

TASMANIA

**MT LYELL POLLUTION ABATEMENT BILL
2003**

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MT LYELL POLLUTION ABATEMENT BILL 2003

(Brought in by the Minister for Primary Industries, Water and Environment, the Honourable Bryan Alexander Green)

A BILL FOR

An Act to facilitate a reduction of acid drainage pollution at Mt Lyell and for related purposes

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 - PRELIMINARY

Short title

1. This Act may be cited as the *Mt Lyell Pollution Abatement Act 2003*.

Commencement

2. This Act commences on the day on which this Act receives the Royal Assent.

Interpretation

3. In this Act –

“acid drainage” has the same meaning as in the Agreement;

“Agreement” means the agreement made between the Crown and Copper Mines of Tasmania Pty. Ltd., a copy of which is set out in Schedule 1 to the Copper Mines Act;

“approved person” means a person approved under section 6;

“Board” means the Board of Environmental Management and Pollution Control established under the *Environmental Management and Pollution Control Act 1994*;

“Copper Mines Act” means the *Copper Mines of Tasmania Pty. Ltd. (Agreement) Act 1999*;

“Director of Environmental Management” means the Director of Environmental Management appointed under section 18 of the *Environmental Management and Pollution Control Act 1994*;

“leased land” has the same meaning as in the Agreement;

“mining lease” has the same meaning as in the *Mineral Resources Development Act 1995*;

“Mining Minister” means the Minister administering the *Mineral Resources Development Act 1995*;

“mining operations” has the same meaning as in the *Mineral Resources Development Act 1995*;

“pollution-reducing activity” means an activity specified in, or declared under, section 5;

“Registrar” means the Registrar of Mines appointed under section 8 of the *Mineral Resources Development Act 1995*.

Act binds Crown

4. This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

PART 2 – POLLUTION-REDUCING ACTIVITIES**Pollution-reducing activities**

5. The following are taken to be pollution-reducing activities for the purposes of this Act:

- (a) the extraction of copper, iron or aluminium from acid drainage;
- (b) the reduction of the acidity of acid drainage;
- (c) any other activity declared by the Minister, on the advice of the Director of Environmental Management, to be a pollution-reducing activity.

Approved persons

6. (1) The Minister may approve a person to undertake a pollution-reducing activity on, or in close proximity to, Mt Lyell.

(2) The Minister may undertake a pollution-reducing activity if of the opinion that the activity is necessary and there is no approved person available to undertake the activity.

(3) A person who is not an approved person must not undertake a pollution-reducing activity in respect of acid drainage.

Penalty: Fine not exceeding 100 penalty units.

Minister may enter agreement

7. (1) Before appointing a person as an approved person, the Minister may require the person to enter into an agreement with the Minister in accordance with this section.

(2) The agreement is to specify –

- (a) the term of the agreement; and
- (b) details of the pollution-reducing activity intended to be undertaken; and
- (c) the obligations on the person in respect of maintenance of equipment and other matters; and
- (d) any other matter considered by the Minister to be appropriate –

and is to include a provision that, in the event of a fundamental breach of the agreement, the Minister may withdraw the approval of that person.

Establishment of facilities on leased land

8. (1) An approved person may apply to the Minister to use any leased land which is subject to a mining lease for the establishment of facilities for use in a pollution-reducing activity.

(2) An application is to contain full particulars of –

- (a) the pollution-reducing activity intended to be undertaken; and
- (b) the land on or from which the activity is intended to be undertaken; and

- (c) any associated building or other works intended to be undertaken.

(3) If the Minister considers it appropriate, he or she, on receiving an application, may consult with –

- (a) the Mining Minister; and
- (b) the person holding the mining lease over the relevant land.

(4) The Minister and the Mining Minister are to attempt to reach agreement with the person referred to in subsection (3)(b) as to the terms and conditions on which that person is to surrender the mining lease, or part of the mining lease, to the Mining Minister if such a surrender is necessary or expedient for the purpose of conducting or enabling the relevant pollution-reducing activity.

(5) In the event that agreement under subsection (4) cannot be reached, the Mining Minister may direct the Registrar to cancel the relevant mining lease and issue a new mining lease on comparable terms and conditions but excluding the land on or from which the pollution-reducing activity is to be undertaken.

(6) The Mining Minister is to take into account any hardship that may be incurred by the person referred to in subsection (3)(b) as a result of the cancellation of the relevant mining lease and the issue of its replacement under subsection (4).

(7) The person who made the application to the Minister under subsection (1) may apply to the Mining Minister for a mining lease.

(8) Nothing in this section affects the rights of a lessee, within the meaning of the *Mineral Resources Development Act 1995*, under Part 8 of that Act.

Use of private land

9. (1) Subject to subsection (2), an approved person may apply to the Minister for an authorisation to use land which is not owned by the Crown for the establishment of facilities for use in undertaking a pollution-reducing activity.

(2) An application must not be made unless –

- (a) the applicant has used his or her best endeavours to reach agreement with the owner of the land for the sale of the land on reasonable commercial terms; and
- (b) agreement could not be reached.

