filled with vegetation and soil.

The defendant was charged with the following offences:

- Carrying out a chapter 4 activity without being a registered operator acting under a registration certificate. Under the EP Act regulated waste storage and regulated waste disposal are chapter 4 activities. The defendant was not a registered operator and the property was not an authorised place to receive waste.

- Carrying out an assessable development without an effective development permit. The defendant carried out the disposal and storage of regulated waste without a development permit under the *Sustainable Planning Act 2009*.
- Wilfully contravening an environmental protection order. The defendant understood the requirements of the order but made no attempts to prevent the black liquid from moving further into the environment.
- Failing to comply with a clean-up notice without reasonable excuse. The defendant did not receive advice on how to conduct the clean up and neglected to take any precautions to avoid further exposure of the environment to the waste. None of the requirements of either clean up notice had been complied with.
- Failure to comply with a requirement to conduct an environmental investigation. The defendant did not submit either of the reports that he was required by the notice to submit.
- Wilfully and unlawfully causing material environmental harm. An expert commissioned by the department determined that the cost of remediating the land was approximately \$70,000.

Outcome

On Wednesday 26 September 2012, the defendant pleaded guilty to all charges before the Toowoomba Magistrates Court. The defendant was also sentenced on that day.

After hearing the facts of the matter, Magistrate Stark commented, 'you used a site which was relatively remote, a site of several hundred acres, and you thought you could simply do this, and that you would get away with it'.

In considering the appropriate penalty, Magistrate Stark noted the defendant's late plea of guilty, his lack of cooperation in the investigation of the matters, the nature of the activity and the fact the activity had been engaged in over a long period of time.

Magistrate Stark determined that 'I'm satisfied that the only appropriate sentence is one of imprisonment'.

For the 2 charges of wilfully and unlawfully causing material environmental harm and wilfully contravening an environmental protection order the defendant was sentenced to 6 months imprisonment to be served concurrently and released on parole after serving 2 months.

For the balance of the charges the Magistrate imposed a fine of \$40,000.

The defendant was also ordered to pay the department's investigation and legal costs. These amounts were \$45,364.77 and \$2,250 respectively.

Convictions were recorded for all offences.

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