



The voice for the environment since 1955

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The Manager Illawarra
Environment Protection Authority
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Wollongong, NSW 2520
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26 October 2012

RE: BHP APPLICATION TO VARY EPL 2504

Submission of Objection

Dear Sir/Madam,

The Nature Conservation Council of NSW (NCC) welcomes the opportunity to comment on the variation to the environment protection license Section 58 of the Protection of the Environment Operations Act (1997) lodged by BHP Billiton.

NCC is the peak environment body for New South Wales, representing over 100 organizations across the state. We have long-standing experience in state environmental assessment and the impact of industry pollutants on the environment.

We are deeply concerned about the pollution released into the Georges River in the Illawarra Region and the failure of the EPA to prosecute Endeavour Coal and Illawarra Coal Holdings for polluting waters.

We strongly object to the proposed variation to the environment protection license, currently held by BHP Billiton, which would permit the continued discharge of pollutants from West Cliff Mine to Brennans Creek, a tributary of the upper Georges River.

NCC objects to the proposal on the following grounds:

The Macarthur Bushwalking and Cycling Club and National Parks Association filed a civil court case against Endeavour Coal and Illawarra Coal Holdings, subsidiaries of BHP Billiton, in response to elevated levels of chemical pollutants including arsenic, zinc, copper, aluminum and nickel being discovered in the George's River. The ruling should hold BHP Billiton accountable and result in orders to stop the pollution discharge.

Dr Ian Wright, an environmental scientist from the University of Western Sydney, has produced consistent evidence of the pollution over an extended period and revealed chemical levels in excess of the Australian and New Zealand Environment Conservation Council (ANZECC) Guidelines for healthy river systems.

The results of Dr Wright's investigation show that the polluting chemicals have had a deleterious effect on the quality of the water and damaged the biodiversity of the river. This conclusion is drawn from the decreased level of 'aquatic invertebrates' downstream from the source of pollution. Decline of invertebrate biodiversity in aquatic ecosystems has been associated with effects up the food chain resulting in damage to ecosystems as a whole. When there is clear risk the discharge can have a detrimental impact on the river's biota, we believe the precautionary principle should be applied.

We would like to emphasize that the pollution is suspected to have been occurring since January 2002. This activity is in breach of s120 of the *Protection of the Environment Operations Act 1997*, which prohibits the pollution of waters.

The EPA's failure to prevent this pollution reinforces the concerns articulated in the report *Clearing the Air: Opportunities for Improved Regulation of Pollution in New South Wales*,¹ which found that the EPA regularly fails to hold polluters accountable.

The granting of the proposed variation to BHP Billiton's environment protection license would provide further evidence the EPA does not provide adequate protections for the environment and people of NSW from industrial pollution.

BHP Billiton is an industry leader, and should be held to a high standard of environmental performance. We call on the EPA to:

- (a) refuse the company's application to vary its environmental protection licence;
- (b) require the company to implement pollution control measures to ensure that discharges match natural, non-polluted, background levels of nearby streams.
- (c) commence enforcement proceedings in relation to the history of water pollution at the site;
- (d) review the EPA's enforcement policy and practice, to ensure that voluntary community organisations are not forced to take court action to protect our state's rivers from unlawful water pollution.

Please do not hesitate to contact me on 02 9516 1488 if you require any further information in relation to our submission.

Yours sincerely,

Katherine Smolski
Campaigns Director

¹ Environmental Defender's Office (2012) *Clearing the air: Opportunities for improved regulation of pollution in New South Wales*, Environmental Defender's Office (NSW) Ltd, Sydney, Australia
http://www.edo.org.au/edonsw/site/pdf/pubs/120322pollution_discussion_paper.pdf