



# Report and recommendations of the Environmental Protection Authority



## Magellan Lead Carbonate Project - inquiry under section 46 of the *Environmental Protection Act 1986* to amend Ministerial Statement 905

Rosslyn Hill Mining Pty Ltd

Report 1579

September 2016

ENVIRONMENTAL PROTECTION AUTHORITY  
REPORT AND RECOMMENDATIONS TO THE MINISTER FOR ENVIRONMENT

**MAGELLAN LEAD CARBONATE PROJECT – INQUIRY UNDER SECTION 46 OF THE *ENVIRONMENTAL PROTECTION ACT 1986* TO AMEND CONDITIONS 3A AND 18 OF MINISTERIAL STATEMENT 905**

The Minister for Environment has requested that the Environmental Protection Authority (EPA) inquire into and report on the matter of changing the implementation conditions relating to the Magellan Lead Carbonate Project proposal in order to:

- extend the time limit on shipments of lead carbonate through Fremantle Port (condition 3A); and
- reduce the amount of the financial assurance required and allow the release and reinstatement of the financial assurance in the event operations are suspended (condition 18).

The following is the EPA's Report and Recommendations (No. 1579) to the Minister pursuant to section 46(6) of the *Environmental Protection Act 1986* (EP Act).

Section 46(6) requires the EPA Report include:

- a recommendation on whether or not the implementation conditions to which the inquiry relates, or any of them, should be changed; and
- any other recommendations that it thinks fit.

## **Background**

### Initial approval

The original proposal included the development of an open-cut lead carbonate mine and processing facilities 30 kilometres west of Wiluna, and the transportation of lead concentrate by road-train in fully enclosed kibbles. The proposal was assessed by the EPA in 2000 at the level of Consultative Environmental Review and a report provided to the Minister for Environment in September 2000 (Bulletin 996). Ministerial Statement 559 was issued in November 2000.

The key environmental factors that were evaluated in that Report, and their equivalents in Environmental Assessment Guideline 8 *Environmental principles, factors and objectives* (Environmental Protection Authority, January 2015), are:

<b>Key Environmental Factors identified in EPA Report 996</b>	<b>Key Environmental Factors applying EAG 8 (January 2015)</b>
Particulates and Dust	Human Health
Groundwater Quality and Quantity	Hydrological Processes Inland Waters Environmental Quality
Rehabilitation	Rehabilitation and decommissioning
Subterranean Fauna	Subterranean Fauna

### Current approval

Since the issuing of Statement 559 the proposal has changed. Consequently, the conditions have also changed over time from regulating both mining and transportation to now only regulating transportation.

The current authorization is Ministerial Statement 905 issued in July 2012, which replaced all previous Statements and Interim Conditions.

The current conditions of Statement 905 (27 July 2012) place strict requirements on the proponent, including how lead carbonate concentrate is to be packaged and shipped, an extensive sampling program, third-party audits, a time limit on shipping lead through Fremantle Port, and a financial assurance for the due and punctual observance of emergency response action should lead escape along the transport route.

### **Requested changes to conditions**

In May 2015 the Minister requested the Environmental Protection Authority (EPA) inquire into and report on the matter of changing condition 18 (Financial Assurance) of Statement 905. Subsequently the Minister issued Interim Implementation condition 18 under section 46A of the *Environmental Protection Act 1986* (EP Act) which allowed for the release of the financial assurance, and reinstatement of the financial assurance once the proposal recommenced. The Minister for Environment subsequently released the bank guarantee on 20 May 2015.

In June 2016, the proponent for the proposal, Rosslyn Hill Mining Pty Limited requested further changes to implementation conditions 3A and 18 of Ministerial Statement 905.

#### **Condition 3A**

Condition 3A imposes a five (5) year time limit on shipping lead carbonate concentrate through Fremantle Port from the date Statement 905 was published (that is, from July 2012 to July 2017).

The proponent has requested an amendment to condition 3A to extend the time limit on shipping lead through Fremantle Port by seven years (that is, to July 2024).

#### **Condition 18**

Condition 18 requires an AU\$5 million financial assurance for the “due and punctual observance and performance of the requirements of Condition 11-1” (Emergency Response Plan) in the event that lead carbonate concentrate is discharged into the environment at any point between the mine-site and the shipping containers being removed from the State.

The proponent has requested an amendment to Condition 18 to reduce the amount of the financial assurance to AU\$2 million.

The Minister for Environment requested (August 2016) that the Environmental Protection Authority (EPA) inquire into and report on the matter of changing conditions 3A and 18 relating to the Magellan Lead Carbonate Project.

This Report, under section 46(6) of the EP Act, completes the EPA's inquiry into condition 18, to close-out the Interim Implementation condition, and includes its inquiry into condition 3A.

