Submission No 132

INQUIRY INTO PERFORMANCE OF THE NSW ENVIRONMENT PROTECTION AUTHORITY

Organisation: Lock the Gate Alliance

Date received: 29/08/2014

LOCK THE GATE ALLIANCE
AUSTRALIANS WORKING TOGETHER TO PROTECT OUR LAND, WATER, AND FUTURE

Reply to: Georgina Woods
NSW Coordinator
PO Box 290
Newcastle, 2300

29 August 2014

The Director
General Purpose Standing Committee No. 5
Parliament House
Macquarie St

Submission: Inquiry into the performance of the NSW EPA

Thank you for the opportunity to make a submission to the inquiry into performance of the NSW EPA.

The EPA performs a crucial function in New South Wales. The *Protection of the Environment Operations Act* provides a robust and appropriate legislative framework for the important role the EPA plays in safeguarding the common goods of clean water, air and land.

In general, the Lock the Gate Alliance believes that the EPA should be empowered and resourced to be a fearless regulator of pollution and polluting activities. It may be that the shortcomings that we highlight in this submission have come about as a result of inadequate resourcing to independently pursue this function. In most instances, the EPA's monitoring and enforcement of pollution standards and licences is dependent on the compliance of the private sector companies it regulates to provide monitoring data and report pollution incidents.

We have observed that the EPA works very closely with the companies and industries it regulates. In some instances, this is appropriate, if it leads to increased corporate social and environmental responsibility. However, the close relationship the EPA has developed with the companies responsible for pollution has also led to situations that we believe compromise the EPA's objectives, and the safety and health of people, communities and the environment in New South Wales.

We highlight the following matters for the Committee's consideration:

1. Pollution standards and load limits must be imposed based on objective environmental and health standards, not developed in negotiation with the company in question. In some cases, load limits are missing entirely from Environment Protection Licences, and so unlimited quantities of dangerous toxins are being discharged for example from Hunter Valley mines into the Hunter River, and from flaring at coal seam gas sites into the air near homes.
2. Insufficient resourcing or independence on the EPA's part means that monitoring data is mostly in the hands of the companies responsible for the pollution. It is not available

generally to the public, and relies on the quick action of those companies in reporting exceedances to trigger a response from the EPA.

3. The EPA's independence in issuing and setting conditions on pollution licences should be reinstated for all classes of development, including state significant development and state significant infrastructure projects.

Control of information and data

The EPA perforce maintains a close relationship with the companies it is charged with scrutinising and regulating because the companies in question are the ones that gather and hold data on their pollution. The relevant EPA objective here is "ensuring the community has access to relevant information about hazardous substances arising from, or stored, used or sold by, any industry or public authority." While we consider it appropriate, and in keeping with the "polluter pays" principle of ecologically sustainable development, that the companies engaging in polluting activity should foot the bill for monitoring, it is not appropriate that this monitoring be undertaken *by* the company, with results reported to the EPA and only available to the public in aggregate or summary down the track.

In the case of the Pilliga coal seam gas activity and contamination of two aquifers from a leaking holding pond for waste water, the EPA and the Health Department had to seek Santos' permission to access documents in order to determine the health impacts of the contamination event. This situation is not acceptable. It is crucial that the ownership and control of information about pollution monitoring be in the hands of the EPA, and be made available in a timely fashion to other Government agencies and concerned members of the public.

The Hunter Valley air quality monitoring network is a step in the right direction towards public access to pollution information, but we submit that the monitoring stations owned and controlled by coal mining companies should also be made public, and should properly be conducted by the EPA itself.

Members of our network frequently use the EPA public register. Most of the necessary information about Environment Protection Licences can be found there, but we believe that transparency could be improved by the full publication of non-compliance reports, and provision of pollution monitoring data in a useable format.

Protecting the polluters

Documents obtained under Freedom of Information by the Wilderness Society regarding the Pilliga aquifer contamination incident and the Hunter Community Environment Centre regarding air quality along the Hunter Valley coal chain reveal a common thread of unwarranted attention to public relations and message management by the EPA.

