



File No: 0721-2017

Entity: Ridgeland Coal Resources Pty Ltd (ACN 141 312 727)

Issue: Whether to accept an enforceable undertaking in relation to an alleged contravention of the Act.

Legislation: *Mining Act 1992* – Part 17A, Division 4B

Decision maker: Lee Shearer
Deputy Secretary, Resources Regulator
Coordinator General for the Central Coast
Department of Planning and Environment

Section 378ZFB decision

As authorised by section 378ZFB of the *Mining Act 1992*, and in accordance with the authority delegated to me by the Secretary of the Department of Planning and Environment, I, Lee Shearer, Deputy Secretary of the Resources Regulator and Coordinator General for the Central Coast, have decided to **reject** the enforceable undertaking given by Ridgeland Coal Resources Pty Ltd, as attached to this decision.

Reasons for decision

Legislation

1. Section 378ZFB of the *Mining Act 1992* provides that:
 - a) The Secretary may accept a written undertaking (an enforceable undertaking) given by a person in connection with a matter relating to a contravention or alleged contravention by the person of the Act;
 - b) The giving of an enforceable undertaking does not constitute an admission of guilt by the person giving it in relation to the contravention or alleged contravention to which the undertaking relates;
 - c) The Secretary must issue, and make public, general guidelines for or in relation to the acceptance of enforceable undertakings under this Act.
2. Section 378ZFH of the Act provides that no proceedings for a contravention or alleged contravention of the Act may be brought against a person if an enforceable undertaking is in effect, or has been completely discharged, in relation to that contravention. If proceedings have already been commenced when the Secretary accepts an enforceable undertaking, then the Secretary must take all reasonable steps to have the proceedings discontinued as soon as possible.

3. The Secretary is required to give the person seeking to make an enforceable undertaking written notice of the Secretary's decision to accept or reject the enforceable undertaking and the reasons for the decision.
4. In exercising functions under the Act, the Secretary must have regard to the objects set out in section 3A of the Act.
5. The maximum penalty for failing to comply with an enforceable undertaking is \$1.1 million in the case of a corporation, and \$220,000 in the case of a natural person.

Background

6. On 27 February 2013, Exploration Licence (EL) 8064 was granted to Ridgелands Coal Resources Pty Ltd (ACN 141 312 727). EL 8064 is located approximately 18 km north of Denman, NSW and authorises Ridgелands to prospect for Group 9 (Coal and Shale Oil) minerals.
7. In August 2017, the Division of Resources and Geoscience referred an allegation that Ridgелands had failed to comply with condition 58 of EL 8064 relating to the establishment of a \$5 million community fund to the NSW Resources Regulator.
8. Condition 58 of EL 8064 requires Ridgелands to do the following:
 - a. As soon as reasonably practical after the grant of EL 8064, set up a local community fund (**Community Fund**) to fund initiatives to benefit the local community; and
 - b. Contribute a minimum of \$5,000,000 to the Community Fund over the initial five-year term of EL 8064; and
 - c. Publicise to the local community the existence of the Community Fund and guidelines for applying for grants from the Community Fund; and
 - d. Remain responsible for the administration of the Community Fund and for any taxation or other obligations arising from or in connection with the Community Fund; and
 - e. Provide bi-annual written reports to the Minister through the Director Industry Coordination, in a form satisfactory to the Minister, detailing the payments made into and from the Community Fund and the results of initiatives funded; and
 - f. Respond to any request for information from the Minister related to the status and progress of the Community Fund, and provide such information in a timely fashion when requested; and
 - g. In good faith continue to contribute to and support the administration of the Community Fund after the grant (if any) of a mining lease, until such time as the licence holder ceases mining operations in the area.
9. Immediately following the referral, the Resources Regulator commenced an investigation into Ridgелands compliance with condition 58, and in particular, whether the Fund had been established 'as soon as reasonably practicable after the grant of EL 8064'. The investigation and any potential enforcement action remains ongoing at the time of this decision.
10. If proven, the allegation would amount to a breach of section 378D(1) of the Act 'Contravention of condition of authorisation' which carries a maximum penalty of \$1.1 million for a corporation and \$110,000 for a natural person.

