



ENVIRONMENT & PLANNING ALERT

EPO + PROSECUTION: AN EFFECTIVE ENFORCEMENT COMBINATION

A recent case we conducted on behalf of Gympie Regional Council has highlighted the effectiveness of enforcement action against an environmental offender, utilising an Environment Protection Order (EPO) combined with a prosecution for development offences.

A motor vehicle repair business at Rainbow Beach had been degreasing vehicles on an area of hard stand, which had a stormwater drain, which discharged some distance away into an environmentally sensitive area. There was a significant build-up of oil, grease and other hydrocarbons, which had accumulated over time and then discharged suddenly, causing a significant environmental incident.

The Council attended urgently at the site and engaged contractors to attend with plant and equipment to remove the contamination and contaminated soil, which covered a large area. Substantial clean-up costs of over \$27,000 were incurred by the Council.

The operator was required to hold an environmental authority for the ERA 21 (motor vehicle workshop operation). An EPO was issued by the Council pursuant to section 358 of the *Environmental Protection Act (EP Act)*. The stated purpose of the EPO was to secure compliance with both the general environmental duty and a condition of the Environmental Authority (which prohibited release of contaminants from the premises).

The EPO required the operator to:

- (a) provide a draft environmental management plan, which was to be finalised by the Council; and
- (b) comply with the finalised environmental management plan.

The EPO has also prohibited any washdown of vehicles other than in an approved washdown facility.

The purpose and effect of the EPO is to cause the operator to dramatically improve the environmental incident. A prosecution was commenced in the Magistrates Court alleging offences of environmental nuisance (section 440) and releasing prescribed contaminants to water (section 440(ZG)).

The prosecution was successful. The Magistrate ordered the operator to pay to the Council of the following amounts:

	\$
Fine for committing an offence against section 440 (ZG)	\$13,000.00
Reimbursement of Council's costs in remediating the incident	\$27,116.04
Council's investigation costs	\$6,379.31
Council's legal costs	<u>\$2,842.90</u>
Total payable by operator:	\$49,338.25

These heavy financial penalties meant that:

- (a) The operator is deterred from non-compliance with the EPO;
- (b) The Council's costs associated with remediating the incident, issuing the EPO and in conducting the prosecution were substantially recovered from the offender; and
- (c) A strong message of deterrence was sent to industry and business operators to avoid environmental offending.

The combination of an EPO and a prosecution is an effective means of not only responding to a contamination incident and punishing the offender, but also dramatically improving the environmental performance of an environmentally relevant activity to minimise the likelihood of future contamination incidents.

FOR FURTHER INFORMATION, PLEASE CONTACT:

Michael Marshall | Partner | +61 7 3338 7525 | mmarshall@tglaw.com.au