



DOC21/55554

Mr Chris Schultz  
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Email: [Chris.Schultz1@south32.net](mailto:Chris.Schultz1@south32.net)

Dear Mr Schultz

**PENALTY NOTICE – NON-COMPLIANCE WITH LICENCE CONDITIONS – POLLUTION OF WATERS – 10 AUGUST 2020**

I am writing in response to a pollution incident at the Dendrobium Mine which resulted in the discharge of turbid water from the premises into Brandy and Water Creek on the 10 August 2020.

The EPA has determined that an appropriate regulatory response is to issue a Penalty Notice for non-compliance with Environment Protection Licence (EPL) 3241 condition L1.1 'A person who pollutes water is guilty of an offence'.

The EPA spoke with you on 18.03.2021 and we described the factors we considered in determining this response.

**BACKGROUND:**

Dendrobium Coal PTY LTD (Dendrobium Coal) is the holder of Environment Protection Licence No 3241 (the licence) issued under *Protection of the Environment Operations Act 1997* (the Act). The licence authorises the carrying out of activities at Dendrobium Mine, Mount Kembla (the premises).

It is an offence under Section 64(1) of the Act for a person to contravene the conditions of their licence. The EPA may prosecute a corporation for committing this offence. This offence carries a maximum penalty of \$1,000,000 for a corporation.

The EPA has completed its investigation of the incident and determined that Dendrobium Coal did not comply with condition L1.1 of its licence.

Condition L1.1 of the licence states that except as may be expressly provided in any other condition of this licence, the licensee must comply with section 120 of the Protection of the Environment Operations Act 1997. Section 120 (1) states that "A person who pollutes any waters is guilty of an offence".

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On 10 August 2020, Dendrobium Coal caused or permitted water with high levels of turbidity and total suspended solids to flow into Brandy and Water Creek from the premises at a point not authorised for discharge on the licence.

Having regard to the EPA's *Compliance Policy and Prosecution Guidelines*, the EPA has determined that an appropriate regulatory response is to issue a fine of \$15,000 for contravening this condition of the licence.

Penalty Infringement Notice number 3173529985 for an amount of \$15,000 for breach of Licence condition L1.1 is attached (Attachment 1).

### **CONSIDERATIONS:**

- On 10 August 2020 following heavy rainfall of 150 mm in 3 days, a clean stormwater diversion pipe located beneath a sediment basin collapsed resulting in a hole in the bottom of the sediment basin. Dispersed coal fines flowed into Brandy & Waters Creek and American Creek and into the upper reaches of Port Kembla Harbour.
- You notified the EPA of the incident promptly and within two hours of becoming aware of the incident.
- You activated your Pollution Incident Response Management Plan (PIRMP) and notified other agencies as appropriate.
- On 10 August 2020 the EPA issued a variation to EPL 3241 adding a new Special Condition requiring preparation of an incident report and completion of an environmental assessment.
- Following the incident Dendrobium established an incident management team and diverted dirty water to a second smaller dam to reduce volumes of discharge to downstream waters.
- Actions were taken to reduce environmental impacts up until the time when the sediment dam and diversion pipe were repaired. This included installing large pumps upgradient of the site to divert clean stormwater around the site
- You undertook creek inspections and water quality monitoring on a regular basis in the weeks following the event;
- Dendrobium took actions to stop the discharge as quickly as possible and took actions to prevent a recurrence
- On 17 August 2020 Dendrobium Coal submitted a written incident report to the EPA admitting that an unauthorised discharge of pollution occurred at the premises.
- South32 (Dendrobium Coal Pty Ltd) are a large publicly listed company with significant mining assets world-wide. You have professional staff across a wide range of disciplines.
- The community has an expectation companies will comply fully with their EPL requirements and have systems in place to ensure compliance with their EPL requirements and more general environmental standards.
- You must ensure you have systems and procedures in place to inspect assets and structures with the aim of identifying problems prior to failure.
- Dendrobium notified the EPA that the works to repair the large sediment dam were completed and it was operational in mid-December. The broken stormwater pipe was excavated and replaced with a new 2 meter diameter pipeline.
- The incident caused generally low-level environmental impacts for a short period of time and no or low impacts in the longer-term. On balance the environmental impacts from the incident are regarded as being low.
- Historical land uses in the receiving catchment are likely to have caused long term changes to the structure of flora and fauna of the creek systems in Mount Kembla.
- Visual impacts to the creek were dramatic and quite long lasting.
- The highly turbid flows to downstream waters mimicked expected impacts during or after heavy rainfall. Local stream communities are known to be resilient to this type of impact.

- The EPA conducted several inspections of Brandy & Water Creek and American Creek downstream of the Dendrobium mine over a 6-week period from the date of the incident.
- The water in Brandy & Water creek was a dark grey-black for two days following the incident on 10 & 11 August. The stream cleared quickly due to high flows from succeeding rainfall.
- At the time of the incident, water quality in adjacent creeks not impacted by the incident also had elevated levels of suspended solids and turbidity associated with the rainfall at the time.
- Suspended coal particles are regarded as inert and not toxic to humans or animals. Turbidity may act as a chronic toxicant if elevated levels persist for extended periods.
- The EPA did not note any impacts to creek biota. The EPA acknowledges the community members provided us with photos of dead fauna in the creek over the period of the incident. The EPA was not able to determine the cause of death.
- The Environmental Assessment reported that aquatic biota abundance and diversity, water quality and stream health indicators at downstream sites were similar to upstream sites. Pool and riffle habitat and banks were observed to be free from coal fine material.
- Several moderate to high rainfall events following 10 August appeared to transport coal fines through the system.
- Dendrobium cleaned-up downstream creek banks to remove coal fines and other deposited material where this work could be done without causing additional impacts, within a month of the incident.
- Dendrobium engaged an environmental specialist to undertake an aquatic health assessment involving three sampling campaigns on 2 August, 1 November & 14 November.
- As required, Dendrobium Coal submitted an initial incident report on 17 August 2020. The final report was submitted on 4 September 2020. The first environmental assessment was submitted to the EPA on 31 August 2020. The follow up assessment was submitted on 4 December 2020.
- Dendrobium Coal complied with all requests and undertook an aquatic health and water quality monitoring program of the river.
- The licensee has a good compliance history and has not been subject to EPA regulatory action since commencement of operations in 2001.
- On 17 August 2020, Dendrobium Coal submitted a written incident report to the EPA admitting that an unauthorised discharge of pollution occurred at the premises.

The EPA reminds Dendrobium Coal that all PNs and non-compliances are reported publicly on the EPA Public Register, which can be accessed at: [www.epa.nsw.gov.au/prpoeo](http://www.epa.nsw.gov.au/prpoeo).

Dendrobium Coal must ensure that its environmental performance and statutory compliance is continually maintained. This correspondence serves as an official record of Dendrobium Coal's compliance history and will be considered by the EPA if there are further non-compliances occur in the future.

If you have questions regarding the above, please phone Andrew Couldridge on (02) 4224 4100.

Yours sincerely



**WILLIAM DOVE**  
Unit Head Regulation

18.03.2021