

5 APR 2011

FILED

## FURTHER AMENDED SUMMONS

### COURT DETAILS

Court The Land and Environment Court of New South Wales  
Registry 225 Macquarie Street, Sydney  
Case Number 40500 of 2009

### TITLE OF PROCEEDINGS

First PlaintiffApplicant **Peter Robert Gray**  
Second PlaintiffApplicant **Naomi Crystal Hodgson**  
DefendantRespondent **Macquarie Generation**

### FILING DETAILS

Filed for **Peter Robert Gray and Naomi Crystal Hodgson**  
PlaintiffApplicants  
Legal representative Kirsty Ruddock  
Legal representative reference 13359  
Contact name and telephone BJ BeomJin Kim Ph: (02) 9262 6989

### HEARING DETAILS

This summons is listed at

### TYPE OF CLAIM

Environmental law – Civil enforcement (Part 8.4 of the *Protection of the Environment Operations Act 1997*)

### RELIEF CLAIMED

- 1 A declaration that between 1 January 2002 and 26 July 2009, the DefendantRespondent wilfully or negligently disposed of waste by way of the emission of carbon dioxide (CO<sub>2</sub>) into the atmosphere in a manner that harmed or was likely to harm the environment, in contravention of section 115(1) of the *Protection of the Environment Operations Act 1997 (the Act)*.
- 2 ~~An order that the DefendantRespondent forthwith cease disposing of waste through the emission of CO<sub>2</sub> into the atmosphere in contravention of section 115(1) of the Act.~~
- 3 Further or in the alternative, a declaration that there is an implied condition in environment protection licence No 779 (the **Environment Protection Licence**) which requires that the Respondent does not emit CO<sub>2</sub> in a manner that fails to have reasonable regard and care for:

(a) the interests of other persons; and/or

(b) the environment.

- 4 Further and in addition to paragraph 3 above, a declaration that between 1 January 2002 and 26 July 2009, the Respondent has emitted CO<sub>2</sub> at Bayswater Power Station in a manner that fails to have reasonable regard and care for:

(a) the interests of other persons; and/or

(b) the environment.

and as such the Respondent has breached the implied condition referred to at paragraph 3 above.

- 5 Further or in the alternative, a declaration that there is an implied limitation on the Respondent's authority to emit carbon dioxide at Bayswater Power Station which requires that it does not emit CO<sub>2</sub> at Bayswater Power Station in a manner that fails to have reasonable regard and care for:

(a) the interests of other persons; and/or

(b) the environment.

- 6 Further and in addition to paragraph 5 above, a declaration that between 1 January 2002 and 26 July 2009, the Respondent has emitted CO<sub>2</sub> at Bayswater Power Station in a manner that fails to have reasonable regard and care for:

(a) the interests of other persons; and/or

(b) the environment.

and as such the Respondent has breached the implied limitation referred to at paragraph 5 above.

- 7 An order that the Respondent be restrained from burning any more than an average of 7 million tonnes of coal per calendar year at Bayswater Power Station, from 1 January 2002 until the power station is decommissioned.

- 8 An order that the terms of the Environment Protection Licence be remitted to the Department of Climate Change and Water (DECCW) in order that DECCW can consider varying the Environment Protection Licence under section 58 of the Act in a manner which further minimises the amount of carbon dioxide emitted at Bayswater Power Station and thereby seeks to prevent Macquarie Generation from:

- (a) disposing of waste through the emission of CO2 into the atmosphere to the extent that it does not have lawful authority to do so and in contravention of section 115(1) of the Act; or alternatively,
- (b) breaching the implied condition referred to at paragraph 3 above; or alternatively,
- (c) breaching the implied limitation referred to at paragraph 5 above.
- 9 An order that the ~~Defendant~~Respondent pay the ~~Plaintiff~~Applicants' costs of the proceedings.
- 10 Such further or other orders as the Court thinks fit.

**NOTICE OF AMENDMENT: UCPR 19.5**

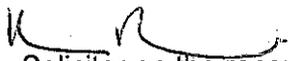
- 1 This document is amended pursuant to leave granted by the court on 4 March 2011.
- 2 New information is in underlined text.
- 3 Deleted information is indicated by strike through.

**SIGNATURE OF LEGAL REPRESENTATIVE**

This summons does not require a certificate under section 347 of the Legal Profession Act 2004.

I have advised the plaintiff applicants that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature



Capacity

Solicitor on the record

Date of signature

4 April 2011

**NOTICE TO DEFENDANT RESPONDENT**

If your solicitor, barrister or you do not attend the hearing, the court may give judgment or make orders against you in your absence. The judgment may be for the relief claimed in the summons and for the plaintiff applicants' costs of bringing these proceedings.

You must enter an appearance before you can appear before the court.

**HOW TO RESPOND**

Please read this summons very carefully. If you have any trouble understanding it or require assistance on how to respond to the summons you should get legal advice as soon as possible.

You can get further information about what you need to do to respond to the summons from:

- The court registry.
- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at [www.lawaccess.nsw.gov.au](http://www.lawaccess.nsw.gov.au).

Court forms are available on the UCPR website at [www.lawlink.nsw.gov.au/ucpr](http://www.lawlink.nsw.gov.au/ucpr) or at any NSW court registry.

**REGISTRY ADDRESS**

Street address	225 Macquarie Street Sydney
Postal address	GPO Box 3565 SYDNEY NSW 2001
Telephone	9113 8200

**PARTY DETAILS****PARTIES TO THE PROCEEDINGS****Plaintiff Applicants****Peter Robert Gray** First Plaintiff Applicant**Naomi Crystal Hodgson** Second Plaintiff Applicant**Defendant Respondent****Macquarie Generation** Defendant Respondent**FURTHER DETAILS ABOUT PLAINTIFF APPLICANTS****First plaintiff applicant**

Name	Peter Robert Gray		
Address	c/o Environmental Defender's Office (NSW) Ltd		
	Lvl 1		
	89	York	Street
	SYDNEY	NSW	2000

**Second plaintiff applicant**

Name	Naomi Crystal Hodgson		
Address	c/o Environmental Defender's Office (NSW) Ltd		
	Lvl 1		
	89	York	Street
	SYDNEY	NSW	2000

**Legal representative for plaintiff applicants**

Name	Kirsty Ruddock		
Practising certificate number	27704		
Firm	Environmental Defender's Office (NSW) Ltd		
Contact solicitor	Kirsty Ruddock		
Address	Lvl 1		
	89	York	Street
	SYDNEY	NSW	2000
DX address	n/a		
Telephone	9262 6989		
Fax	9262 6998		
Email	kirsty.ruddock@edo.org.au		

**DETAILS ABOUT DEFENDANT RESPONDENT**

**Defendant Respondent**

Name	Macquarie Generation		
Address	34	Griffiths	Road
	LAMBTON	NSW	2299