

**INQUIRY INTO PERFORMANCE OF THE NSW
ENVIRONMENT PROTECTION AUTHORITY**

Name: Mr Dennis Hirst

Date received: 8/08/2014

I wish to bring to the attention of the Upper House Inquiry into the EPA ,the failure of the EPA to put in place measures to secure the long term protection of the Hexham Swamps from present and future potential contamination threats from the adjoining Aurizon and Australian Rail Track Corp land at Hexham.

In September and October 2013 the NSW minister for Planning and Infrastructure granted the approval to Aurizon and Australian Rail Track Corp. for the Development of two State Significant Infrastructure (SSI) Projects located at Hexham. The Proposed projects involves the development of Coal Train Holding Yards, Fuel Depot and Train Support Facility. Part of the proposed site comprises the former Coal and Allied Coal Washery site, an area of 105 hectares that contains significant volumes of coal waste ,encroaching into the Hexham Swamps and adjoining the Hexham Swamp Nature Reserve .

The Hexham Swamps is listed under the *Environment Protection and Biodiversity Conservation Act (EPBC Act)* as a Wetlands of National Significance , a SEPP14 coastal wetland system covering more than 3000 hectares, described by the Hunter Central Rivers Catchment Management Authority as "*the hunters largest and most **biological diverse** wetland and one of the largest in the NSW(Fact Sheet 2007)* containing rare and endangered species. Australia has Bi lateral agreements with Japan ,China and South Korea for the protection of Hexham Swamps as important habitat for migratory water birds, and the Hexham Swamps is also recognised valuable fish and prawn nursery area (NSW Fisheries values on Hexham Swamp July, 1999 **US \$ 19,580/ha/annum.**)

In December last year I notified the EPA over the contamination of low PH/ high acidic levels draining off the site (attached photograph) into the Hexham Swamps and the potential for the mobilisation of Heavy Metals also discharging or leaching off this site entering and accumulating into the surrounding wetlands . I also wrote to the EPA (5-3-2014Attached) relaying the same concerns.

EPA's written response (8-5-2014 Attached) confirmed that;

"Heavy metals and
an acidic PH has been encountered in waters at concentrations exceeding the
ANZECC/ARMCANZ trigger values.
“

The EPA also raised a number of environmental concerns and listed six recommendations all stating; **“should be”** ...implemented, rather than demanding.

On the 4th July 2014 I sent a written response (attached) noting the Environmental Assessment Report prepared for the site by Environmental Resources Management Australia in 2010 confirming that contamination was also present on the site with the ground water, Arsenic, Nickel and Benzo being above suitable levels.

I also believe I addressed in my letter, the EPA criteria for declaring land to be “significantly contaminated land”, as set out in section 12 of the Contaminated Land Management Act 1997 (NSW) (CMA Act.).

EPA's response dated 16th-July 2014 (attached) confirmed another two contaminants identified on the site in coal waste. The letter went on to state a number of possibilities in relation to land contamination on the site and the; *“(EPA) determined that there is no reason to believe that the contamination of the land is significant enough to warrant regulation under the Contaminated Land Management Act.”*---- *“The EPA will be regulating the remediation of the isolated hot spots of soil contamination as part of the Environmental Protection Licence”*--.

The EPA also advised; *“ Any environmental controls required to prevent future contamination at the site will be incorporated into the EPL to ensure that the future operation of the site does not exacerbate the existing contamination.”*

A more recent statement from the EPA (attached) claims; *“The EPA understands that once construction activities at the premises are completed , Aurizon will no longer be required hold a licence “— adding –“The EPA **may** impose conditions of surrender to manage ongoing environmental issues”.*

Indicating a **lack of certainty** on future environmental management, but more importantly can the EPA impose additional conditions on their EPL? As described below.

Since development approval , Aurizon has applied to the EPA for an EPL to carry out crushing , grinding and separation on its site, which is a scheduled activity.(11) As such , the EPA must grant the licence, and the conditions in the licence must be substantially consistent with the SSI approval . This means that the EPA cannot impose additional restrictions on Aurizon to deal with pollution or contamination that what is already required under the SSI approval. Therefore , while Aurizon must comply with the conditions of any EPL in relation to crushing, grinding or separating activities, the EPL will not be capable of requiring them to do additional clean-up work on the site.

However, under the CLM Act, the EPA can issue clean-up and prevention notices in accordance with Part 4.2 or 4.3 of the POEO Act in relation to “significantly contaminated land”, regardless of whether an EPL is required or not.(12) In order to do this the EPA must consider the land to be significantly contaminated land as outlined in section 2 of this advice.

It appears the information provided by the EPA to incorporate additional environmental controls on their EPL is false, and without the EPA declaring the site “significantly contaminated land”, protecting the Hexham Swamp from contamination from the site lacks **certainty**.

I would further add despite notifying the EPA in December last year contamination is still discharging off the site into the Hexham Swamps

Due to the **uncertainty** of continuing discharges off the site into the wetlands , the **uncertainty** of disturbing contaminated land on the site for similar coal related industrial uses into the future and the **uncertainty** surrounding extra conditions being placed on EPL.

The EPA has failed to adopt the **precautionary principle**.

As the Act States, (a) *That if there are threats of serious or irreversible , environmental damage , lack of full scientific **certainty**, should not be used as a reason for postponing measures to prevent environmental damage.*

(c) *Conservation of **biological diversity and ecological integrity**- namely ,that conservation of biological diversity and ecological integrity should be a **fundamental consideration***

Yours
Sincerely

Dennis Hirst

Hexham Swamp Rehabilitation Project
Committee

Local Land Services Hunter, Water Watch Team.

27th August