

Hunter Community Environment Centre.



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Inquiry into Costs for remediation of sites containing coal ash repositories
Response to question on notice from Committee Chair during September 1st public hearing

Anti-competitive conduct and the fly-ash reuse industry in QLD and NSW

Queensland fly-ash contracts and ACCC prosecutions

- In 2008, the ACCC filed proceedings against Pozzolanic and Cement Australia for misuse of market power alleging that the companies “...had no commercial need for the contracted flyash from Millmerran Power Station, and by contracting for the flyash, took advantage of their market power for the purpose of preventing entry and competitive conduct in the relevant concrete-grade flyash market.”¹
- Pozzolanic’s fly-ash contracts came to the attention of the ACCC again in 2010, when an application from the company was lodged seeking approval for first right access to fly-ash from Tarong Energy Corporation Limited and Tarong North Pty Ltd²
- A draft determination from the ACCC in 2011 proposed to deny the application from Pozzolanic due to the likelihood of “...barriers to entry and expansion for other fly ash acquirers in the south-east Queensland region by restricting the quantity of the fly ash available for sale to third parties from Tarong and Tarong North Power Stations.”³ The final determination the same year ruled to conditionally authorize Pozzolanic access to fly-ash from Stanwell Corporation Limited and Tarong North Pty Ltd.
- In 2016, an \$18.6 million penalty against Cement Australia and related companies for anti-competitive conduct was issued⁴ In 2017, the Federal Court upheld the ACCC appeal and issued a total of \$20.6 million in penalties against Cement Australia and related companies including Pozzolanic, making it the third highest total penalty for an ACCC case.⁵

NSW fly-ash contracts

- Flyash Australia is a 50/50 joint-venture between Cement Australia and Boral Limited.
- FAA’s contract gives it access to 100% of the cement-grade shake ash (captured before from Eraring power station).
- Eraring produces 1.3 million tonnes of fly ash per year, but of the 700k cement-grade shake ash produced, Flyash Australia purchases just 350K tonnes per annum.

¹ <https://www.accc.gov.au/media-release/accc-institutes-proceedings-alleged-misuse-of-market-power-by-cement-australia>

² <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/pozzolanic-enterprises-pty-ltd-authorisation-a91261>

³ <https://www.accc.gov.au/media-release/accc-conditionally-authorises-queensland-fly-ash-agreement>

⁴ <https://www.accc.gov.au/media-release/186-million-penalties-ordered-against-cement-australia-companies-for-anti-competitive-flyash-agreements>

⁵ <https://www.accc.gov.au/media-release/full-federal-court-orders-206million-penalties-against-cement-australia-companies>

- Flyash Australia also has contracts to buy or use fly ash at Mount Piper and Bayswater (NSW) and Collie (WA) power stations.⁶
- Boral is a major cement producer in Australia and while the company is pursuing reuse of coal ash as a business opportunity in America, it does not appear to be doing so here.
- Former manager of Fly Ash Australia, Ron McLaren, alleges that Flyash Australia Pty Ltd has held contracts granting it almost exclusive access to Eraring's fly ash for decades and the company is restricting the reuse and sale of fly ash by other customers.
- FlyAsh Australia's longstanding contracts with Origin Energy', and possibly their contracts with other power-stations resemble the Tarong contracts investigated by the ACCC.
- Flyash Australia's contractual dominance over Eraring's cement-grade fly-ash, coupled with Origins restrictive contracts present obstructions to its re-use.
- Flyash Australia competitors are not allowed access to fine grade fabric filter bags, even though they use only 50% of the total.

⁶ <http://www.flyashaustralia.com.au/OurPlants.aspx>