We fully accept the need for the EPA to ensure that the public is not needlessly alarmed about pollution events that can be safely and simply cleaned up and managed. However, close and private negotiation with polluting companies to agree on media messages that sideline concerned members of the public and non-Government and community organisations erodes confidence in the Authority, and alienates members of the community that take a strong interest in the matters for which it is responsible. This approach impacts on the ability of the EPA to fulfil its objective of "promoting community involvement in decisions about environmental matters" since community members feel excluded from negotiations undertaken behind closed doors and are then treated in some cases as

antagonists to the Authority and the proper conduct of its mandate, when precisely the opposite is the case.

Standards and limits on pollution

The EPA should strive to adopt, and enforce, world's best practice in order to meet it objectives. We have observed and been concerned by a practice of adopting standards based on parameters imposed by the industry or company concerned, rather than adopting objective pollution benchmarks set down in Australian regulation or by the World Health Organisation. The relevant EPA objective is the agency adopt "minimum environmental standards prescribed by complementary Commonwealth and State legislation and advising the Government to prescribe more stringent standards where appropriate." In the regulation of coal seam gas and coal mining, the EPA has not fulfilled this objective.

With regard to coal mining, we acknowledge the extensive work that the EPA has done in creating Pollution Reduction Programs for coal mines in the Hunter Valley. As is generally its wont, the EPA has developed these programs in close consultation with the companies involved, but has also involved affected members of affected communities and held workshops and information sessions about the programs.

Nevertheless, air quality in the Upper Hunter does not meet national standards and is worsening. The results of the Upper Hunter Air Quality Monitoring Network in 2012 (the 2013 report is not available) reveal that several suburbs and villages are being subjected to poor air quality in breach of the national standards for particle pollution, including Maison Dieu and Camberwell, which were above the benchmark concentration for PM^{10} on 20 and 23 days respectively. These two locations will both be profoundly affected by the construction of Yancoal's new Ashton South East Open Cut coal mine, which was approved by the Planning and Assessment Commission despite the objections of the New South Wales Department of Health and people living in the area. It is not logical to expect that air quality standards can be maintained if the quantity of particle pollution being created in the proximity of these villages and suburbs continues to increase. In order to properly fulfil its objective, the EPA needs a concurrence power for all developments, including State Significant Development, and full health impact assessments for developments that are likely to impact on human health must be conducted.

It is our view that the EPA's approach to regulating coal mining in the Hunter has accepted boundaries set for it by the industry, rather than compelling the industry to accept boundaries set by objective standards and regulations. For example, it is widely accepted that mines will operate 24 hours a day, seven days a week, that mines will discharge mine-affected water into the Hunter River and its tributaries, that mines will continue operating in poor meteorological conditions. The industry has become accustomed to setting the terms of its own regulation, and the result does not meet community expectations or pollution standards.

Adopting limits

One matter that has so far not received public attention is the unlimited licence to emit harmful and carcinogenic chemicals into the air from coal seam gas flaring sites that the EPA has given to Santos in the Pilliga and AGL in Gloucester in recent months. The EPA has issued three Environment Protection Licences for coal seam gas assessment and production. Two of these, Santos' EPL for exploration in the Pilliga and AGL's EPL for Gloucester, cover activities associated with extracting gas from coal seam gas wells.

The EPL given to AGL (EPL no. 20358) for the Gloucester Gas Waukivory project on 6 August covers fracking at five wells and irrigation of a property owned by AGL with produced water from the exploration. It gives approval for four flaring locations that will discharge pollution into the air and lists over 90 groundwater, surface water and soil monitoring locations. Clause L2.2 of the licence lists a number of harmful pollutants that will be discharged into the air at the flaring points, but fails to put any limit on the concentration or total volume of these contaminants that will be released. These include Benzene, Benzo(a)pyrene, Nitrogen oxides, and volatile organic compounds. As the site of the wells is quite close to the township of Gloucester, we do not believe that this action by the EPA is in accord with its objective of "reducing to harmless levels the discharge into the air, water or land of substances likely to cause harm to the environment" or "adopting minimum environmental standards prescribed by complementary Commonwealth and State legislation and advising the Government to prescribe more stringent standards where appropriate." Within the terms of the licence, this amounts to an unlimited licence to produce and emit these chemicals.

