

DOC18/490944

Mr Kelly McNicol
Team Leader, Industry Assessments
Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2001

Dear Mr McNicol

Modification - Pasminco Cockle Creek - Smelter Remediation Project (MP 06-0184 MOD 6)

I refer to your letter (your reference MP06_0184 MOD6) dated 3 July 2018 inviting the Environment Protection Authority (EPA) to make a submission on the request by the Proponent to modify the Pasminco Cockle Creek Smelter Remediation Project (the remediation project).

The site which is the subject of the Remediation Project was remediated under a Remediation Order No. 23008 issued on 1 July 2003 under the *Contaminated Land Management Act 1997* (CLM Act), now taken to be a Management Order.

The Minister for Planning approved the remediation project on 24 February 2007 under Part 3A of the *Environment Planning and Assessment Act 1979* Major Projects Application No. 06-0184 (the 2007 project approval). The Remediation Order required Pasminco to remediate the land occupied by the smelter and the surrounding land. A large cell has been constructed for disposal of the lead smelter waste. Construction of the cell is complete and the outstanding issue is to ensure the cell is maintained in perpetuity.

Pasminco formerly held a licence for the site under the *Protection of the Environment Operations Act 1997*. At present, the licence is only held over the water treatment plant which treats leachate from the containment cell and discharges it.

On 13 July 2018, the EPA was notified by Mr Michael Levy of the Department of Planning and Environment that Pasminco Cockle Creek Smelter Pty Limited has lodged an appeal against the Minister for Planning regarding a deemed refusal of MOD 6. This does not limit the EPA from making a written submission. Please find attached the EPA's comments on the proposed modification of the Project Application (No. 06-0184).

Yours sincerely



13-7-2018

STEVE BEAMAN PSM
Executive Director, Hazardous Incidents and Environmental Health
Environment Protection Authority

EPA COMMENTS ON MODIFICATION REQUEST FOR THE PASMINCO COCKLE CREEK SMELTER REMEDIATION PROJECT (MP 06-014 MOD 6)

Remove the timing for the application of a covenant to the containment cell onsite

The EPA does not agree to this modification. Pasminco Cockle Creek Smelter Pty Ltd (Pasminco) are already in breach of its obligations to ensure that a public positive covenant is put in place on the land prior to the completion of the containment cell. Given the previous negotiations and considerations that went into the positive covenant and environmental liability for the containment cell, the EPA believes that there should be no changes to the funding arrangements set out in condition 8.8 of the 2007 project approval. The EPA consider that Department of Planning and Environment (DPE) should at least consider whether regulatory action is required to enforce this requirement.

Amend the framework for funding the cost of ongoing maintenance of the containment cell

The EPA does not agree to this modification. The containment cell, which occupies about 19.4 hectares, will require ongoing maintenance in perpetuity. The community should not be left with an environmental liability when Pasminco leave the site. Funding the cost of ongoing maintenance of the containment cell should, in the opinion of the EPA, occur as set out in the 2007 project approval.

The Deed Administrators for Pasminco have not been able to demonstrate to date, to the satisfaction of the EPA, that there is sufficient funding for the management and maintenance of the containment cell in perpetuity.

Reduce future groundwater, surface water, air quality and noise monitoring, and, environmental management and reporting requirements

The EPA does not support a change in monitoring and reporting conditions in the current Project Approval, including changes to public reporting of monitoring data which should continue.

The EPA will only support proposed changes where these are in accordance with any management plans approved by DPE, and/or an EPA accredited Site Auditor, on the basis the changes were justified by a statistically valid dataset.

Currently, the EPA has issued an environment protection licence (EPL No. 5042) for the water treatment plant, which receives and treats cell leachate, and the resulting discharge which also includes off-premises groundwater monitoring points. A plan showing the licensed premises is attached.

The EPA has taken into consideration containment cell plans and correspondence; the surface water monitoring program (2007); and contaminated water management program (2007) in respect of the containment cell when considering and undertaking its licensing functions and varying the licence over time (EPL condition A3.2).

The EPA would like to point out that it has taken a range of regulatory action against the licensee with two Penalty Notices issued in Nov-2015 (pollute waters), Official Caution issued in Nov-2015 (failure to publish monitoring data), two Penalty Notices issued in Mar-2016 (failure to undertake all monitoring, failure to publish monitoring data) and an Official Caution issued in Aug-2016 (failure to undertake all monitoring). These actions were taken under the *Protection of the Environment Operations Act 1997*. The EPA is also currently investigating a discharge as a result of irrigation over the cell. This investigation is on-going.

Remove the requirements to maintain up-to-date information on the project's website

As stated above, the EPA does not support changes to public reporting of monitoring data which should continue. In the interest of transparency, the website should continue to be updated with the latest monitoring data. Furthermore, pollution monitoring data that is required to be collected by a licence

condition must be published by the licensee in accordance with s66(6) of the POEO Act and with the written requirements issued by the EPA. It is recommended that ongoing water treatment plant monitoring data is regularly uploaded onto the website.

Other Attachments

1. EPL No. 5042
2. Plan of licenced premises at the Pasminco Cockle Creek Smelter site

List of Document/s Reviewed

1. Section 75 W Modification Application – Project No. 06_0184
2. Pasminco Land Realisation and Longer-Term Funding Strategy
3. Webpage: www.pasminco.com.au/index.php/pasminco-cockle-creek
4. Part 3A Consent Conditions