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Nature Conservation Saves for Tomorrow

31 July 2016

Mr Barry Buffier
Chief Executive Officer
Environment Protection Authority
PO Box A290
Sydney South, NSW 1232

Dear Mr Buffier,

The Blue Mountains Conservation Society writes to you regarding the Environment Protection Authority (EPA)'s prosecution of Clarence Colliery for harm to the environment caused by the collapse and escape of coal fines from its site on 2 July 2015.

The Blue Mountains Conservation Society is a community organisation working to achieve the preservation and regeneration of the natural environment of the Greater Blue Mountains. The Society has a membership of over 800 people. Our mission involves conserving the natural environment of the extensive Greater Blue Mountains region, including the Greater Blue Mountains World Heritage Area (GMBWHA) and its contained national parks and reserves.

The Society remains concerned about the impacts on the environment from the Clarence Colliery coal waste collapse and from Clarence Colliery's operations generally on the Wollangambe River and the adjacent Greater Blue Mountains World Heritage Area through which it flows. The society is also a stakeholder in the current review of Clarence Colliery's Environmental Protection Licence.

In relation to the Clarence coal waste collapse, it is understood that Clarence Colliery has pleaded guilty to charges for a tier one offence under the Protection of the Environment Operations Act (POEO) s.116 (1) (a). We ask the EPA to make submissions to the court asking for the maximum penalty for this offence and seeking other measures by way of court orders which will be a deterrent to the Clarence Colliery and its parent company Centennial Coal, and maintain public confidence in the EPA as an important regulator of extractive industries. The reasons for both requests are set out below.

Factors to be taken into account in relation to penalties (*POEOA*, s.204)

Harm caused or likely to be caused to the environment

On 2 July 2015 large part of a coal reject waste heap (on Reject Emplacement Area 3) collapsed sending many tonnes of coal fines flowing down the adjacent slope into the Wollongambe River. A gooey black sludge of toxic coal fines coated the river bed, river banks and was suspended in the water. The Wollongambe River is a wild river, in a World Heritage listed national park. EPA has reported it had travelled at least eight kms downstream. This material has suffocated plant life and killed of fauna in the waterway. It would cause physical and chemical impacts on the water quality and the river fauna, for instance, clogging the breathing apparatus of frogs, fish and other freshwater species including macroinvertebrates.

World heritage listing was a hard-fought but appropriate recognition of the significant and unique values of the Greater Blue Mountains area. Clarence Colliery's potential impacts as a mine perched above and adjacent to a world heritage area have been raised with UNESCO in the past.

The volume of waste removed and time it has taken gives some indication of the magnitude of this collapse. Over a year, the EPA has calculated that 214 tonnes of coal fines have been removed from the national park as part of the clean-up notice works. [EPA media release, 7 July 2016]

The harm to the environment continues in that, as the EPA acknowledges, the coal fines cannot be completely removed as this would do further harm to the environment. While the year-long clean-up has now stopped [EPA media release, 7 July 2016], coal fines will continue to move down the river pushed or dislodged by further river flows and storms. For instance, coal fines were reported and confirmed by EPA testing some 23 kms downstream of the discharge point (Verbal communication by Regional Manager, EPA in July 2016) The harm caused to the environment will continue for an unknown time.

Another harm to the environment is that the mine waste collapse has delayed for at least a year the imposition of stricter limits on Clarence Colliery's discharge to the Wollongambe River and therefore to GBMWA. Clarence Colliery is licensed to discharge up to 25ML/day into the Wollongambe River under its Environmental Protection Licence (EPL) 726.

In September 2014 the EPA initiated the formal review of EPL 726. The EPA's intention to change the licence was advertised in 2014 and a public submission period closed on 24 November 2014. The EPA made it clear that the licence thresholds would be tightened. For instance, the EPA's website said that

“The proposed variation is focusing on the discharge of pollutants into the Wollangambe River. The Environment Protection Authority is proposing to vary the Environment Protection Licence to put in place limits on nickel, salinity, and temperature of the discharge, as well as introduce a legally-binding Pollution Reduction Program requiring the company to reduce the concentration of pollutants in the discharge”. [EPA website at <http://www.epa.nsw.gov.au/licensing/clarence-colliery.htm>]

Further, an EPA Facts Sheet on Clarence colliery dated July 2015 stated that:

“In response to the report the EPA will be varying the company’s Environment Protection Licence to improve the quality of the discharge and reduce the impact on the river. Options for Centennial will be to either reduce the pollutants in the mine water discharge or if possible remove the discharge from the Wollangambe River. These options will be the subject of negotiations between the EPA and Centennial Coal.” [EPA website]

There has been strong community interest in cleaning up the Clarence’s mine discharge for some time. This was supported by the release of 2012-13 findings by independent University of Western Sydney scientists which documented the toxicity of Wollangambe River below the colliery’s discharge point compared with waters above the discharge point. Almost two years ago the EPA received 130 letters calling for reducing the toxic load in the discharge to the Wollangambe River which runs through the GBMWA. [See EPA summary of submissions at <http://www.epa.nsw.gov.au/licensing/clarence-colliery.htm>]