(3) An application is to contain full particulars of –

- (a) the relevant land; and
- (b) any pollution-reducing activity intended to be undertaken; and
- (c) any associated building or other works intended to be undertaken; and
- (d) the applicant's attempt to reach agreement with the owner of the land for the sale of the land.

(4) If the Minister, on receiving an application, is satisfied that –

- (a) subsection (2)(a) has been complied with; and
- (b) it is appropriate for him or her to do so in order to facilitate a pollution-reducing activity –

the Minister may consult with the person who owns the relevant land with a view to reaching an agreement for the sale of that land.

(5) The Minister may acquire the relevant land in accordance with section 4(1)(b) of the *Land Acquisition Act 1993*.

Authorisation of water-diversion works

10. (1) The Minister may approve the construction of any works for the diversion of water on leased land that are necessary as part of a pollution-reducing activity.

(2) Before approving the construction of water-diversion works, the Minister must consult with any person who is undertaking mining operations in or under the leased land.

(3) Any works that the Minister approves under this section must be carried on so as to cause minimum disturbance to any mining operation on the leased land.

(4) This section does not derogate from a requirement imposed under any other law.

PART 3 – ACCESS, TREATMENT, &C. OF ACID DRAINAGE

Ownership of acid drainage and extracted minerals and metals

11. (1) Any substance obtained from acid drainage vests in the Crown.

(2) Notwithstanding the *Mineral Resources Development Act 1995*, the Crown may assign the rights to any substance obtained from acid drainage to an approved person.

Access to acid drainage

12. The Minister may assign the rights to any metals and minerals in any acid drainage in accordance with such conditions and for such period of time as may be determined under any agreement under section 7.

Disruption to flow of acid drainage

13. (1) A person who holds a mining lease over the leased land is to carry out mining activities in a manner that minimises any disruption to the flow of, or content of metals and minerals in, any acid drainage.

(2) A person who holds a mining lease over the leased land is to consult with the relevant approved person before taking any action that might reasonably be considered likely to significantly alter the flow of acid drainage to a processing plant or to reduce the concentration of metals and minerals in the acid drainage.

(3) If an approved person believes that a person who holds a mining lease over the leased land is proposing a major change in the method of mining which will have the effect of significantly altering the flow of, or content of metals and minerals in, the acid drainage to the extent that the pollution-reducing activity may become ineffective or non-viable, the approved person may seek the Mining Minister's intervention to prevent the change.

Treatment of acid drainage under Copper Mines Act

14. Nothing in this Act is taken to change the responsibility for treatment of acid drainage by any company under the Copper Mines Act unless the Minister, in writing, authorises otherwise.

Royalty not payable

15. No royalty is payable under the *Mineral Resources Development Act 1995* in respect of a pollution-reducing activity undertaken under this Act.

Immunity for past pollution

16. An immunity provided for an indemnified person under the Copper Mines Act extends to an activity undertaken by an approved person in accordance with this Act.

Immunity from proceedings

17. (1) An approved person does not incur any liability under the *Environmental Management and Pollution Control Act 1994* by virtue of returning acid drainage that

has been processed to remove metals and minerals to the environment if it is impracticable to remove all pollutants from the acid drainage.

(2) Nothing in this section affords a defence for an approved person in a prosecution for failure to comply with –

- (a) a condition of a planning permit imposed under the *Land Use Planning and Approvals Act 1993* pursuant to a direction by the Board; or
- (b) an environment protection notice issued under the *Environmental Management and Pollution Control Act 1994*.

(3) In determining the conditions to be imposed on the conduct of a pollution-reducing activity, the Board or the Director of Environmental Management, as the case may be, is not bound by the State Policy on Water Quality Management established under the *State Policies and Projects Act 1993*, but must have regard to the following principles:

- (a) the pollution-reducing activity must result in a significant net reduction in the environmental impact of, and risks posed by, acid drainage;
- (b) any limits set on the level of pollutants in the discharge of acid drainage after it has been treated or processed must be set with regard to paragraph (a) and the levels of pollutants in the acid drainage before it enters a processing plant;
- (c) any emissions of air pollutants or noise and the disposal of solid wastes are to be regulated in accordance with any relevant Government policies.

(4) Copper Mines of Tasmania incurs no civil liability by reason only of a change in the quality or quantity of acid drainage produced in the course of its normal mining operations.

PART 4 – MISCELLANEOUS**Precedence of provisions**

18. (1) Subject to subsection (2), nothing in this Act derogates from the Copper Mines Act.

(2) If there is any inconsistency between a provision of this Act and a provision of the Copper Mines Act, the provision of this Act prevails.

Delegation

19. The Minister may delegate to the Secretary of the Department any of his or her functions or powers under this Act other than this power of delegation.

Regulations

20. The Governor may make regulations for the purposes of this Act.

Administration of Act

21. Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Primary Industries, Water and Environment; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the

s. 21

No.

Mt Lyell Pollution Abatement

2003

Department of Primary Industries, Water and
Environment.