

## NSW Waste recycler prosecuted and fined \$90,000 for accepting 130,000 more tonnes of waste than permitted

The NSW Land and Environment Court has penalised Minto Recycling Pty Limited (a subsidiary of Bingo Industries Limited) for receiving nearly 170,000 tonnes of waste material in a particular year at a facility licenced to receive only 30,000 tonnes of waste per annum.

It is an offence under the *Protection of the Environment Operations Act 1997* (NSW) to breach a licence condition - the maximum penalty is \$1,000,000. Minto Recycling pleaded guilty to this offence.

The NSW EPA argued that the Court should impose a significant penalty on Minto Recycling as it said substantial environmental harm was caused as a direct result of the breach of the licence condition. The substantial environmental harm was said to be the significantly increased dust impact on the surrounding area caused by the facility receiving the significantly higher volumes of waste. The Court found, however, that there was insufficient evidence to prove that the dust found in the surrounding area came from the waste facility and declined to find that substantial environmental harm was caused by the breach.

The NSW EPA also argued that the Court should impose a significant penalty on Minto Recycling as the commission of the offence resulted in a financial benefit to the Bingo group in the range of \$230,000 to \$585,000 (approximately) after tax. The Court was critical of the 'extraordinarily broad and imprecise set of financial benefit figures' provided in the EPA's evidence, but nevertheless found that the financial benefit was undoubtedly substantial and a direct result of the offending conduct.

Interestingly, the EPA did not seek a monetary benefit order, which requires payment of an amount that represents the financial benefit obtained by an offender. This payment is in addition to the standard penalty imposed for the offence. Perhaps the EPA did not seek such an order as it had difficulty in determining the extent of the financial benefit.

Ultimately, the Court decided that the offence was at the 'top of the lower end' of seriousness and imposed a \$90,000 penalty on Minto Recycling. It also required notices of the offence to be published in the press, on Bingo's website and in Bingo's Annual Report provided to the Australian Stock Exchange. Bingo was also ordered to pay the EPA's legal costs, which we would anticipate were substantial given that the sentencing hearing lasted 10 days.

The case is known as *Environment Protection Authority v Minto Recycling Pty Limited* [2019] NSWLEC 193.

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