



OCEANIC COAL AUSTRALIA PTY LIMITED
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Date 13 December 2013

DIRECTION TO CARRY OUT REMEDIAL WORK

BACKGROUND

- A. The Office of Environment and Heritage (“OEH”) within the Department of Premier and Cabinet (“DPC”) has responsibility for the administration and enforcement of the *National Parks and Wildlife Act 1974* (“the Act”) and its associated Regulations.
- B. Pauline McKenzie, holds the position of Director Coastal Branch, National Parks and Wildlife Service within OEH.
- C. Director, Coastal Branch, National Parks and Wildlife Service holds delegated authority on behalf of the Director-General of the Department of Premier and Cabinet for the purposes of section 91K of the *National Parks and Wildlife Act 1974* (NSW).
- D. Sugarloaf State Conservation Area (“the reserve”) is land reserved under this Act.
- E. Oceanic Coal Australia Pty Limited (“OCAL”) being the operator of West Wallsend Colliery holds approval to extract coal from beneath Sugarloaf State Conservation Area (SCA) in accordance with Project Approval 09_0203, Mining Lease CCL 718 and Environment Protection Licence (EPL1360). The Project Approval requires the project to be carried out generally in accordance with the project's Environmental Assessment (West Wallsend Colliery Continued Operations Project - Volumes 1 to 4, July 2010) and preparation and implementation of Extraction Plans. The Mining Lease requires preparation and implementation of Subsidence Management Plans.
- F. OCAL have a consent issued by OEH under the NPW Regulation to undertake subsidence management works, including the remediation of surface cracking in the reserve (“the consent”). The consent was signed by OCAL on 25th July 2012.
- G. Surface cracks in remote and steep areas of the reserve are remediated by filling the cracks with an aerated concrete product known as grout. The grouting methodology employed by OCAL is detailed in the Subsidence Management Protocol between OCAL and “Director Coastal, National Parks and Wildlife” (“the protocol”).

- H. Remediation of surface cracking adjacent to Longwall 41 using grout commenced in December 2012.
- I. On 4 June 2013 OCAL notified authorities including OEH of a leak of the approved grouting product (Air-O-Cem) down slope of Longwall 41 into an ephemeral drainage channel within the Cockle Creek catchment and the reserve (“remediation area”).
- J. On 21 June 2013 OCAL provided OEH with a report titled “Detailed Incident Report – West Wallsend Colliery LW41 Grouting Incident” (“the report”). In that report OCAL states that “the grout affected area extends approximately 250m down slope of the work area. The average width of the affected area is approximately 1.5m and the average depth of the grout is estimated to be around 200mm. It is estimated based on visual inspections that approximately 75 cubic meters of grout has travelled into the drainage channel”.
- K. OEH inspected the site on 14 June 2013 and 17 July 2013.
- L. The leak of the grouting product into the remediation area has resulted in damage to the vegetation, rock, soil, sand and stone within the ephemeral drainage channel.
- M. OCAL has breached condition 4.8 of the consent by causing contamination or pollution of the reserve and has committed an offence under section 156A((1)(b) of the Act by causing or permitting damage to vegetation, rock, soil, sand, stone or similar substance within the reserve.
- N. OEH issued a Remediation Direction under section 91K of the Act to OCAL on 28 August 2013 in respect of the remediation area identified in **Attachment 1**. The Remediation Direction required OCAL to submit a remediation plan to OEH for approval. OCAL submitted a final remediation plan to OEH on 11 October 2013.
- O. The Remediation Direction was subsequently varied on 14 October 2013 to require OCAL to implement the trial phase of the final remediation plan, subject to certain modifications specified in the direction, and to provide a report to OEH on the outcomes of the trial phase.
- P. The Remediation Direction was again varied on 18 November 2013 to allow a 2 week extension for the completion of the trial and submission of the trial report.
- Q. OCAL informed OEH of the completion of the trial phase on 4 December 2013. A trial report and revised Operational project plan was submitted to OEH on 5 December 2013. A final revised remediation plan titled ‘Grout Remediation Plan’ version 3.0 (WWC SD PLN 0097) for the remainder of the grout removal (“the Remediation Plan”) was submitted to OEH on the 12 December 2013 (**Attachment 2**).
- R. OEH hereby approves the implementation of the Remediation Plan for delivery of remediation works for the remainder of the project and the proposed timeframes set out in the Operational project plan.

