

Media Release

Environment Protection Authority



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EPA welcomes court judgement on waste cases

The Environment Protection Authority (EPA) has welcomed two significant appeal decisions handed down by the Full Court of the Supreme Court today.

In the matter of EPA v Adelaide Resource Recovery (ARR), the EPA successfully appealed a 2015 ruling of the Environment Resources and Development (ERD) Court that ARR had not breached its licence by storing construction and demolition waste in an area that was not covered at its Hanson Road, Dry Creek site.

The Supreme Court found that on the evidence, the material in the stockpiles was waste that predominantly comprised construction and demolition material and this should have been stored undercover, as required by ARR's EPA licence.

A conviction was recorded but a second count of storing commercial and industrial waste outside was not proved.

The Court rejected ARR's argument that the material in the stockpiles had become 'product' rather than 'waste'. It found that receipt of waste with the intent to process and then sell it as a product does not necessarily mean that it has material that was no longer waste and therefore no longer subject to EPA licence requirements.

The Court ruled that it will be a question of fact and degree as to when the waste has suitably changed its character and become a product which requires consideration of whether there is an economic demand and immediate market for that material.

In a decision today on similar issues, in the matter of Adelaide City Council (ACC) v EPA, the Full Court dismissed the council's appeal and upheld the decision of the ERD Court in finding ACC guilty of breaching two counts of its licence by failing to cap the former Wingfield landfill by 31 October 2012. A landfill cap is required to prevent pollution of water, vermin access and uncontrolled release of gas and odour.

ACC's licence permitted the use of surplus soils and related material from development sites in the capping of the landfill. ACC had failed to cap the area required and contended that the use of waste fill would involve the disposal of waste in contravention of other legal requirements. The Court again emphasised that waste is a relative and not absolute concept, and that in circumstances of this particular matter the use of waste fill was specifically envisaged and permitted under the EPA licence.

EPA Chief Executive Tony Circelli said the two cases had reinforced the EPA's regulatory approach to licensing and regulating waste and waste depots.

"The EPA places licence conditions on companies to ensure that the environment and community are protected."

"The Supreme Court rulings sent a message to industry that the EPA will vigorously pursue breaches of licence conditions through the courts if necessary," Mr Circelli said.

"Waste and resource recovery is a significant industry in South Australia, with around a \$1 billion per annum turnover," he said.

"As well as serving as a warning to those companies who breach conditions, today's outcome should also reassure those companies who meet their environmental obligations that the EPA is committed to ensuring a level playing field, supporting compliant operators and providing greater confidence for industry investment in this significant sector."