Case summary - EPA v Sydney Water Corporation [2020] NSWLEC 153

Date : June 29, 2022

Summary

The case of *EPA v Sydney Water Corporation [2020] NSWLEC 153* was heard in the LEC in the Class 5 jurisdiction before Pain J.

Proceedings in the Land and Environment Court's (LEC) Class 5 jurisdiction typically involve summary criminal enforcement proceedings (initiated by government authorities prosecuting offences against planning or environmental laws). According to the statistics published by the LEC, 32% of the prosecutions commenced in 2019 were initiated by the Environment Protection Authority or Office of Environment and Heritage.

Of interest in this case is the way in which the court ordered the defendant to publicise its offences through social media platforms.

Facts

- From 26 July 2018 to 27 July 2018, approximately 64,000 litres of sewage overflowed from a Sydney Water Corporation (**SWC**) maintenance hole in Lane Cove National Park at North Epping.

- SWC operated under an environment protection licence (EPL) which contained a series of conditions which required SWC to take all reasonable and feasible actions as soon as practicable to minimise the impact of sewage overflow on the environment and public health in the event of a sewage discharge.

- Even though SWC was required to take action to minimise the impact of the sewage overflow as soon as practicable the clean-up was delayed due to failures in SWC's management in the aftermath of the sewage overflow.

- The offences were referred to as the 'Pollution Offence' and the 'Licence Offence':
    a. *The Licence Offence*: The Licence offence concerned SWC's failure to complete an adequate manual clean-up of the sewage material for nearly three weeks.
    b. *The Pollution Offence*: The pollution offence concerned events where SWC staff flushed the affected creek prior to the required manual-clean up. Therefore, the EPA's submission was that the flushing 'would have' had the consequence of transferring additional sewage material downstream into the Lane Cove River and thereby polluted the waters.

Offences

Sydney water pleaded guilty to 2 separate offences:

- an offence against s 64(1) of the *Protection of the Environment Operations Act (NSW)* ('POEO Act'), being a failure from about 26 July 2018 – 17 August 2018 to comply with Condition O3.1 of Sydney Water's EPL; and

- an offence against s 120(1) of the POEO Act, being pollution of waters between about 29 July 2019 and 30 July 2019.

Evidence

The EPA adduced expert evidence in the form of a report which dealt with the overflow and its consequences.

A supplementary expert report prepared by was submitted to deal with the harm to the environment and human health from the impacts of the flushing of the unnamed creek. However, the Court found at [50] that the Supplementary Report had little relevance in that:

1. it did not establish that additional harm was caused by the flushing event over and above what was otherwise caused by the sewage overflow;
2. the evidence from the Supplementary report was unable to identify either quantitatively or qualitatively the actual harm caused by the further pollution evidence the subject of the Pollution Offence.

Outcome

The appropriate penalty for the Pollution Offence was initially determined to be $120,000. However it was reduced by 30 percent in light of the defendant's early guilty plea and other mitigating circumstances to $84,000.

The Licence Offence was found to be of similar seriousness and therefore attracting the same amount of $120,000 but reduced by 25 percent in light of the slightly later guilty plea and other mitigating circumstances to $90,000.

Ultimately, SWC was convicted of both offences pursuant to s 64 of the POEO Act and penalised a fine in the sum of $185,000.

In addition, SWC was ordered to perform the following:-

1. Pay $120,000 to NSW National Parks and Wildlife Service for the purposes of a bush regeneration program;
2. Contribute to the Lane Cove National Park Bush Regeneration Program;
3. Pay $18,000 to the EPA;
4. Pay $24,369 to the EPA's reasonably incurred costs and expenses incurred during the investigation of the offences;

5. Pay the EPA's costs in an amount as agreed or as may be determined under s 257G of the *Criminal Procedure Act 1986* (NSW);
6. Publish a notice within the first 12 pages in the Sydney Morning Herald, The Daily Telegraph and North Shore Times;
7. Publicise the offences and orders made on the relevant social media platforms in the following manner:'
    a. Publicising the offences, photos and orders on SWC's Facebook wall between 8am and 10am or between 4.30pm and 6.30pm on a weekday. The post was ordered to remain as a pinned post on Facebook (at the top of the Sydney Water Facebook page) for a minimum of seven (7) days;
    b. publicise the offences and the orders made against it by tweeting the following text from its Twitter account:

    @SydneyWaterNews prosecuted by @NSW_EPA and

    convicted of offences related to inadequate clean-up of an

    overflow of 64,000 litres of untreated sewage into Lane Cove

    River and Lane Cove National Park in July 2018. Ordered to

    pay a total of $145,000 including $127,000 to the Lane Cove

    National Park Bush Regeneration Project: [INSERT

    HYPERLINK TO JUDGMENT AS PUBLISHED ON NSW CASELAW WEBSITE]

    c. publicise the offences, photos and orders on SWC's Instagram account with the same text as above.