

case notes

VICTORIA

Prosecutions under the *Environment Protection Act 1970* (Vic) – contributed by Jessica Mentlikowski, Office of the Solicitor, Environment Protection Authority, Victoria

<p style="text-align: center;">Betta Foods (Australia) Pty Ltd Broadmeadows Magistrates' Court 16 June 2005</p>

Offences

- Section 39(1)(e) of the *Environment Protection Act 1970* (“EP Act”) - pollution of waters (detrimental to a beneficial use – aesthetic enjoyment).
- Section 39(1)(c) of the EP Act - pollution of waters (harmful or potentially harmful to fish or other aquatic life).

Maximum penalty

\$240,000 for each charge¹

Betta Foods (Australia) Pty Ltd (“Betta Foods”) pleaded guilty to one charge of pollution of waters on 11 December 2003, and one charge of pollution of waters on 16 March 2004, contrary to section 39(1) of the EP Act.

The charges related to two separate discharges of trade waste (confectionary waste) from the Betta Foods’ premises in Broadmeadows via the stormwater system into nearby Yuroke Creek. Betta Foods’ investigations found that both discharges were caused by equipment failures at the company premises. Members of the public alerted authorities to the spills, which adversely affected water quality in the creek, and caused odour described by local residents as being like rotten eggs.

The Magistrate convicted Betta Foods on both charges and:

- (a) in relation to charge one, fined the company \$5,000;
- (b) in relation to charge two, fined the company \$10,000;
- (c) pursuant to section 67C of the EP Act, ordered the company to pay \$45,000 towards a local environment project – the revegetation of Jacana Wetlands;
- (d) pursuant to section 67AC of the EP Act, ordered the company to publicise the offence in the Hume Leader (local newspaper); and
- (e) ordered the company to pay the EPA’s costs of \$5,459.15.

¹ Of which \$100,000 is available when the matter is heard summarily in the Magistrates’ Court.

**Sea Elf Maritime Inc (Liberia) and Dimitrios Paraskevopoulos
Melbourne Magistrates' Court on 26 May 2005**

Offences

- **Sea Elf:** Discharge of oil or an oily mixture from a ship into State waters contrary to section 8(1) of the *Pollution of Waters by Oil and Noxious Substances Act 1986* ("POWBONS Act").
- **Paraskevouloulos:** Discharge of oil or an oily mixture from a ship into State waters contrary to section 8(1) of the POWBONS Act.

Maximum penalty

- In the case of a natural person – 2,000 penalty units (\$200,000) or imprisonment for two years, and for a body corporate, a maximum fine of 10,000 penalty units (\$1,000,000)².

On 24 February 2004, EPA was called to investigate the discharge of approximately 200 litres of oil from the cargo vessel "Maersk Toba" into the Yarra River at East Swanson Dock, Port of Melbourne.

The EPA investigation revealed that oil being transferred along an overflow pipe which ran along the ceiling of an internal passageway had leaked out of a small hole in the pipe.

The hole had developed as a result of corrosion caused by dripping seawater.

The oil which leaked out of the pipe into the passageway then drained into a drain inlet (scupper) located on the passageway floor. The scupper inlet in the passageway can be sealed, however, at the time oil leaked out of the overflow pipe it was not sealed. As a result the oil was able to flow directly out of the scupper outlet and into the Yarra River.

At Melbourne Magistrates' Court on 26 May 2005, Dimitrios Paraskevopoulos (the Master of the vessel) and Sea Elf Maritime Inc (Liberia) (the Owner of the vessel) pleaded guilty to one charge each of breaching section 8(1) of the POWBONS Act.

The hearing was adjourned to 2 June 2005, on which date Mr Muling, Magistrate convicted and fined Sea Elf Maritime Inc (Liberia) \$5,000 and ordered payment of the Authority's costs in the sum of \$10,000. The Master was fined \$5,000 without a conviction being recorded.

² Of which \$50,000 or imprisonment for two years or both is available when the matter is heard summarily in the Magistrates' Court – s24C of the POWBONS Act

**MRI (Aust) Pty Ltd and William John Le Messurier
2 March 2005 at Broadmeadows Magistrates' Court**

Offences by MRI

- Store prescribed industrial waste without a licence contrary to s.27(1A)(a) of EP Act.
- Contravene conditions of licence contrary to s.27(2).
- Provide incorrect information to the Authority contrary to s.59D(a).

Offence by Le Messurier

Contravene conditions of licence contrary to s.27(2).

Maximum penalty

\$240,000 for each charge³

MRI (Aust) Pty Ltd ("MRI") and one of its company directors William Le Messurier pleaded guilty to charges relating to the storage of polychlorinated biphenyls ("PCBs") at a premises in Campbellfield.

PCBs are potentially carcinogenic, and require disposal by high-temperature incineration.

MRI was licenced to store and consolidate waste oil containing PCBs of a concentration less than 50 mg/kg and were required to notify EPA immediately if analysis showed PCBs higher than that level and for the item to be quarantined.

Following an EPA investigation it was discovered the company was storing PCBs, with a higher concentration level, at a premises other than the one they were licenced for.

MRI pleaded guilty to one charge of storage of a prescribed industrial waste without a licence, one charge of contravention of an EPA licence, and one charge relating to the incorrect provision of information to EPA.

The Magistrate convicted and fined MRI \$5,000 on each charge (total fines \$15,000) and, pursuant to section 67C of the EP Act, ordered that the company pay \$15,000 towards a local environment project – the revegetation of 5000m² of habitat at Galada Tamboore beside Merri Creek in Campbellfield. MRI was also ordered to pay the Authority's costs in the amount of \$13,459.98.

Mr Le Messurier pleaded guilty to one charge of contravening an EPA licence and, without conviction, was ordered by the Magistrate, pursuant to section 67AC of the EP Act, to pay \$5,000 towards the revegetation of Galada Tamboore.

³ Of which \$100,000 is available when the matter is heard summarily in the Magistrates' Court.