Proposed undertaking

11. On 12 March 2018, Ridgелands submitted a signed enforceable undertaking proposal to the Regulator. Consistent with the Enforceable Undertaking Guidelines the proposal was developed using the pre-proposal advisory services offered by the Regulator which provided 'without prejudice' feedback on the proposed terms of the undertaking.
12. In summary, the Ridgелands undertaking proposes to:
 - a. Pay the Department's costs of \$18,000 incurred during the investigation;
 - b. Pay the Department's costs of \$15,000 incurred for legal services;
 - c. Pay the Department the sum of \$2,000 to cover costs associated with monitoring the undertaking;
 - d. Provide \$100,000 to the Hunter Medical Research Institute for research and development of telehealth education programs for paramedics;
 - e. Carry out training of all key personnel of Ridgелands NSW operations in respect of the operation and compliance with the requirements of the *Mining Act 1992*;
 - f. Report to the Department on the implementation of each of the measures provided for in the undertaking within 4 weeks of the undertaking being in force.

Considerations and findings

13. While the Act does not set out a threshold test for the acceptance or rejection of a proposal for an enforceable undertaking, the Secretary has approved guidelines under section 378ZFB(3) of the Act for this purpose.
14. The guidelines provide that enforceable undertakings should be designed to deliver tangible benefits for the industry and broader community, and that these initiatives should seek to resolve both the behaviour of concern that has led to the alleged contravention and seek to rectify the consequences of that behaviour.
15. The guidelines further set out a number of considerations for determining whether to accept an enforceable undertaking. These include: the nature of the alleged contravention; potential impacts on any worker, the industry, the community or the environment, and; the compliance history of the company.
16. While I note that Ridgелands has no other adverse compliance history, I do not accept, as submitted by Ridgелands, that there was limited impact as a result of the alleged breach.
17. In this respect, I note that Ridgелands were awarded EL 8064 as part of a competitive Expression of Interest process, as part of which Ridgелands offered to establish a five million dollar community fund. This was presumably a key consideration in Ridgелands being successful in acquiring the exploration licence.

18. I am of the view that the alleged failure to establish the fund as soon as reasonably practicable would have potentially had a significant impact on the community in a number of ways.
19. Firstly, the community would have been deprived access to the funds when they allegedly should have been made available, potentially resulting in important initiatives that benefit the community being significantly delayed or not progressed at all.
20. Secondly, a situation where a titleholder is in alleged breach of a commitment given as part of a competitive process to award a mining authorisation has the potential to significantly undermine industry's and the community's confidence in the regulatory regime.
21. In relation to the specific undertakings proffered by Ridglands, I am also not satisfied that these commitments adequately resolve the behaviour of concern or appropriately seek to rectify the consequences of the behaviour.
22. While the key terms proposed by Ridglands are estimated to cost approximately \$105,000, it could be argued that the potential financial benefit Ridglands may have obtained by allegedly not making the funds available as soon as reasonably practicable (through interest on the retained monies) would far exceed this amount.
23. Further, no commitment has been given by Ridglands in relation to the current and future operation of the Fund, or any improved governance arrangements in this regard.
24. Having regard to the above, I am not satisfied that the undertaking proffered in this instance appropriately reflects the significance of the alleged behaviour or will deliver better compliance outcomes, or general and specific deterrence, than other alternative compliance measures.
25. Accordingly, I have determined to reject the enforceable undertaking proposed by Ridglands Coal Resources Pty Ltd.

Date of decision: 6 April 2018



Lee Shearer

Deputy Secretary Resources Regulator
Coordinator General for the Central Coast
Department of Planning and Environment