OPINION

- S. I, Pauline McKenzie, Director Coastal Branch, National Parks and Wildlife Service, OEH am of the opinion that:
 - a) Damage has been caused to the reserve as a result of the commission of an offence under the Act.

DIRECTION TO CARRY OUT REMEDIAL WORKS

T. I, Pauline McKenzie, Director Coastal Branch, National Parks and Wildlife Service, OEH, in order to:

- a) Control, abate or mitigate the damage to the reserve
- b) Maintain remediate or restore the reserve

Require that OCAL perform the following remediation works on the land within the time specified for each work.

Remediation works

1. OCAL must undertake the grout remediation works in accordance with the operational project plan and the Remediation Plan, as modified in the following manner:
 - (i) OCAL is responsible for all decisions regarding selection and use of contractors. OCAL must be satisfied that any contractor engaged has the relevant expertise and experience required for the task;
 - (ii) Responsibility for compliance with this Remediation Direction rests with OCAL alone. That is, the obligation to carry out all of the works and measures referred to in the OCAL Remediation Plan is an obligation on OCAL, irrespective of whether it is expressed in the Remediation Plan to be a work or measure to be carried out by OCAL, Minova Australia Pty Ltd, or a contractor;
 - (iii) OCAL must ensure that a net environmental benefit is achieved by ensuring that:
 - a) the removal process causes as little damage as possible to the drainage channel and the surrounding environment, and
 - b) the natural processes of the drainage channel are restored;
 - c) native vegetation surrounding the drainage channel and other affected areas (such as access track and heli-lift sites) is able to continue to regenerate naturally (following OCAL's post-remediation activities);
 - d) and that any remaining grout is no longer visually intrusive.
2. For the avoidance of doubt, OCAL must implement the Remediation Plan such that:
 - (i) All grout is removed from Grout Site 1 by **27 June 2014**;
 - (ii) A written report on the completion of the grout removal is provided to OEH by **18 July 2014**;
 - (iii) All remaining project works including post removal ancillary activities and monitoring as specified in section 3.3 and 5.1 are completed by **5 August 2014**.
3. All documents or notices required to be provided to OEH by this Direction must be sent to: Deon van Rensburg, Manager, Lower Hunter Area, National Parks and Wildlife Service, Sandgate Rd, Shortland NSW 2307.

WARNING AND INFORMATION ABOUT THIS DIRECTION

- It is an offence against section 91Q of the Act to fail to comply with this Remediation Direction. The maximum penalty that a court may impose for this offence is:
 - for a corporation, \$220,000 plus \$22,000 for each day the offence continues and
 - for an individual, \$110,000 plus \$11,000 for each day the offence continues.
- If you fail to comply with this Remediation Direction OEH may authorise any other person to carry out the works and may then recover the cost from you (section 91O of the Act).
- This Remediation Direction is issued under section 91K of the Act.
- Under section 91K(3) of the Act this Remediation Direction may be varied or revoked by a further notice.
- Under section 91T(1) of the Act, if you are aggrieved by the decision to make this Remediation Direction you may appeal to the Land and Environment Court within 30 days of this direction being served on you. However, even if an appeal is lodged, you must comply with this Remediation Direction, unless the Court orders otherwise.
- Under section 188E of the Act, your obligation to comply with the requirements of this Remediation Direction continues until the direction is complied with, even if the due date for compliance is passed.
- OEH may conduct inspections to determine whether this Remediation Direction is being complied with.
- Words and expressions have the same meaning as words and expressions used in the Act, except where a word is specifically defined in this Remediation Direction.
- For the purposes of this Remediation Direction, “national parks legislation” means the Act and the regulations under the Act.
- A Remediation Direction will not negate the potential for prosecution. A Remediation Direction is separate to any potential prosecution.



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Pauline McKenzie

Director Coastal Branch
(by Delegation)

Attachments:

1. Map of the Remediation Area
2. Grout Remediation Plan prepared by OCAL Coal Australia Pty Ltd WWC SD PLN 0097 Version 3.0 Dated 12/12/2013