### **Application of relevant EPA Policies and Guidelines**

In inquiring into the change of condition, the EPA has considered relevant published EPA policies and guidelines.

The following relevant EPA process policies and guidelines were considered:

- Environmental Impact Assessment (Part IV Divisions 1 and 2) Administrative Procedures 2012;
- Environmental Assessment Guideline 1 (EAG 1) for *Defining the key characteristics of a proposal*, 2012;
- EAG 8 for Environmental principles, factors and objectives, 2015;
- EAG 9 for the Application of a significance framework in the environmental impact assessment process, 2015;
- EAG 11 for Recommending environmental conditions, 2015; and
- Environmental Protection Bulletin (EPB No. 11) for *Consultation on Conditions Recommended by the EPA*, 2012.

The EPA considers that the relevant environmental factor applying to the proposed changes to conditions relating to the time limit extension through Fremantle Port and the release and reinstatement of the financial assurance is 'Human health'. The EPA's objective for this factor is:

*To ensure that human health is not adversely affected.*

The EPA notes that other published policies and guidelines were also considered but not determined to be relevant.

### **Inquiry into the requested change to conditions**

The EPA has discretion as to how it conducts this inquiry. This inquiry has considered currency of the EPA's last assessment (Report 1415), and the issue of Ministerial Statement 905 (July 2012) and the Notice of Interim Implementation Conditions (May 2015) as these documents are instructive in determining the extent and nature of the inquiry under section 46.

### **Inquiry findings**

In conducting this inquiry the EPA reviewed the information provided by the proponent. The EPA's evaluation of the proponent's information is provided below.

### Condition 3A – Time Limits on Shipments through Fremantle Port

Condition 3A, restricting the time limit on shipments of lead carbonate through Fremantle Port to five years, was not recommended by the EPA but rather applied to the proposal by the then Minister for Environment. Although Statement 905 described the proposal as having a project-life of up to 10 years, the condition was applied at a time when:

- advice to the Minister from the proponent stated that the remaining five million tonnes of ore, from the total 8.2 million tonnes described in the Key Characteristics Table (originally described in Statement 559), would take approximately three years to mine;
- the proponent was investigating downstream processing options (condition 6) to determine whether it would be financially feasible and environmentally beneficial to process the lead in Western Australia and transport it in another form (such as ingots); and
- there were potential plans for other container ports being developed in Western Australia.

The condition therefore provided a trigger that would prompt an inquiry into the conditions applying to the proposal should the proponent wish to continue transporting lead through Fremantle Port beyond five years.

To that end, this inquiry has noted the following:

- The proponent has revised its mine-life estimate and advised in its request to amend condition 3A that it now anticipates mining and transport to continue for a further seven years from the recommencement of operations;
- No other container ports have been developed in Western Australia capable of exporting the lead carbonate in accordance with Statement 905; and
- The proponent has consulted with 20 municipalities (Shires and Cities) along the transport route, and the Fremantle Port Authority (FPA). None of these stakeholders posed any objections to the change to the conditions, which would allow continued transport of lead carbonate concentrate through their jurisdictions.

The EPA considers condition 3A to provide certainty that lead carbonate is only to be shipped through Fremantle Port for a defined period of time. However, the EPA also notes that the proponent is required to ship lead carbonate in a particular manner; that is, in sealed double laminated, water-proof and sieve-proof bags within locked shipping containers.

On review of the results from the sampling program and the outcomes of third-party audits into packaging and transportation procedures, the EPA is satisfied that the packaging and shipping requirements have ensured, and should continue to ensure, that lead carbonate is safely contained and is not escaping along the transport route and that human health will not be adversely affected.

The EPA therefore considers that the current requirements of Statement 905 are sufficient to manage the transport of lead carbonate from the mine-site to Fremantle Port.

However, given the revision of mine-life, the EPA considers that it is appropriate to extend the time limit on shipping lead through Fremantle Port to for a further seven years (to July 2024), such that it aligns with the end of the anticipated mine-life. The maintaining of a time-limit will ensure that, should circumstances change, such as the continuation of mining beyond July 2024, alternatives to the current shipping practices may be considered by the proponent and the EPA.

#### Condition 18 - Financial Assurance

The requirement for a financial assurance of AU\$5 million, as well as stricter controls on management and transport of lead carbonate concentrate, was first imposed as a requirement of condition 14 of Statement 783 in February 2009, as a result of lead contamination during transport and handling of lead carbonate concentrate at the Esperance Port.

The shipping of lead carbonate concentrate under Statement 905 commenced in April 2013. In January 2015 the proponent announced that its Paroo Station Mine was being put into care and maintenance due to market factors. Consequently the shipping of lead carbonate concentrate was suspended and the proponent shipped its last container out of Fremantle Port in March 2015.

