

29 October 2021

Burgess Earthmoving convicted and fined for breaches of WHS laws

On 29 October 2021, the NSW District Court convicted and fined Burgess Earthmoving Pty Ltd (BEPL) a total of \$180,000 for two offences under section 32 (Category 2) of the *Work Health and Safety Act 2011* for failing to comply with duties required by section 19 of the Act.

The convictions relate to a shotfiring incident which occurred at Albury Quarry on 10 April 2018 when workers and members of the public were exposed to risks to their health and safety as a result of flyrock being ejected after a blast.

Burgess Earthmoving operates Albury Quarry, which is located at about 15 kilometres north of Albury. Resources Regulator Chief Investigator, Andrew McColm, said that during the incident a blast was fired at the quarry which resulted in the ejection of flyrock which damaged three light vehicles and landed near 12 individuals who were present at the firing location.

“The individuals were situated between 275m and 320m from the blast area and were forced to take evasive action including diving out of the path of the flyrock and sheltering behind excavators near the firing location,” Mr McColm said.

“The people who were present at the incident included workers from the quarry, the shotfirer and four members of the public who attended to watch the blast. Nobody was struck by flyrock but everyone present was exposed to a risk of serious injury or death.”

In delivering his sentence on 29 October 2021 Judge Russell ordered that BEPL:

- Be convicted and fined a total of \$320,000 reduced to \$180,000 after discounts for early guilty pleas and consideration of the totality of the offending conduct.
- Pay a 50% moiety of the fine to the prosecutor.
- Pay the prosecutor’s costs in the sum of \$55,000.

Judge Russell emphasised the duties and responsibilities of the parties involved in the incident to ensure people’s safety at the site

“Hamilton’s was the specialist shotfirer and clearly had its own duties. However, Burgess was the owner and operator of the quarry and had the power, and a non-delegable duty, to keep persons away from the blast site,” Judge Russell said.

“Simple and well-known steps were readily available to eliminate or minimise the risk. Indeed had Burgess followed its own safety system for blasting, most of the workers and other people put at risk would have been well outside the quarry.

“Instead they were permitted by Burgess to stand in harm’s way treating the blast as some sort of entertainment.”

“Burgess did have a documented safety system in place. That was of little use when personnel were not trained, supervised or even suitably qualified.”

“The likelihood of the risk occurring was significant. The potential consequences of the risk were death or serious injury,” Judge Russell said.

The full judgment is available [here](#).

The conviction follows the NSW Resources Regulator’s investigation which established that BEPL had failed to:

- Provide and maintain a safe system of work for blasting by not ensuring compliance with its Explosives Management Plan
- Provide adequate training and instructions to its workers about its Explosives Management Plan
- Provide adequate supervision of its mining operations by not ensuring that its appointed Quarry Manager possessed the necessary qualifications or experience to fulfil that role, held a practising certificate for that role and had the competency necessary to manage the Quarry.

The blast was conducted by BEPL’s contractor, Hamilton’s Blasting Services Pty Ltd (HBS). Charges have also been laid against HBS and its director, David Hamilton, both of whom have pleaded guilty. The proceedings against HBS and its director, David Hamilton, are listed for sentence in the District Court of New South Wales on 10 December 2021.

The Resources Regulator produced a learning from investigations animation about the dangerous blasting incident at Albury Quarry, which is available on the [Regulator’s YouTube channel](#).

For further information about Resources Regulator, visit our [website](#).