

CaseNote

— Trade and Transport

November 2009

***Environment
Protection
Authority v
Bowport All
Roads Transport
Pty Limited
(No. 2) (2009),
NSWLEC 180***

This judgment is a sentencing judgment as a result of prosecutions under Regulation 9(1) of the *Protection of the Environment Operations (Clean Air) Regulation 2002*. They involve technological detection of four “smoky vehicles”, one of them twice, in the M5 East Tunnel.

The charges were proven. The offence required detection of a continuous “visual emission” from a heavy vehicle for a period of 10 seconds. The emission needed to be of “excessive air impurities” in accordance with Test Method 31.

In finding the offences proved, Sheahan J found the likely cause to be age and mileage of the offending trucks and their mechanical condition and/or their loading.

Sheahan J imposed fines totalling \$80,000. Additionally, an order was made that the defendant engage, at its cost, a suitably qualified independent expert to conduct

on road smoke tests on all the defendant’s current fleet of vehicles which were first registered before 31 December 2002. The defendant was then required to take all necessary steps to complete any outstanding obligations following the completion of the independent expert’s audit.

**Stuart Hetherington
Partner**

T: 02 8281 4477

E: swh@cbp.com.au