

GENERAL PURPOSE STANDING COMMITTEE NO.5
INQUIRY INTO THE PERFORMANCE OF THE NSW ENVIRONMENT PROTECTION
AUTHORITY

QUESTIONS ON NOTICE – EPA RESPONSES

Question on Notice – Sydney Morning Herald publication

QUESTION

The Hon. Dr Peter Phelps: Thank you. One final thing is the requirement to publish the decision. The requirement was that it had to be published in the *Sydney Morning Herald*. Is there any reason you chose a paper that has a smaller circulation than, for example, the *Daily Telegraph*?

ANSWER:

Publication orders, including which publication the notices go in, are made by the Court, not the EPA.

The EPA is advised by the Legal Services Branch of the Office of Environment and Heritage (which provides legal services to the EPA under a service agreement) that traditionally, the *Sydney Morning Herald* (SMH) has been regarded as the most appropriate publication within the legal fraternity because, amongst other things, it published court lists. This is reflected in the Land and Environment Court's Class 5 (criminal jurisdiction) Practice Note, which refers to court lists being published in the SMH. It refers to no other newspaper.

Question on Notice – Container deposit

QUESTION

Mr SCOT MacDONALD: Has the EPA calculated the externalities of bottled container waste in New South Wales?

ANSWER

No. As part of the COAG process, Australian Environment Ministers agreed to investigate national measures (including Container Deposit Schemes) to improve packaging recovery and reduce packaging litter. This investigation culminated in the development of a Decision Regulation Impact Statement that provided detailed economic and social analyses on various options to improve recycling and reduce litter associated with packaging waste.

The Decision Regulation Impact Statement is being considered by Environment Ministers.

Questions on Notice – Dargues Gold Mine

QUESTIONS

The Hon. Dr PETER PHELPS: My understanding is that, essentially, muddy water entered into the local stream, is that correct?

Mr BUFFIER: If you want the detail, I think we might have to take it on notice.

The Hon. Dr PETER PHELPS: That is okay, if you can take it on notice.

At the same time, could you indicate whether any toxins were released by that spill, any heavy metals were released by that spill or was it, as I understand, simply a case that muddy water entered a stream?

Is it appropriate for the regulatory regime of this State to be seeking prosecutions for muddy water because, presumably, streams got muddy not only prior to mining activities but also prior to the arrival of white men in this country?

CHAIR: Mr Buffier, the secretariat will send questions on notice. You do not have to write them down.

Mr BUFFIER: No, I was just doing something for my own assistance.

CHAIR: Okay.

The Hon. Dr PETER PHELPS: Given, obviously, that dirt and mud now are considered to be some sort of pollutant, are you planning to extend your remit into further areas?

Mr GIFFORD: I think in terms of that particular discharge, the issue was with respect to heavily sediment-laden water being discharged into the receiving environment. The potential generally there is for that sort of discharge, particularly if it is large, to affect the oxygen content of the receiving environment and then that can have ecological impacts. That is really generally why we would take action in those sorts of circumstances.

The Hon. Dr PETER PHELPS: Why was the money which was supposed to have been allocated for Upper Araluen riparian works—specifically the removal of non-native vegetation—not used for that purpose?

Mr GIFFORD: I would have to take that on notice.

ANSWER:

During February and March 2013 the operators of the Dargues Gold mine discharged muddy water from their mine construction site and polluted Spring and Majors Creeks. The NSW Land and Environment Court found that the incidents were caused, in part, by the incomplete installation of sediment and erosion controls on the construction site and in part because of rainfall events that mobilised sediment. The Court also found that the discharge of muddy water from the mine caused actual environmental harm to Spring and Majors Creek, and that there appeared to have been a substantial failure to implement appropriate sediment control measures at the mine and that the environmental harm was foreseeable.

Schedule 5 of the Protection of the Environment Operations (General) Regulation prescribes among other things, ashes, soil, earth, mud, stones, sand, clay or similar inorganic matter as being pollutants of water. This provision has had effect since the regulation was first made in 1998.

Soil and sediment from construction sites causes major environmental problems for waterways and aquatic flora and fauna. Sedimentation and the subsequent siltation of

waterways can also adversely affect the amenity and recreational values of waterways not only at the initial site of discharge, but areas downstream of it.

The discharge of sediment to waterways can also lead to other environmental impacts including:

- Reduction in water quality which can adversely affect water storages
- Sediment deposition on the bed of the waterway which can alter the way that a waterway disperses flood waters and even increase the flooding potential in the lower reaches and floodplains of a waterway
- Clogging of the small aquatic spaces that are used by macro-invertebrates as habitat and as refuge to escape floods
- Reduction in sunlight penetration into the waterway which can affect the ability of aquatic vegetation to photosynthesise.

Majors Creek forms part of an important catchment that provides water supply for rural properties and flows into Araluen Creek, which is a tributary of the Deua River. The Deua River catchment provides 60 per cent of the water supply for the people of Eurobodalla.

As part of the penalty, the Court made an order pursuant to section 250(1)(e) of the *Protection of the Environment Operations Act 1997* that the operator of the Dargues Gold Mine pay to the Upper Deua Catchment Landcare Group Inc. within 28 days of the order, the amount of \$103,000 to be used for the Riparian health works in and around Araluen Creek. This money has been paid by Big Island Mining and the works are to be used to:

1. Rehabilitate creek stabilisation measures
2. Clear weed infestations in the riparian zone
3. Exclude stock from creek areas.

The Upper Deua Landcare group has been preparing plans for the riparian works which will be ratified at a meeting on 20 November 2014. It is expected that works will commence late in 2014/early 2015.