
Costly Coal Spill in World Heritage Area

Date : July 24, 2017

EPA v Clarence Colliery Pty Ltd; Chief Executive, Office of Environment & Heritage v Clarence Colliery Pty Ltd [2017] NSWLEC 82 per Robson J

Background

Clarence Colliery Pty Ltd (**Clarence Colliery**) operates a coal mine near Newnes Junction in the Blue Mountains area. In July 2015 an overtopping incident occurred where 2,300 tonnes of coal escaped from a coal storage area and entered an unnamed watercourse, the Wollangambe River and the World Heritage listed Blue Mountains National Park.

National Parks are declared for exceptional natural values and must be protected for future generations.

The EPA issued clean-up notices and oversaw a comprehensive clean-up of the coal material including over 44 inspections and over 600 helicopter trips to remove the coal from the river. The clean-up efforts cost more than \$2M.

Offences

In *EPA v Clarence Colliery Pty Ltd; Chief Executive, Office of Environment & Heritage v Clarence Colliery Pty Ltd* [2017] NSWLEC 82, Clarence Colliery was prosecuted by the Environment Protection Authority for negligently causing the escape of a coal material that harmed the environment. The two offences were under:

1. Section 116(1)(a) of the Protection of Environment Operations Act 1997 that in the period of 1 July 2015 to 2 July 2015, it negligently caused the escape of coal fines slurry and coarse reject material into the environment including an unnamed watercourse and the Wollangambe River within the Blue Mountains National Park.
2. Section 156A(1)(b) of the National Parks and Wildlife Act 1974 that in the period 1 July 2015 to 2 July 2015 it damaged vegetation, rock, sand, stone and similar substances located within the Blue Mountains National Park.

Judgment

In sentencing Clarence Colliery, Robson J determined that the offences had a significant impact on the unnamed watercourse, Wollangambe River and World Heritage Blue Mountains National Park. Robson J also found that the actions of Clarence Colliery caused substantial actual harm and likely environmental harm to areas that were of high environmental and conservation value which were specifically preserved and intended to be free of pollution (at [93]).



The harm caused was also found to be likely to diminish the suitability of affected areas for aquatic invertebrates, vertebrates and plants.

The harm caused was found to be reasonably foreseeable and there were practical measures available to Clarence Colliery prior to the commission of the offences that would have prevented the offences from occurring (at [102]).

Penalties

Clarence Colliery was fined \$1.2M for the offence under the POEO Act and \$550,000 for the NPWS Act offence, these penalties were reduced by Robson J to take account of the early guilty plea (25%) and further reduced because the aggregate of the amount of the fines was considered to be too excessive for the circumstances (20%). The total reduced penalties amounted to \$1,050,000 (\$720,000 for the POEO Act offence and \$300,000 for the NPWS Act offence).

The penalties are to be paid to the Environmental Trust and the funds will be distributed between 5 projects to restore or enhance the environment.

Takeaways

The case sends a clear message to corporations and the community that companies that unlawfully cause damage to a National Park will pay a hefty price for their actions.