In 2014 the EPA also commissioned the Office of Environment and Heritage to undertake an independent assessment of the state of the Wollangambe River including above and below the colliery’s discharges to help inform its review of EPL 726. This report, ‘Clarence Colliery Discharge Investigation’, confirmed that the mine discharge was impacting on the Wollangambe River and confirmed the findings of the study undertaken by the University of Western Sydney. The EPA indicated again that it “...will use the findings in the report to require Centennial Coal to undertake an environmental improvement program to address the water quality issues identified by OEH....The environmental improvement program will be formalised and new conditions added to the licence which will ensure the water quality and the ecology of the Wollangambe River is protected for future generations.”

However, because of the huge mine waste collapse on 2 July 2015, EPA staff resources had to be diverted from the EPL review to the mine waste collapse, thus seriously delaying the resolution and imposition of stronger protection for the Wollangambe River and GBMWA area. This is the same area which was subjected to the damage from the coal fines mine waste collapse. EPA’s facts sheet dated July said review would be completed “in the next few months” but as of July 2016 it has not been completed. A stakeholders’ meeting is scheduled for 24 August 2016 so the delay is at present about twelve months. As finalising this review is subject to negotiation with

Centennial Coal (e.g. see reference in facts Sheet quoted above) the EPA should consider seeking orders which would require these negotiations to impose stronger conditions on EPL 726 and be quickly finalised so that further damage from the discharge to the Wollongambe River is reduced and the last twelve month's harm is compensated for.

Extent to which harm reasonably foreseeable

Collapse of mine waste piles occur not infrequently in the mining industry. The location of Clarence Colliery directly above the GBMWA means that the risk of downstream movement of solid or liquid coal waste would be foreseeable as a risk and should have been addressed. The reject heap which collapsed (Part of REA 3) is positioned close to the edge of the slope it escaped down and on land some 30 metres above the surrounding Greater Blue Mountains World Heritage Area. Such waste heaps can collapse if they become too wet so watering needs to be monitored. The containment of the waste heap pile was clearly inadequate making the collapse an environmental disaster waiting to happen. The mines' activities should have been appropriately conditioned and should have required actions specifically to ensure no coal fines escaped from the mining site.

GBMWA was inscribed as a World Heritage Area in 2000. In 2001, the proposed expansion of the Clarence colliery and its possible impacts on world heritage values of Greater Blue Mountains area was raised with UNESCO. The World Heritage Committee of UNESCO was advised of three environmental concerns "water pollution, water conservation (loss of water to mine pit) and the protection of the WHA by an adequate buffer". [IUCN decision CONF 205 V.113-115 of 2001 at <http://whc.unesco.org/en/decisions/4964>] In 2001 Australia advised that the Clarence colliery expansion would be assessed under the *Federal Environment Protection and Biodiversity Conservation Act* where world heritage areas are a matter of national environmental significance. This recent mine collapse due to operator's admitted negligence highlights that this internationally important issue remains: there was no buffer zone which contained this event. In the light of the collapse in 2015, the risks of it recurring need to be reassessed and addressed. The EPA should consider how this could be done by means of court orders. (See below)

Extent to which person had control over causes

Clarence Colliery had control over the placement and management of coal fines on its site as well as on the movement of water on the site and its application to the reject emplacements areas including REA3. It has apparently failed to exercise that control.

Previous convictions of the defendant

This is not the first offence for Clarence Colliery's parent company, Centennial Coal Company Ltd (Centennial) . Centennial has been convicted twice under the *Protection of the Environment Operations Act* (NSW) and entered into an enforceable undertaking

under the *Environmental Protection and Biodiversity Conservation Act (Cth)* with the Commonwealth Department of the Environment for \$1.45M for actual harm to the environment by its Springvale operations. These outcomes support the application of a larger penalty and greater deterrents in the form of orders in the current proceedings.

In 2006 Centennial Newstan Pty Ltd was convicted of an offence under *POEOA* s.120(1) for polluting waters. Centennial Coal is the parent company for its Newstan operations and its Clarence operations. Centennial Newstan admitted that it had failed to prevent the discharge of sediment-laden water from a dam at its Fassifern colliery into a nearby watercourse which flows into Lake Macquarie [*Environment Protection Authority v Centennial Newstan Pty Ltd* [2006] NSWLEC 732]

In 2010 Centennial Newstan was found guilty of polluting waters for five days when it failed to prevent approximately 1.4 to 1.8 megalitres of sediment-laden waters discharging from old underground workings of Newstan Colliery. The sediment-laden water entered an unnamed watercourse and flowed into Stony Creek. The court noted that this was a similar offence to the earlier conviction. [*Environment Protection Authority v Centennial Newstan Pty Ltd* [2010] NSWLEC 211]

