

To: Assistant Secretary, Monica Collins (For Decision)

CAS3685 – EPBC 2010/5736 - INFRINGEMENT NOTICES

Timing: 28 October 2020 to allow for the progression of the investigation in a timely manner.

Recommendations:			
1. That you approve of an authorised officer issuing two (2) infringement notices to Adani Mining Pty Ltd.			
			Approved / Not approved
2. That you agree that following payment of the infringement notices, the details be published on the Department's website.			
			Agreed / Not agreed
3. That you sign the letter advising the approval holder of your decision (Attachment A)			
			Signed / Not signed
s. 47F(1)			
Signatory:			Date: <i>29 Oct 2020</i>
Comments:			
Clearing Officer:	s. 22(1)(a)(ii)	A/g Director, Environmental Audit	s. 22(1)(a)(ii)
Sent/..			Mob: s. 22(1)(a)(ii)
Contact Officer:	s. 22(1)(a)(ii)	A/g Assistant Director, Environmental Audit	s. 22(1)(a)(ii)

Key Points:

- The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) provides for the issuance of infringement notices by authorised officers where there are reasonable grounds to believe that a person has contravened section 142B of the EPBC Act. Section 142B provides a strict liability offence for a breach of approval conditions which includes a penalty of 60 units (\$13,320)¹ for a company, without the need to prove intent.
- Please note, one of the identified breaches of section 142B of the EPBC Act occurred prior to the change in penalty unit value. Therefore, one of the infringement notices is for the previous value of \$12,600.
- On 20 December 2019, the Deputy Secretary of the Strategy and Operations group noted that the Assistant Secretary of Environment Compliance branch (formerly the Office of

¹ Under Commonwealth law (i.e. the Crimes Amendment (Penalty Unit) Act 2017 (Cth)), the value of one (1) penalty unit is \$222, as per section 4AA of the Crimes Act 1914 (Cth). On 1 July 2020, the value of a Commonwealth penalty unit increased from \$210 to \$222. This has resulted in Infringement notices for corporations increasing from \$12,600 to \$13,320.

Compliance) will approve the issuing of infringement notices under legislation administered by the Environment Compliance Branch.

7. This matter relates to the Carmichael Coal Mine and Rail Infrastructure Project, Queensland (EPBC 2010/5736) approved under the EPBC Act on 14 October 2015, subject to 36 conditions (**Attachment B**).
8. The approval is held by Adani Mining Pty Ltd - ACN 145 455 205 (the approval holder).
9. Condition 7 of the approval requires the approval holder to implement the approved 'Species Management Plan Carmichael Rail Network – SP1', approved by the Department on 20 July 2016.
10. Following a compliance investigation, it was identified that the approval holder has contravened condition 7 of the approval by conducting clearing activities outside the currency of the pre-clearance survey and by not submitting a revised plan to the Department within the required timeframe as required by the Species Management Plan (see Compliance Assessment Report at **Attachment C**).
11. Based on the compliance investigation and information available to the Department, it is recommended that two infringement notices totalling \$25,920 be issued to the approval holder for the contraventions of condition 7.
12. This outcome is considered appropriate and is consistent with Department's published compliance policy. Infringement Notices may be issued under the EPBC Act as an alternative to criminal prosecution². Subject to your approval of the infringement notices, once paid, the details will be published on the Department's website.

Sensitivities and Handling

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14. These non-compliances represent the approval holder's third and fourth non-compliance with conditions attached to the EPBC 2010/5736 approval.
15. On 14 November 2019, the Department issued a warning to the approval holder for contravening condition 13 of their approval (**Attachment D**).
16. On 6 March 2020, the Department issued a warning to the approval holder for contravening condition 2 of their approval (**Attachment E**).

ATTACHMENTS

- A:** Letter to Approval Holder
- B:** Approval notice (EPBC 2010/5736)
- C:** Compliance Assessment Report
- D:** 14 November 2019 - Warning Letter
- E:** 6 March 2020 - Warning letter

² The Environment and Heritage Legislation Amendment Bill (No. 1) 2006 established a range of enforcement options as an alternative to lengthy and expensive court proceedings. The amendments enhance enforcement action taken to address minor breaches of approval conditions by allowing the use of reduced penalties.