The same failure to impose load limits on pollution from flaring at coal seam gas assessment sites is evident in the Pilliga. Santos' EPL for their Pilliga coal seam gas exploration covers five flaring sites. The EPL was issued to Santos on 1 May 2014, prior to the Planning and Assessment Commission assessment of the proposed project and the consent which Santos obtained from the Planning and Assessment Commission last month. Similarly to AGL, there are a list of hazardous chemicals that the EPL gives open approval to Santos to emit, with no limits imposed. These include Benzene, Benzo(a)pyrene, fine particulates, Hydrogen sulphides, Nitrogen oxides, Sulfur oxides and volatile organic compounds.

When the EPA was asked why load limits had not been imposed for the Gloucester fracking activities, Lock the Gate was informed that the authority was intending to first monitor the emissions and set the limits after results of the monitoring had been gathered. Similarly, the goal of the Upper Hunter Air Quality Monitoring Network is "to gather sufficient information to allow a standard to be set for PM2.5 when the Air NEPM is reviewed." In other words, rather than looking to the World Health Organisation or standards set by other Governments or recommended by non-Government organisations for limits on dangerous particle pollution, the EPA is collecting information about the current pollution levels to inform the standard.

In the case of coal mining in the Hunter Valley, a similar problem has occurred: the EPA has issued Environment Protection Licences that licence the release of heavy metals into the Hunter River and its tributaries, without imposing any limits on these. Given the significant expansion on mining activity in the Hunter in the last ten years, including the discharge of mine affected water into waterways, we believe that it is not appropriate for there to be no limit imposed on the levels of dangerous contaminants in this water. In response to a Lock the Gate report that highlighted this problem, the EPA simple stated that "Analysis suggested that the [Hunter River Salinity Trading Scheme] rules designed to manage conductivity are also likely to mitigate against the impact of other pollutants that are found in mine water such as heavy metals."

Compliance and enforcement

We are concerned that the EPA relies on reporting and monitoring by polluting companies and facilities for its compliance activities, and that repeated breaches of Environment Protection Licence conditions by some companies indicates that enforcement actions are not sufficiently strong to deter repeat offences.

For example, AGL has repeatedly breached the conditions of its EPL for its Camden gasfield and processing plant. A compliance audit released in June 2014 revealed that AGL had exceeded the nitrogen oxide emission limit at two discharge points in November 2013 year and was not monitoring the required pollutants or monitoring continuously at three discharge points. This was the second NOX exceedance breach in that calendar year. AGL had already been $1,500 fine in March 2013 for a breach of the nitrogen oxide limit. Other non-compliance events at the site include a $1,000 fine in July 2013 for failing to publish monitoring data, a finding in August 2013 that AGL had not complied with several conditions relating to air pollution monitoring between 2009 and 2012 and a $1,500 fine and caution in December 2013 for exceeding air pollution levels. After repeated fines and breaches, and continuous failure to report, instead of prosecuting, the EPA negotiated an "enforceable undertaking" with the company. This sent the signal that no matter how long a company ignores requirements and warnings, it can avoid prosecution. This approach alienates the public, who see polluters getting off scot free on matters that affect people's health and wellbeing. It seems clear to us that the company does not view breaches of its Environment Protection Licence as a serious matter and the small fines and notices being issued have not deterred them from repeat offences. Given the proximity of this facility to people's homes, we view this as a dereliction of the EPA's responsibility.

In regard to the Pilliga groundwater contamination incident, we note that the EPA was reliant on reporting by Santos of the elevated pollutants found in the aquifers that had been contaminated. The investigation report for that incident reveals that the EPA did not conduct any independent sampling of their own, but relied entirely on data provided by Santos - the company they were investigating. Relying on Santos' data and reports limited the degree to which the EPA could engage other agencies, community groups and members of the public.

Thank you again for the opportunity to provide input into this inquiry.