

## Prosecution Bulletin no. 1/2012

### Summary

- A Queensland company that was in receivership and operating a sewage treatment plant was fined \$45 000 for unlawfully carrying out an environmentally relevant activity (ERA) without a registration certificate and carrying out assessable development without an effective development permit.
- The sentence was delivered in the Emerald Magistrates Court on 15 July 2011.
- The defendant pleaded guilty to two offences:
  - s.427(1) *Environmental Protection Act 1994* (EP Act) carrying out a chapter 4 activity without a registration certificate
  - s. 4.3.1 (1) *Integrated Planning Act 1997* (IP Act) carrying out an assessable development without a development permit

### Facts

The defendant operated a hotel in regional Queensland where several complaints were made to the Department of Environment and Resource Management (DERM) concerning discharge of sewage effluent from a sewage treatment plant. The effluent discharge problem existed for the five years the sewage treatment plant was operating on the premises.

Operating a sewage treatment plant with a capacity of over 21 equivalent persons is an environmentally relevant activity for which a development approval and registration certificate are required. The plant operated by the defendant had a capacity of 64 equivalent persons, and required a development approval and registration certificate. The defendant had obtained neither.

In addition, the capacity of the sewage treatment plant was insufficient to treat the sewage generated by the hotel (whose patronage could reasonably be expected to exceed the sewage treatment plant's capacity).

Authorised officers from DERM found that effluent released from the treatment plant had pooled over and along a dirt road intersection. There was a risk of the effluent entering a nearby waterway used by a variety of fauna and local children. The Magistrate noted there was very real potential for environmental harm as a result of the effluent release.

In response to the effluent release, DERM issued an environmental protection order (EPO) to the defendant. The EPO contained requirements which included identifying the source of the sewage and implementing measures to prevent further releases. The defendant did not comply with the EPO, despite a number of warnings from DERM.

During this enforcement activity receivers and managers were appointed to the company. The appointment did not affect the obligations of the company to comply with the EPO and with the EP Act more generally.

DERM was able to reach an agreed outcome with the receivers and managers to remedy the company's ongoing breaches of the EPO. As a result, DERM exercised its discretion to not commence a prosecution in respect of the breach of the EPO. Because the receivers and managers were appointed after the offences relating to the operation of the sewage treatment plant occurred, DERM considered that the appropriate defendant for those offences was the company rather than the receivers.

### Outcome

The defendant was charged with one offence under the EP Act and one offence under the IP Act, pleaded guilty and was fined \$45 000 in total for both charges. In sentencing the Magistrate took into account the cooperation shown by the receivers and managers. However, the court found that the risk of environmental damage from the release of partially treated sewage was appreciable and known to the defendant, and was an aggravating factor. The Magistrate noted that there was an appreciable risk of environmental damage and harm, particularly during times of rain. The maximum penalty, for a corporation at the time of the offences, was \$30 000 and \$124 875 respectively.

February 2012

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