Esso Australia convicted of safety breaches in fatal gas explosion

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After a bitterly fought legal battle, a Supreme Court jury in the Australian state of Victoria has found Esso Australia , a subsidiary of Exxon, guilty of breaching safety laws over the September 1998 explosions at the company's Longford natural gas plant. The blasts killed two workers, Peter Wilson and John Lowerty, and injured another eight, as well as cutting gas supplies to more than a million homes and businesses for two weeks.

Esso was convicted on all 11 counts under sections 21 and 22 of Victoria's *Occupational Health and Safety Act* 1985. These included failure to perform such basic procedures as identifying hazards, assessing risks, monitoring dangerous conditions, and providing crisis shutdown devices. The jury also concluded that Esso had failed to provide emergency procedures, safe production methods and adequate training for workers and supervisors.

Esso has now twice been found legally responsible for the explosion, with a 1999 Royal Commission concluding that the disaster's major cause was "the failure of Esso to equip its employees with appropriate knowledge to deal with the events which occurred". But neither verdict mentioned the underlying causes of the tragedy—government deregulation of safety inspection and corporate cost-cutting in maintenance and safety.

For its part, the company has refused to apologise to its victims or to the workers that it originally attempted to blame for the explosion. Moreover, even if Justice Philip Cummins, who will sentence Esso on July 23, hands down the maximum possible fines, totalling $2.75 million, the amount will hardly trouble Esso, which made a profit of almost $800 million in 1999-2000.

The company also faces class actions, worth up to $1 billion, on behalf of companies and individuals affected by the gas shutdown. The Supreme Court decision may have strengthened these claims, but any legal action will be fought tooth and nail by Esso and will drag on for years. The case has been in train since October 1998, and, according to one of the lawyers involved, may go to court in the first half of next year.

In the recent Supreme Court trial, Esso abandoned its unsuccessful efforts to blame workers, particularly plant operator James Ward, for the disaster. Esso's earlier tactics backfired in the Royal Commission and its public image was further tarnished when Ward was awarded a bravery medal for his actions during the explosion.

Esso's legal counsel Malcom Titshall sought to appeal to the jury by refusing to challenge any of the damning evidence given by workers. Instead he argued that Esso was simply not aware of the potential for catastrophic breakdown in Longford's Gas Plant 1. Expert witnesses testified, however, that the company knew the dangers involved and furthermore had not performed basic hazard identification testing, which probably would have prevented the disaster.

On the day of the explosion, 15 of the plant's crew, including some of its most experienced members, had gathered to attempt to restart Gas Plant 1, but because of a lack of training they had no inkling of the danger they confronted. Hot lean oil ruptured the cold brittle metal of heat exchanger 905, causing an enormous expulsion of hydrocarbons, which then ignited a second blast, starting a fire that severely damaged Gas Plant 1.

WorkCover Victoria chief executive Bill Mountford said the jury's verdict should "send a clear message to those organisations who have not been supplying a safe environment for their workers". Yet the current state Labor Party government of Premier Steve Bracks has

no intention of reversing the safety de-regulation initiated by the former Kennett Liberal government.

Major companies like Esso operate as "self regulators" under the Liberal government's 1995 changes to occupational health and safety legislation. At the time of the explosion, Esso was largely responsible for running its own safety checks, while WorkCover Victoria, the government agency responsible for carrying out safety audits, had been downsized to such an extent that risk assessments were severely curtailed.

Shortly after the disaster, it was revealed that the number of WorkCover visits to the Esso plant dropped after 1996 from an annual average of 120 to only 18 a year. A leaked internal WorkCover memo indicated that overall visiting time to sites fell statewide to 55 percent of its target for December 1998.

WorkCover issued Esso a dangerous goods licence after two inspectors visited the site in June and July 1998 for a total of about four and a half hours. A thorough inspection of the complex 40-hectare site, which contains numerous highly inflammable gas and liquid gas storage and production facilities, would require weeks.

The Kennett government restricted the Royal Commission's terms of reference to prevent any examination of this de-regulated regime and the Bracks government has not reopened the issue.

The current government has promised to increase the fines for company safety breaches and create an offence of "industrial manslaughter," with a maximum penalty of a $5 million fine. These measures, yet to be proceeded with, would also leave untouched the fundamental causes of the Esso disaster, which lie in cost-cutting.

Like its competitors, Esso outsourced much of its maintenance work during the 1990s. It downsized its workforce by at least 16 percent, halving the number of jobs in maintenance. Ageing and less profitable areas of the complex were given less priority. Esso conducted Hazard Operability Studies on Gas Plants 2 and 3, but not Gas Plant 1—its oldest plant.

During the Royal Commission, workers gave voluminous evidence of how cutbacks in maintenance and supervisory jobs and increased workloads undermined safety. Robert Elliott, a panel operator, for example, said: "Esso is tightening up on their budgets, and in doing so they are trying to tighten up on the maintenance budgets. In the process, they have to prioritise the work that needs to be done in the plant."

The outcome was not simply the result of Esso's corporate greed. With intensifying global competition and the uninterrupted introduction of new technology, transnational companies are continuously restructuring their operations to maintain profit margins and market shares. According to *Business Review Weekly*, labor-shedding alone boosted the profitability of the top 1,000 Australian companies by more than three percent in 1997-98.

Speaking for the union leadership, Victorian Trades Hall Council secretary Leigh Hubbard claimed that the Esso verdict was a "potent warning to employers who tried to boost profits by sacrificing workplace health and safety". The case confirmed, however, that the unions had agreed to Esso's restructuring—a point made by Esso in its own defence at the previous Royal Commission.

Crown prosecutor Robert Richter was obliged to argue in the Supreme Court that, "the circumstance that both employer and employees agreed on a system of work does not ...[seem] to be conclusive of the question of whether the system was safe".

This situation is not confined to Esso either. Enterprise bargaining between the unions and major companies over the past decade or more has involved repeated job-shedding and the imposition of "flexible" conditions, inevitably undermining maintenance and safety standards.