Under Condition 18 the proponent is required to have in place an AU\$5 million financial assurance for the due and punctual observance of Condition 11 (Emergency Response Plan). After the suspension of operations, the proponent requested the release of its financial assurance while operations were suspended.

In May 2015 the Minister requested the Environmental Protection Authority (EPA) inquire into and report on the matter of changing condition 18 of Statement 905. The Minister subsequently issued Interim Implementation condition 18 under section 46A of the *Environmental Protection Act 1986* (EP Act) which allowed for the release of the financial assurance, and reinstatement of the financial assurance once the proposal recommenced.

In June 2016 the proponent requested further changes to condition 18; namely, to reduce the amount of the financial assurance required under condition 18.

The amount of AU\$5 million was a conservative estimate and was agreed to at the issuing of Statement 783. It has since been carried through to subsequent interim conditions and Statement 905.

The EPA has inquired into the following, with regard to changes to condition 18:

- Imposition of a financial assurance requirement under section 86 of the EP Act;
- The amount of the financial assurance in regard to what is reasonable (section 86(D) of the EP Act); and
- The ability for the Chief Executive Officer (CEO) of the Office of the EPA to release and reinstate the financial assurance in the event shipping of lead is suspended.

#### *Continuation of a financial assurance*

Under Section 86C of the EP Act the Minister is to have regard to:

*“(c) the degree of risk of pollution or environmental harm associated with the implementation of the authorisation; and*

- (d) *the likelihood of action being required to deal with waste or prevent, control or abate pollution or environmental harm arising from acts associated with the implementation of the authorisation; and*
- (e) *the environmental record of the responsible person or proposed responsible person; and*
- (f) *other financial assurances required to be held by the responsible person or proposed responsible person under this Act and other written laws; and*
- (g) *any other matters prescribed.”*

The EPA has given regard to the above matters in its advice to the Minister for Environment and advises that:

- the degree of risk of pollution or environmental harm associated with the implementation of the authorisation is considered to be low given the current conditions addressing: bagging and container management (condition 4), prevention of discharge of lead carbonate (condition 5), shipping container cleanliness (condition 7), sampling and monitoring (conditions 8, 9 and 10), emergency response (condition 11), and requirements imposed by other regulatory authorities (such as Dangerous Goods Transport and Safety regulations). In addition to the above, the strict transport and handling controls at Fremantle Port ensures that the contamination issues that occurred during transport and handling at Esperance Port do not reoccur;
- the likelihood of action being required to deal with waste or prevent, control or abate pollution or environmental harm arising from acts associated with the implementation of the authorisation is considered low given the existing mechanisms in place to prevent such likelihood (as described above);
- during the most recent operation period from April 2013 to February 2015, no lead carbonate concentrate has entered the environment as a result of road and rail transport from the Paroo mine; and
- there are no other related financial assurance requirements held by the proponent nor are there any other related prescribed matters.

*The amount of the Financial Assurance*

The proponent, in consultation with ToxFree Australia, has undertaken a review of worst-case scenarios to better estimate the amount required to undertake a clean-up. These scenarios and costs are outlined below.

<b>Scenario</b>	<b>Cost Estimate</b>
Scenario A – Collision between a concrete handling truck and a fuel tanker	\$680,000
Scenario B – High speed train derailment on main east-west railway line during rain event	\$900,000
Scenario C – Train derailment over water	\$1,130,000
Scenario D – Derailment in Fremantle	\$1,890,000
Scenario E – Derailment in Kalgoorlie	\$1,290,000

Based on the advice of the Pollution Response Unit in the Department of Environment Regulation, and given the matters referred to above, the EPA accepts the estimates are credible and notes that they represent worst-case, catastrophic events.

Consistent with section 86D of the *Environmental Protection Act 1986*, the EPA has sought the opinion of the CEO. The EPA notes the CEO is of the view that the revised financial assurance of AU\$2 million represents a reasonable estimate of the total likely costs and expenses that may be incurred in taking action in that case or in reimbursing a person for any action taken.

In consideration of the above, the EPA recommends that the amount of the financial assurance be reduced to AU\$2 million, indexed to inflation (being the Consumer Price Index, Perth) at 5-yearly intervals.

#### *Release and reinstatement of the requirement for a financial assurance*

Should lead carbonate shipping be suspended and the sampling program has adequately demonstrated that lead has not been released into the environment, the EPA agrees that the financial assurance is not required for the period that lead carbonate shipping is suspended. This is consistent with the intent of the Minister's previous Interim Conditions issued on 13 May 2015. The EPA recommends this change be incorporated into condition 18.

