



OCEANIC COAL AUSTRALIA PTY LIMITED  
PO BOX 4186  
EDGEWORTH NSW 2285

Notice Number        DOC13/76057  
File number         FIL13/7070  
Date                  11 November 2013

**BY PERSON**

**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 ("Oceanic") 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. Oceanic 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 Oceanic Coal on 25<sup>th</sup> 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 Oceanic is detailed in the Subsidence Management Protocol between Oceanic 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 20 September 2013 Oceanic notified authorities including OEH of a leak of the approved grouting product (Air-O-Cem) located on the side of a steep slope at the northern end of Longwall 41 ("remediation area").
- J. On 27 September 2013 Oceanic provided OEH with a report titled "Detailed Incident Report - West Wallsend Colliery LW41 Grouting Incident – 20 September 2013" ("the report"). In that report Oceanic states that "the grout affected area extends approximately 120m down slope of a previously remediated subsidence crack site. The average width of the affected area is approximately 1m. It is estimated that the average depth of the grout product is approximately 100mm. Based on the above information it is estimated that approximately 12 cubic meters of grout has travelled down the side of a steep slope area on the northern end of longwall 41 terminating on the embankment of an ephemeral drainage channel in the Cockle Creek catchment".
- K. OEH inspected the site on 25 September 2013.
- L. The leak of the grouting product into the remediation area has resulted in damage to the vegetation, rock, soil, sand and stone on the steep slope area.
- M. Oceanic 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. The purpose of this remediation direction is to require Oceanic to prepare a remediation plan for the remediation area and to submit this plan to OEH for approval. Once approved, OEH intends to vary this remediation direction to require Oceanic to implement the approved remediation plan and to report back to OEH on completion of the remediation works.
- O. A draft version of this remediation direction was offered to Oceanic for comment on the 29 October 2013. In reply Oceanic accepted clause 2 of this document but asked for the submission date outlined in clause 1 be extended from the 1 December 2013 to 31 December 2013. In consideration of this request the OEH has taken in to account the period of time that Oceanic has know about this event and has decided to offer an amended submission date of the 13 December 2013.

## **OPINION**

- P. 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**

- Q. 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 Oceanic perform the following remediation works on the land within the time specified for each work.

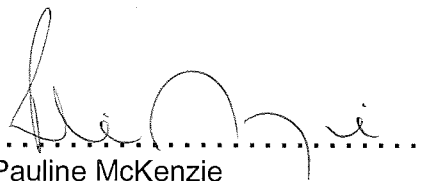
## **Remediation works**

1. Oceanic must prepare, in consultation with OEH, a remediation plan that is to be submitted to Deon van Rensburg, Manager, Lower Hunter Area, National Parks and Wildlife Service, OEH by 13 December 2013 for approval.

2. Oceanic must ensure that the remediation plan:
  - (a) includes a detailed explanation of the method for removing grout from the remediation area mapped in Attachment 1 to this notice
  - (b) includes a detailed explanation of the measures taken to minimise any impacts on the environment in removing the grout,
  - (c) includes the proposed timeframes for removing the grout, and
  - (d) provides for a net environmental benefit to be achieved by the remediation works by ensuring that:
    - i. the removal process causes as little damage as possible to the surrounding environment, and
    - ii. the natural processes of the site are restored;
    - iii. native vegetation surrounding the site and other affected areas (such as access track and heli-lift sites) is able to continue to regenerate naturally following Oceanic's remediation activities;
    - iv. and that any remaining grout is no longer visually intrusive

### **WARNING AND INFORMATION ABOUT THIS DIRECTION**

- It is an offence against section 91Q of the Act to fail to comply with this 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 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 Direction is issued under section 91K of the Act.
- Under section 91K(3) of the Act this 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 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 Direction, unless the Court orders otherwise.
- Under section 188E of the Act, your obligation to comply with the requirements of this 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 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 Direction.
- For the purposes of this 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.



Pauline McKenzie

Director Coastal Branch  
(by Delegation)

### **Attachments:**

1. Attachment 1. Map of the Remediation Area





**Legend**

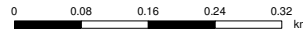
- Watercourse
- Grout Remediation Site 2
- NPWS Estate

**Attachment 1**  
**Sugarloaf SCA Grout Remediation Site 2**

Copyright Department of Environment, Climate Change & Water (NSW) October, 2013  
This map is not guaranteed to be free from error or omission  
The Department of Environment, Climate Change & Water (NSW) and its employees  
disclaim liability for any act done on the information in the  
map and any consequences of such acts or omissions



Datum/Projection: GDA 1994 MGA Zone 56



Printed By:  
Doug Beckers  
26 October 2013