In 2011 Springvale Coal Pty Ltd and Centennial Angus Place Pty Ltd Enforceable entered into an enforceable undertaking of \$1.45M under *EPBC Act* in relation to mining without approval. This was a case of actual harm. The enforceable undertaking agreement described this as follows:

“3. Breach of the EPBC Act

The Minister considers that Springvale Coal and Centennial Angus Place have contravened the EPBC Act in that, contrary to section 18(6) of the EPBC Act, Springvale Coal and Centennial Angus Place have undertaken an action (being coal mining, and/or related mine groundwater discharge, at the Springvale and Angus Place collieries) without approval. The Minister considers that this action has had a significant impact on Temperate Highland Peat Swamps on Sandstone, specifically:

- (a) Narrow Swamp;
- (b) East Wolgan Swamp; and
- (c) Junction Swamp

These swamps are part of the threatened ecological community Temperate Highland Peat Swamps on Sandstone listed as “endangered” under the EPBC Act,…” [Department of Environment website] at

<https://www.environment.gov.au/news/2011/10/21/centennial-coal-fund-145-million-research-program>]

The funding was used for a research project by an independent institution into swamps. The size of the undertaking shows the seriousness of the damage. The \$1.45M had to be paid within thirty days of execution of the agreement.

As well as the above convictions, on 26 April 2016 the Department of Planning and Environment initiated court action against Charbon Coal Pty Ltd near Kandos (a subsidiary of Centennial Coal Company Limited) after a compliance investigation. The company pleaded guilty in the Land and Environment Court for failing to comply with the project approval, specifically for constructing a coal truck haul road outside of the approved location. A sentencing hearing has been listed for August 2016.

<http://www.planning.nsw.gov.au/News/2016/Department-takes-court-action-against-Charbon-Coal?page=1&itemsPerPage=10&keyword&from&to>

Penalty notices issued to Centennial owned companies include:

- On 23 February 2015 Springvale Coal was fined \$15,000 by the EPA for discharging coal fines from Springvale Colliery into a downstream wetland www.epa.nsw.gov.au/epamedia/EPAMedia15022301.htm
- On 26 March 2012 Clarence Colliery was issued with a \$1500 Penalty Notice by the EPA for breaching its manganese limit because of the treatment plant being unable to cope with an increased inflow of raw mine water; www.epa.nsw.gov.au/prpoeoapp/
- In November 2004 the EPA issued Clarence Colliery with a \$1500 Penalty Notice for breaching the filterable manganese limit of its EPL726 on 18 October 2004; www.epa.nsw.gov.au/prpoeoapp/
- Between 2000 – 2013 Clarence Colliery's Annual Return shows numerous breaches for exceedances of Iron, Cadmium (min), Total Suspended Solids (TSS), pH, and no less than 32 instances of Manganese exceedances. www.epa.nsw.gov.au/prpoeoapp/
- On 19 March 2013 Charbon Coal Pty Ltd was issued with a Penalty Notice for contravene licence conditions relating to noise. www.epa.nsw.gov.au/prpoeoapp/

Why the maximum fine

Clearly the convictions, enforceable undertaking and fines have not been a sufficient deterrent. The EPA should seek the maximum fine, however, as this may, by itself, be inadequate in comparison with the company's profits, significant orders should also be sought.

Environmental court orders

We ask the EPA to consider applying for the following court orders as well as seeking the maximum fine:

- Orders requiring the defendant to take all necessary steps to ensure the mine waste heaps at Clarence Colliery do not collapse again. Given coal fines can liquefy, Clarence's five large reject areas need to be treated and contained as a liquid with adequate dam walls. Their management needs to include monitoring to identify whether they are at imminent or likely risk of collapse and carrying out rehabilitation promptly. These orders should be codified and publicised as a message to industry

for managing coal waste heaps safely. The public needs to be assured that there will not be other destructive coal waste heaps collapses in NSW;

- A monetary benefits penalty derived from the funds saved by Clarence Colliery being able to operate for a period of a year or more without having to improve the quality of its mine discharge to Wollongambe River, as foreshadowed in EPA communications regarding the review of Clarence's EPL 726;
- An environmental service order require Centennial to either significantly improve the treatment of its Clarence colliery mine discharge to Wollongambe River or to extend the Springvale Water Transfer Project (SSD 16_7592) to include its current discharge to the Wollongambe River.
- A publication order setting out the offence which would be published locally and nationally. The EPA's *Guidelines for seeking environmental orders* states that "publication orders should mainly be reserved for corporate offenders as it is likely to be of the most deterrent value to them". [at p.2] The form of words for publication should include details of the offence, how the offence was committed, the nature and extent of the pollution, very importantly, what has been done to ensure the offence will not happen again; the punishment by the court and all orders. The same information should be recorded in the executive summary of Centennial Coal's annual report and displayed on their website

Yours sincerely

A handwritten signature in black ink, appearing to read "Madi Maclean", followed by a period. The signature is written in a cursive, flowing style.

Madi Maclean

For the Management Committee