#### **EPA conclusions and recommendations**

Having inquired into the conditions, the EPA submits the following recommendations to the Minister for Environment, that:

- condition 3A of Ministerial Statement 905 may be amended to allow the shipping of lead carbonate concentrate through Fremantle Port for a further seven years, up to 27 July 2024;
- condition 18 of Ministerial Statement 905 may be amended to:
- reduce the amount of the financial assurance from AU\$5 million to AU\$2 million;
- allow for the release and reinstatement of the financial assurance in the event shipping of lead carbonate concentrate is suspended; and
- if the Minister agrees with these recommendations, and after consulting relevant decision making authorities, the Minister issues a statement of decision to change conditions 3A and 18 of Ministerial Statement 905 in the manner provided for in the attached recommended Statement.





Statement No. XXX

RECOMMENDED ENVIRONMENTAL CONDITIONS

**STATEMENT TO CHANGE THE IMPLEMENTATION CONDITIONS APPLYING TO A PROPOSAL**

**(Section 46 of the *Environmental Protection Act 1986*)**

MAGELLAN LEAD CARBONATE PROJECT

**Proposal:** The proposal includes an open-cut lead carbonate mine and processing facilities 30 kilometres west of the Wiluna townsite. The lead carbonate concentrate produced at the mine-site is transported in sealed bags within locked shipping containers by road from the mine-site to Leonora and then by rail to the Port of Fremantle where it is exported.

**Proponent:** Rosslyn Hill Mining Pty Ltd  
Australian Company Number 075 523 661

**Proponent Address:** Level 5, 151 Castlereagh Street  
SYDNEY NSW 2000

**Report of the Environmental Protection Authority:** 1579

**Statements Relating to this Proposal:** 905

Pursuant to section 45 of the *Environmental Protection Act 1986*, as applied by section 46(8), it has been agreed that the implementation conditions set out in Ministerial Statement No. 905 be changed as specified in this Statement.

These conditions supersede the Interim Implementation Conditions published by the Minister for Environment under section 46A of the *Environmental Protection Act 1986* on 13 May 2015.

1. Condition 3A is deleted and replaced with the following:

**3A Time Limit on Shipments through Fremantle Port**

3A-1 The proponent shall not ship lead carbonate through Fremantle Port beyond 27 July 2024.

2. Condition 18 is deleted and replaced with the following:

## **18 Financial Assurance**

- 18-1 As security for the due and punctual observance and performance by the proponent of the requirements of condition 11-1, the proponent shall not remove shipping containers of lead carbonate concentrate from the mine-site unless the proponent has in place a financial assurance for the amount specified in condition 18-2. The financial assurance is to be in the form of an unconditional and irrevocable bank guarantee from a guarantor acceptable to the CEO, for the benefit of both the Minister and the CEO.
- 18-2 The financial assurance shall be for an amount of AU\$2 million and shall be substituted every five years after the provision of the first guarantee with the fixed initial amount of each successive guarantee being indexed to inflation (being the Consumer Price Index, Perth).
- 18-3 In the event that the guarantor referred to in condition 18-1 terminates its liability under the bank guarantee by paying to the Minister or the CEO the balance of the financial assurance remaining unpaid, the CEO will hold the financial assurance (being the amount paid by the guarantor upon termination), as security for the due and punctual observance and performance by the proponent of the requirements of condition 11-1, in an interest bearing account nominated by the CEO, with the interest accruing for the benefit of the Minister or the CEO.
- 18-4 The financial assurance may be called on or used in accordance with section 86E of the *Environmental Protection Act 1986* if the proponent fails to implement the proposal in accordance with condition 11-1.
- 18-5 The financial assurance shall be discharged by the CEO and the Minister when the CEO has given the proponent written notice pursuant to section 86F(1) of the *Environmental Protection Act 1986*.
- 18-6 The CEO may suspend the requirement for the financial assurance required under condition 18-1 and release the financial assurance if:
- i. the removal of shipping containers of lead carbonate concentrate from the mine-site is suspended; and
  - ii. the CEO is satisfied that it will be unlikely the proponent will be required to implement the Emergency Response Plan as required under conditions 11-1 or 11-3 during the time that the removal of shipping containers of lead carbonate concentrate from the mine-site is suspended.
- 18-7 If the CEO agrees to suspend the requirement for the financial assurance required under condition 18-6 the suspension will only be for the period of time that the removal of shipping containers of lead carbonate concentrate from the mine-site is suspended.

18-8 Prior to recommencing the removal of shipping containers of lead carbonate concentrate from the mine-site the proponent shall provide a financial assurance to the CEO in accordance with condition 18-1 for the amount specified in condition 18-2 as if the requirement for a financial assurance under condition 18-1 was not suspended.

[Signed XXXX]

**HON ALBERT JACOB MLA  
MINISTER FOR ENVIRONMENT; HERITAGE**