Mining companies exposed to liability for flood damage under environmental laws

The recent flooding events in Queensland had a significant impact on the resources sector and posed a challenge to mining proponents meeting their obligations under environmental legislation.

Delays in processing applications to allow flood water to be discharged from mines may leave mining companies exposed to liability under new laws which give rise to a duty to notify authorities and affected landholders of environmental harm.

The Natural Resources and Other Legislation Amendment Bill (No. 2) 2010 (Qld), passed by Queensland Parliament late last year, amended the Environmental Protection Act 1994 (Qld) (EP Act) by imposing a positive obligation on mining proponents to notify authorities and affected landholders when environmental damage occurs.

Under the new laws, mining proponents must notify the Department of Environment and Resource Management (DERM) within 24 hours after becoming aware of potential environmental harm. The Act also prescribes a duty to notify the owners and occupiers of affected land as soon as is reasonably practicable after the event by written or public notice. Failure to comply with the notification requirements is an offence under the EP Act and penalties of up to $50,000 may apply. The legislation came into effect on 1 December 2010.

The new laws do not apply to events which are authorised under an environmental authority or transitional environmental program.

Under the EP Act mining proponents are required to obtain an Environmental Authority prior to carrying out activities which may cause environmental nuisance or harm. Strict conditions attach to an authority, including restrictions on the amount and quality of water that can be discharged from a mine into the local environment. Any release of water outside the specified conditions will constitute a breach of the Environmental Authority and is an offence under the EP Act.

The exception to this is where a Transitional Environmental Program applies. Chapter 7 Part 3 of the EP Act allows mining proponents to apply for a Transitional Environmental Program to carry out activities outside of their Environmental Authority. The program authorises activities such as dewatering mines subject to certain conditions for a specified period of time.

The effect of these provisions is such that during the recent floods, mining proponents were unable to discharge water outside the ordinary conditions of their Environmental Authority unless they had in place a Transitional Environmental Program authorising the release of floodwater from mine pits. As a result, at least 41 applications for Transitional Environmental Programs were submitted to DERM for approval in December 2010 and January 2011.

The time required to process an application for a Transitional Environmental Program meant mining proponents were unable to respond to the emergency by putting in place flood mitigation strategies to control the release of floodwater from mines. This led to several instances where water was inadvertently released outside the Environmental Authority due to flooding caused by unusually high rainfall. DERM is currently investigating these
As the industry continues to recover, mining proponents would be well placed to examine their contingency plans and consider further flood mitigation strategies, such as raising levees around mines.

For more information on recent changes to the EP Act please contact our resources team on 07 3000 8300.

1 Environmental Protection Act 1994 (EP Act) ss 320B(2), 320C(2) and 320D(2).
2 EP Act ss 320C(3) and 320D(3).
3 EP Act ss 320C(2)(a) and 320D(2)(a).
6 Environmental Protection Act 1994, Chapter 5.
9 Fraser, A. (2011) Government continues to work with mines affected by extreme flooding, 7 January 2011.
10 EP Act section 430

Resources industry updates

Royalty payment reforms - Queensland Government

Royalty payments will become payable on a monthly basis from 2012 under a proposed new royalty payments regime. The changes, announced in the Mid Year Fiscal and Economic Review 2010-11, are likely to have significant financial and administrative impacts on mining companies.

Currently, larger producers pay royalties on a quarterly basis. Under the new system, major royalty payers will be required to make monthly payments to the Office of State Revenue, rather than the Department of Employment, Economic Development and Innovation as is current practice.

The State Government and the Queensland Resources Council will soon commence talks on how the reforms will be implemented. Legislation will be introduced later in the year to give effect to the changes. The changes may also include an increase in the royalty rates.

The aim of the reforms is to centralise revenue collection and enhance the State Government’s revenue forecasting capacity. Following the recent floods, Treasury was forced to downgrade estimated revenue from royalties by more than $200 million in the 2010-11 financial year due to lost production in the mining sector. Further downward revisions are likely given that the final bill for lost production to the resources sector may be up to $9 billion (which translates to $700 million in royalty payments), which could be used to justify an increase in royalty rates.
Consultation on overlapping coal and CSG tenure extended

The consultation period regarding the proposed changes to the coal seam gas regime has been extended to 18 March 2011.


The aim of the consultation is to seek input from CSG proponents and coal miners on the proposed CSG and coal tenure management framework to ensure the new regime supports the development of both industries.

Whilst the Bill preserves the general principles underpinning the current regime, it introduces additional requirements for resolving issues of overlapping tenure which may affect the existing and future land rights of tenement holders.

More information on the draft Bill can be found at: http://www.carternewell.com/media/773246/resources_january.pdf

Submissions can be made to the Department of Employment, Economic Development and Innovation – Mines Division.

Carbon pricing to hit resources sector

The Federal Government plans to introduce a tax on carbon emissions from 1 July 2012. While full details of the proposed Carbon Price Mechanism are yet to be released, the Government will prescribe a fixed price for carbon over the next three to five years, before graduating to an emissions trading scheme in 2015-17.

The Government is still considering the initial carbon price, though $20 per tonne has been flagged as a likely starting point based on the recommendations of the Garnaut Climate Change Review. Professor Garnaut will release his update on carbon pricing in Canberra on 17 March 2011.

The introduction of a carbon tax will have a significant financial impact on energy intensive industries such as mining, which are set to be the biggest payers of the new tax. However, the Government has proposed a compensation scheme for coal and electricity industries. Legislation will be introduced to Parliament later this year to give effect to the mechanism.
Carter Newell Lawyers has been listed as a finalist in the 2011 BRW Client Choice Awards for Best Law firm in Australia with revenue less than $50 million. The BRW Choice Awards are the most prestigious awards for professional service firms in Australia. This is because they are determined by the views of people who matter most - clients. Now in its seventh year, the awards recognise firms who pride themselves on client service. The Award winners will be announced on 16 March 2011.

Carter Newell Partner to present at FutureGAS 2011
Resources Partner James Plumb is set to present at FutureGAS 2011 being held 23-24 March in Brisbane. The two-day business program will canvas a broad range of aspects of the entire gas industry.

Carter Newell Special Counsel to present at Legalwise Litigation Seminar
Special Counsel Nola Pearce is an appointed member of the Queensland Law Society's Litigation Rules Section and is to speak at the Legalwise Commercial Litigation Essentials Seminar on 25 March which aims to work through the latest litigation developments to enhance practice and procedure.
For event information, visit http://www.legalwiseseminars.com.au

Carter Newell Special Counsel to present at Employment Law Conference
Workplace Relations Special Counsel Stephen Hughes is to present at the New IR Laws for HR Managers in Brisbane on 31 March. The conference is designed to inform and advise HR practitioners on how to formulate best-practice workplace relations policies, rules and contracts.
For event information, call 02 9425 7600.

Carter Newell Partner to present at Contract Law Conference
Partner Mark Brookes is to present at the Contract Law for Non-lawyers Masterclass on 24 March. Designed for business professionals who are exposed to contracts on a daily basis, this intensive one-day program will provide all the basic skills and tools you require to understand, build and interpret legally enforceable contracts.
For event information, visit http://www.albmasterclass.com/