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Our reference: CAS 2873

Sanjay Loyalka
Shree Minerals Ltd
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Dear Mr Loyalka

Shree Minerals Ltd - Formal Caution Contravention of *Environment Protection and Biodiversity Conservation Act 1999* for EPBC 2011/5846

As you are aware, the Department of the Environment and Energy (the Department) have been conducting inquiries into an alleged contravention of section 142 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC); specifically an alleged breach of condition 12 attached to the approval for the Nelson Bay Magnetite Mine (EPBC 2011/5846).

I would like to reiterate that condition 12 requires Shree Minerals Limited to publish EPBC species sightings registers at least every 3 months. Condition 23 also requires that Shree Minerals Limited maintain accurate records substantiating all activities associated with the conditions.

On 5 September 2017, the Department wrote to you requesting further information in relation to the allegation. You responded by email to the Department's letter on 5 September 2017. In your reply, you were unable to confirm the exact dates which the EPBC species sightings registers were published on Shree Minerals Limited's website.

Based on the available information I am satisfied there is sufficient evidence of a contravention of section 142 of the EPBC Act. Specifically, Shree Minerals Limited did not maintain accurate records substantiating the publication dates of EPBC species sightings registers, and so is in breach of condition 23.

Section 142 of the EPBC Act requires a proponent to comply with conditions attached to an approval, with penalties for contravening conditions of approval up to \$2,100,000. As an alternative to prosecution, the Department may choose to pursue a range of administrative measures; such as Infringement Notices of up to \$12,600 for each contravention, formal cautions, and directed audits.

I take into account that Shree Minerals Limited explained the breach in a timely manner, and that three EPBC Register have been published so far in 2017. I have also considered the public interest in this matter as well as the options available under the Department's EPBC Act Compliance & Enforcement Policy¹. In this instance I believe that an appropriate

¹ The policy is available at <http://www.environment.gov.au/resource/compliance-and-enforcement-policy-environment-protection-and-biodiversity-conservation-act>

response is that you should receive a formal caution for contravening section 142 of the EPBC Act, rather than the Department pursuing a civil penalty for the contravention.

The Department has recorded the contravention of section 142 of the EPBC Act. In the event of further contraventions of the EPBC Act, the Department may take into account the fact that you have received a formal caution in determining an appropriate compliance or enforcement response.

I suggest that on the Shree Minerals Limited website, the exact date that each EPBC species sightings register are published (as had been done previously for EPBC Species sightings registers published on your website between 28 October 2013 and 22 October 2015). It would also be prudent to record the date other information is published under the conditions, such as annual compliance reports. It may also be useful to review the information that Shree Minerals Limited records in undertaking activities to satisfy the EPBC Act approval conditions. For example in the case of an audit, the Department would ask for documented evidence that Shree Minerals Limited have implemented the approval conditions.

Should you have any questions please contact Mr Mick Welsh (contact details above).

Yours Sincerely



Shonelle Meagher
Assistant Director
Environmental Audit Section
Office of Compliance

11/19/2017