



Our ref: DOC23/903965

Dr Amanda Cohn MLC
Chair
Portfolio Committee No. 2 - Health
Parliament of NSW

By email: portfoliocommittee2@parliament.nsw.gov.au

Dear Chair

I refer to Portfolio Committee No. 2's Inquiry into the current and potential impacts of gold, silver, lead and zinc mining on human health, land, air and water quality in New South Wales and to the hearing on 18 September 2023.

Response to questions on notice

Please find enclosed the EPA's responses to questions on notice.

Response to the supplementary question

I understand Stephen Beaman has responded separately to you on the supplementary question.

Transcript correction request, clarification of my evidence and additional information

Thank you for the opportunity to review the uncorrected transcript. I seek a correction to the transcript. I also wish to clarify some of my evidence and provide additional information to the evidence I provided at the hearing. This information is enclosed.

Yours sincerely

TONY CHAPPEL
Chief Executive Officer

16 October 2023

Encl

Portfolio Committee No. 2's Inquiry into the current and potential impacts of gold, silver, lead and zinc mining on human health, land, air and water quality in New South Wales

EPA response to questions on notice

Question 1:

The Hon. SUSAN CARTER: Thank you for your time here today and for the time involved in the preparation of the submission. I was interested in your observations in relation to the fines. There is certainly a theme in the submissions and in the evidence today in terms of sufficiency of the fines. I am happy for you to take this on notice if you don't feel able to answer it: Do you have any evidence that there are corporations that regard the penalty notices as cost of business, and so would be regularly receiving penalty notices because they regard that as less of a cost of business than actually taking appropriate remedial action?

STEPHEN BEAMAN: I can't think of a specific example. I think the issue of fines and broader penalties is certainly one where you can see the context of those penalties perhaps dwarfed by the level of net profit that some of these operations generate on an annual basis. But I don't have a direct example. I'm happy to take that on notice, though. I have some anecdotal experience there, but I'd rather check and see if we have anything more rigorous that we can share with the Committee.

Answer 1:

Please correct the transcript to show that it was Tony Chappel (as opposed to Stephen Beaman) answering.

The EPA has not been able to identify any specific examples where a corporation has expressly stated that penalty notices are a cost of doing business.

The EPA has a range of regulatory tools that it can use. For example, the EPA may also issue clean up or prevention notices. It may also vary environment protection licences to require licensees to implement pollution reduction programs.

Although these specific tools are not pecuniary in nature, they can have a significant impact on licensees. For example, the EPA has imposed various pollution reduction programs on Cadia Holdings Pty Limited's environment protection licence. We understand that implementing these programs has cost approximately \$30 million for works related to the management of dust from the tailings dam and over \$50 million for works related to the management of dust from the ventilation shaft known as VR8.

Question 2:

The Hon. SUSAN CARTER: When, if ever, has there been a tier 1 prosecution in relation to a mining company?

STEPHEN BEAMAN: I might have to take that on notice, if that's okay?

The Hon. SUSAN CARTER: Certainly, please.

STEPHEN BEAMAN: Yes, I'll take that on notice, thanks.

Answer 2:

There has been one Tier 1 prosecution of a mining company.

The EPA prosecuted Clarence Colliery Pty Ltd for an offence against section 116(1)(a) of the *Protection of the Environment Operations Act 1997* for negligently causing the escape of coal fines slurry and coarse reject material from a tailings storage facility into the environment, including an unnamed watercourse and the Wollangambe River within the Blue Mountains National Park. The conduct occurred in July 2015.

In July 2017, the Court convicted the defendant and ordered it to:

- pay \$720,000 to the Environmental Trust for various environmental projects
- pay the EPA's investigation costs of \$103,000 and the EPA's legal costs as agreed or assessed, and
- publish a notice of the offence in the Australian Financial Review, the Sydney Morning Herald and the Lithgow Mercury.

The judgment is [Environment Protection Authority v Clarence Colliery Pty Ltd \[2017\] NSWLEC 82](#).

Question 3:

Ms CATE FAEHRMANN: Quick question on that, when you're saying "around the mine", what distance?

STEPHEN BEAMAN: We're working out locations as close as we can. I can come back to you on that.

Answer 3:

Study sampling sites related to the Cadia mine were selected to meet the study objectives based on wind field analysis and the location of potential sources of air emissions, in particular the tailings storage facilities, relative to residential areas.

The sites were specifically selected to assess particulate matter and heavy metal level upwind and downwind of emissions sources so as to establish a background and contribution from Cadia Valley Operations and consideration of nearby residences.

The proposed locations for the high-volume air samplers are 4 -10 km from the mine and are subject to landowner approval.

Question 4:

The CHAIR: We heard this morning in evidence that the proposed lead, zinc and silver project near Mudgee has a rather extraordinary condition of consent: that residents in the area must have routine blood tests. Are you aware of any other mining projects that have such a requirement? Whose job is it to actually monitor that? I note in your opening statement you said that the EPA is not responsible for compliance with conditions of development consent. Whose job is it? Is the planning department monitoring people's blood test results?

TONY CHAPPEL: I think I'd better take that on notice, Chair, because I don't think that would be the subject of an environment protection licence condition. My assumption would be it would be a planning department compliance issue. I'm not personally aware of other projects with that condition, but we'll check and confirm.

The CHAIR: Thank you. I'd appreciate your input on notice. I think several Committee members have spent the morning, trying to unpick whose job that would be.

Answer 4:

The condition requiring blood level monitoring that the Chair referred to is a condition of the development consent for the project near Mudgee. The Department of Planning and Environment is responsible for regulating breaches of conditions of development consent for State significant development.

I refer the Chair to the Secretary of the Department of Planning and Environment as to whether any other conditions of development consent require blood tests to be carried out.