

**Senate Standing Committee on Environment and Communications
Legislation Committee**

Answers to questions on notice
Environment and Energy portfolio

Question No: 287
Hearing: Additional Estimates
Outcome: Agency
Programme: Clean Energy Regulator
Topic: Bald Hills Wind Farm
Hansard Page:
Question Date: 14 March 2017
Question Type: Written

Senator Back asked:

As the Regulator would be aware, under the *Renewable Energy (Electricity) Act 2000*, all accredited power stations must submit an electricity generation return by close of business on 14 February each year (or the following business day), for electricity generated in the previous year. Scheme participants must bring any evidence of a breach under the Act to the attention of the Regulator.

Prior to 14 February 2017, did the owner of the accredited Bald Hills Wind Farm in Victoria inform the Regulator that the power station was operating in breach of State planning permit obligations relating to noise compliance and therefore, in contravention of the Act?

Is this currently being investigated?

What steps have been taken?

What penalties are applicable for not disclosing a breach of state planning permit to the Regulator?

Answer:

Please refer to the response to Question on Notice 288 for further background on the Clean Energy Regulator's approach to compliance and enforcement.

Section 20 of the *Renewable Energy (Electricity) Act 2000* (the REE Act) and Regulation 18 of the Renewable Energy (Electricity) Regulations 2001 require the nominated person of an accredited power station to report in their annual electricity generation return any breach of the conditions of a permit, or conviction for an offence, under and Commonwealth, State, Territory or local government law related to the operation of the power station during the year.

Subsection 30E(3) of the REE Act gives the Clean Energy Regulator the authority to suspend the accreditation of an accredited power station if the Clean Energy Regulator believes on reasonable grounds that the power station is being operated in contravention of a law of the Commonwealth, State or Territory.

A breach of a State planning permit condition may or may not be a contravention of a State law, depending on how the permit conditions are framed. Whether or not a permit has been breached or a breach of a permit is a contravention of a law is generally a matter for the local regulatory authority to determine. A breach of a permit is not a breach or contravention of the REE Act.

Prior to 14 February 2017, did the owner of the accredited Bald Hills Wind Farm in Victoria inform the Regulator that the power station was operating in breach of State planning permit obligations relating to noise compliance and therefore, in contravention of the Act?

No. The nominated person for Bald Hills Wind Farm had not advised the Clean Energy Regulator that the power station was operating in breach of a permit condition prior to 14 February 2017.

As noted above, a breach of a planning permit condition may, or may not be a contravention of a State law. A breach of a permit is not a breach or contravention of the REE Act.

Is this currently being investigated?

No. The Clean Energy Regulator has not been advised by a relevant regulatory authority or by the operator of the wind farm that the Bald Hills Wind Farm is being operated in contravention of State law. Nor have we received specific allegations that the wind farm is being operated in contravention with State laws. The Clean Energy Regulator has received a report that outlines an assessment of operational noise of the power station. This report was commissioned by the Bald Hills Wind Farm Pty Ltd and it was provided to the Clean Energy Regulator by the Wind Farm Commissioner in late January 2017. The report, in summary, says there have been minor breaches of a permit condition and a curtailment strategy has been implemented:

‘The noise levels exceeded the applicable NZS6808:1998 noise limits by up to 1.2dB for a limited range of wind speeds during the night period at one stakeholder property (Property 28, where no noise agreement is in place) and one tenement property (Tenement Property B).’

‘Bald Hills Wind Farm has advised that the interim curtailment strategy has been implemented to reduce wind farm noise levels during night-time periods at four relevant receiver locations.’

However, the report does not state that the wind farm is being operated in contravention of State law.

What steps have been taken?

As Bald Hills Wind Farm Pty Ltd did not submit an electricity generation return for 2016 by the legislated date of 14 February 2017, the Clean Energy Regulator sent a written notice of intent to suspend the accreditation of the Bald Hills Wind Farm power station on 22 March 2017. This is based on the power to suspend for failure to lodge a return (subsection 30E(1)) rather than the power to suspend for operating a power station in contravention of a law (subsection 30E(3)). This notice invites the nominated person to make submissions before a decision is made.

What penalties are applicable for not disclosing a breach of state planning permit to the Regulator?

A false or misleading statement in an electricity generation return may be an offence under the Commonwealth Criminal Code (section 137.1). Prosecutions under the Criminal Code are a matter for the Commonwealth Director of Public Prosecutions (CDPP). While the brief to the CDPP is prepared by the Clean Energy Regulator, the decision to prosecute rests with the CDPP. The maximum penalty under section 137.1 is 12 months imprisonment.

Decisions regarding actions, including the preparation and forwarding of briefs are made in accordance with the Clean Energy Regulator’s *Compliance, Education and Enforcement Policy*. This policy is available on the Clean Energy Regulator’s website.