

Court orders 'arrogant' Mobil to pay almost \$1m for site contamination

The Vic Supreme Court has ordered Mobil to pay \$954,635 to the owners of a property used by Mobil to operate a service station for not complying with all clean-up obligations in its lease. Justice Kim Hargrave described the company as behaving in an "arrogant and high-handed manner" towards the site owners. He held the scope and design of the environmental site assessment (ESA) commissioned by Mobil was "deficient".

Mobil operated a petrol station at the Springvale site from late 1981, but by May 2000 decided not to continue when the lease expired. The judge noted Mobil's then remediation co-ordinator, Gregory Bond, hired Handex Australia Pty Ltd to conduct an environmental site assessment (ESA). Bond instructed it to scale back its original proposal for 16 soil bores to "only 10 soil bores", with the judge holding "cost was a significant factor" in the decision. Handex sent draft ESAs to Mobil, with these disclosing there was soil and groundwater contamination.

"Mr Bond's comments on the draft reports were directed at ensuring that the ESA did not describe the contamination which was found as significant, and towards reducing the scope (and therefore cost) of the further investigations recommended by Handex," the judge said. Justice Hargrave ruled a final version ESA conclusion that only one soil bore showed excessive contamination "had the capacity to be misleading". This was because another soil bore yielded a high hydrocarbon reading in field testing but no sample from that bore was sent for lab analysis. "Mobil was unable to explain this error by Handex," the judge said. Handex concluded there were "minimal risks associated with the ongoing use of the site as service station" and Bond proposed \$6,000 to \$7,000 be allocated for clean-up. But an environmental adviser to Woolworths - in negotiations with the owners about occupying the site - said the Handex ESA understated "the very high levels of contamination found" and recommended further investigation. Woolworths later opted to lease another site.

A second review by an environmental auditor done for the site owners' lawyers similarly found the Handex conclusions were "not adequately supported" by its investigation. Meanwhile, in June 2001, Handex conducted additional groundwater monitoring at the site. Although benzene contamination at one of the monitoring wells had increased from 800g/L in 2000 to between 1,500 and 2,600g/L, Handex reported concentrations "have remained approximately constant over the sampling events". Handex complied with Bond's request to remove wording from the draft report referring to "significant groundwater contamination". In July 2001, the site owners asked EPA Victoria to issue a clean-up notice to Mobil, which the EPA eventually did in early 2003. A 2004 report done for a potential purchaser of

the site was also critical of the Handex ESA and estimated the likely cost of clean-up to enable commercial use was at least \$210,000.

The site owners eventually sold the site in 2004, after starting legal action against Mobil. The judge ruled that although Mobil operated on the assumption that the lease only required it to remediate the site sufficient for it to be re-used as a service station, the lease required it to clean up the site to be suitable for any commercial use permitted under the zoning. He ordered Mobil to pay \$575,735 in licence fees to cover the period for which the lease was not complied with, and \$378,900 in damages for breach of its clean-up obligation. A Mobil spokesperson told *EM* the company is "considering its options" regarding the decision. Handex went into liquidation last year.

(Masha Nominees Pty Ltd v Mobil Oil Australia Pty Ltd [2006] VSC 15, 7/2/06)

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