Wastetek Pty Ltd – Queensland prosecution for contravention of an environmental licence condition

By Alan Girle, Environmental Protection Agency, Queensland

On 10 May 2004, Wastetek Pty Ltd was convicted and fined $50,000 in its absence. The company was also ordered to pay a total of $13,275 in compensation. The company had appeared on an earlier occasion, but for reasons unknown had decided not to appear on the 10th. Wastetek Pty Ltd has not attempted to reopen the matter, seek a rehearing or appeal.

Wastetek Pty Ltd was charged with contravening a condition of its environmental authority to transport liquid waste. The offence related to an incident on 22 November 2003. The company was transporting effluent by tanker from a chicken processing factory in Cleveland to Swanbank for disposal. At the point of loading, employees of the company had been told not to fill the tanker beyond 70% capacity as the effluent expanded in transit. The tanker was filled to 90% of capacity. The tanker driver was then told, *"I think you should unload some of this waste as the tanker is too full."* This did not happen. Whilst in transit the effluent started to expand and notwithstanding pressure seals on the tanker, it started to spray out of the rear of the tanker as it was driving along. Liquid sprayed along at least 2 kilometres of the Ipswich Motorway, making the road greasy and causing vehicles to lose traction. Over a distance of 100 metres near Goodna, there were five traffic accidents involving eight vehicles. People were injured, cars were damaged and traffic was banked up for miles. Fifteen police officers were required to manage the situation.

In sentencing the company the magistrate said, *"There was no significant, from the evidence, checks or fail-safe mechanisms on the transport that would give rise to a warning that there was a leakage occurring. The fact is that, had it not been for the actions of other motorists, the spillage would have continued for a much longer period".*

The magistrate noted during submissions that the risk of ecological harm from a spill of 200 litres on the motorway was small and had there been a greater risk of ecological harm, it was clear that the magistrate would have imposed a higher penalty.

Harvey -v- The Rural City Of Murray Bridge (2004) SAERDC 32 (19th April 2004)

Contributed by Will Webster, South Australia

The defendant Council pleaded guilty to a single charge of breach of a condition of a licence held by it pursuant to the *Environment Protection Act 1993*. The licence authorised the operation of a land fill waste depot, and the relevant condition provided that the licensee must ensure that:-

- No litter escapes from the boundaries of the depot;
- In the event of litter escaping from the depot, then the licensee must immediately collect such letter;
- All litter within the depot must not be visible from properties or transport corridors outside the boundaries of the depot;
- All litter is to be collected and disposed of as often as is necessary to maintain the grounds within the depot and the fences free of litter.

The offences occurred in the period 1st January 2002 to 23rd April 2003, and 9th June 2003 to 19th June 2003, when the defendant Council's land fill allowed litter escape, and litter visibility at the site. Whilst the depot was operated by a contractor on behalf of the Council, Her Honour Judge Trenorden stressed that the defendant Council should have been supervising the contractor to ensure that the Council, as the licensee, was not in breach of the conditions of the licence.

In mitigation of sentence, the Council submitted that, amongst other things, the significant cases of litter escape occurred as a result of "exceptionally windy conditions", however in sentencing, Her Honour was mindful that on occasion, litter had escaped the depot and entered adjoining farming properties reaching as far as 2.5 kilometres from the depot. There was potential for contamination of crops by plastic bag and other litter and consequently the potential impact upon neighbouring farmers had serious repercussions. Her Honour regarded the offence as "serious". With that said, Her Honour described the breach as neither "flagrant or deliberate". It occurred more "as a result of very poor management, lack of supervision and a failure to communicate the seriousness of compliance with licence conditions to the defendant's contractor". Her Honour fined the Council in the amount of $31,996.00, taking in to account the (late) plea of guilty and other mitigating factors.

Harvey -v- Kangaroo Island Council (2004) SAERDC 63 (19th August 2004)

Contributed by Will Webster, South Australia

The defendant Council pleaded guilty to 7 counts under the *Environment Protection Act 1993*, for breaches of conditions of an environmental authorisation between August 2002 and July 2003. The Council, which operates three waste depots within the area of Kangaroo Island, (and amongst other things):-

- Stored waste, oil and batteries above ground in an area that did not have an impervious base; and
- Stored waste, oil and batteries above ground in an area that was neither bounded nor graded to a common sump; and
- Stored waste, oil and batteries above ground in an area that was neither fully enclosed nor roofed.

The Council also failed to provide to the Environment Protection Authority (EPA), timely updated management plans, and ground water monitoring programs for the relevant period, failed to ensure that all exposed waste at the depot was covered with appropriate fill, and allowed litter to escape from the boundaries of the relevant depot without being immediately collected.

Whilst there was no evidence of contamination of soil or underground water, Presiding Judge, Her Honour Judge Trenorden commented that:-

> *"The holder of an environment authorisation has an obligation to the community not to breach the trust placed in it by virtue of being granted an authorisation to carry out activities which could result in pollution of the environment".*

The offences were compounded by the failure of the Council to respond to numerous requests for information, and in two cases, the imposition of an Environmental Protection Order, by the EPA.

Her Honour recorded convictions against the Council on each of the 7 counts raised. Whilst Her Honour had regard to the Council's guilty pleas, she considered several of the counts as "quite serious", particularly in that the Council "was operating the Kingscote Waste Depot in the absence of any ground water monitoring program, and both the Kingscote and Parndana Waste Depots were each being operated in a manner, the nature and detail which was not known to the EPA". Her Honour ultimately was minded to apply the "totality principle", that is to impose one sentence reflecting the total criminality and culpability of the defendant, and noted that none of the offences were committed wilfully. It is noteworthy that Her Honour rejected the "faint" suggestion that in determining the penalty, she should have regard to the less than adequate performance of the then Chief Executive Officer, who had since left the Council. Her Honour commented that (by Section 127(1)(a) of the *Environment Protection Act*), the acts of the (then) CEO as an employee of the Council were imputed to the Council. Ultimately, the Judge imposed a sentence by way of fine in the amount of $75,000.00 by way of penalty, together with $1,570.67 for costs incurred by the EPA.

Each of the above decisions reinforce the importance of complying with conditions imposed upon environmental licences, and other regulatory instruments. Both cases contain reference to the importance of deterrent elements of sentences of this kind. It is also noteworthy that both cases relate to relatively