

**SENATE ENVIRONMENT, COMMUNICATIONS,
INFORMATION TECHNOLOGY AND THE ARTS
REFERENCES COMMITTEE**

**Inquiry into Environmental Regulation of
Uranium Mining**

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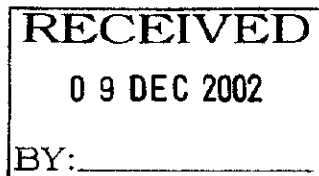
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ATTACHMENTS: Yes. Correspondence with NT
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5 December, 2002

Senator Lyn Allison
62 Wellington Parade
East Melbourne

Dear Senator,

I write to you as the Chair of the Senate Environment, Communications, Information Technology and the Arts Committee to alert you and the members of the ECITA Inquiry into uranium mining regulation to the continuing unsatisfactory response of the Northern Territory Government (NTG) in its role as the primary regulator of uranium mining operations in the Alligator Rivers Region.

You will be aware of the deep concerns held by ACF, other environment groups and traditional Aboriginal owners over the NTG's persistent failure to ensure that the Kakadu uranium mining company Energy Resources of Australia operates in a manner consistent with the existing regulatory regime and community expectation, as well as our concerns over both regulatory capture and conflict of interest.

Enclosed please find copies of recent ACF correspondence with the NT Minister for Business, Industry and Resource Development, Mr Paul Henderson. We believe that this correspondence clearly highlights the failure of the NTG to effectively understand and give effect to its key role in this area. We view the NTG's response as cursory, incorrect and lacking proper regulatory credibility.

We commend this correspondence to your attention and would welcome you tabling or distributing this to your colleagues. We also re-iterate our hope that the current ECITA Committee Inquiry into the regulation of uranium mining can help identify, articulate and address this serious deficiency in the existing regulatory regime in order to help protect the natural and cultural values of the World Heritage listed Kakadu region.

Yours truly,

A handwritten signature in black ink, appearing to read "Dave Sweeney". The signature is written in a cursive style and is positioned above a diagonal line that extends from the bottom right towards the center.

Dave Sweeney
National Nuclear Campaigner



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9 May 2002

The Hon. Paul Henderson
Minister for Business, Industry & Resource Development
Parliament House
Mitchell street
Darwin, NT 0800

Dear Sir,

Breaches by ERA of the Mining Management Act 2001

I am writing with respect to two "mining incidents" which took place at the Ranger uranium mine and the Jabiluka project earlier this year (2002). It is our view that the two mining incidents involve several contraventions of the *Mining Management Act 2001* by the operator of the mining sites, Energy Resources Australia Ltd ("ERA").

I will briefly set out the nature of the two incidents and the provisions of the *Mining Management Act* that we believe have been contravened.

1. The Grade 2 Stockpile Incident at Ranger

The Incident

- 80,900 tonnes of weathered grade 2 material and 3,600 tonnes of weathered grade 3 material were dumped on the grade 2 stockpile between 14 January 2002 and 26 February 2002. This material was not compacted and was placed on an area of the Grade 2 stockpile from which surface run off was directed to the Corridor Creek wetland filter system. Some of the material was pushed over the western batter of the grade 2 stockpile after initial emplacement on top of the western edge of the stockpile. This was in contravention of the of the stockpile management plan approved by the Northern Territory Minister for Resources and Development.¹
- Runoff from the 4/7 laterite may have joined runoff from the 4P stockpile and incorrectly entered the Corridor Creek wetland filter system.²
- As a consequence of the surface runoff (outlined in the two dot points above), uranium concentrations measured at the input point to the Corridor Creek wetland filter system in January and February 2002 were higher than expected. Despite the higher than expected uranium concentrations being noticed by ERA employees in January and February 2002, they were not reported to stakeholders until 26 February 2002.³

The Contraventions

This incident has caused ERA, the operator of the Ranger Mine, to contravene (at the very least) the following provisions of the *Mining Management Act 2001*:

¹ Supervising Scientist Investigation of the Stockpiling and Reporting Incidents at Ranger and Jabiluka 2002 page 3.

² Supervising Scientist Investigation of the Stockpiling and Reporting Incidents at Ranger and Jabiluka 2002 page 3.

³ Supervising Scientist Investigation of the Stockpiling and Reporting Incidents at Ranger and Jabiluka 2002 page 9.

- **Section 39** - *The operator for a mining site granted an Authorisation must comply with the Authorisation as in force from time to time.*

Reasons

The fact that ERA breached its stockpile management plan has caused it to act contrary to a condition of the Mine Authorisation (see section 37 (2)). This in turn has resulted in a failure by the company to comply with the Authorisation itself.

- **Section 29 (1)**- *As soon as practicable after the operator for a mining site becomes aware of the occurrence of a serious accident or critical incident on the site, the operator must notify the Chief Executive Officer of the occurrence.*

Reasons

Employees of ERA were aware of higher than expected uranium concentrations at the input point to the Corridor Creek wetland filter system as early as January 2002. Despite this awareness, this critical incident does not appear to have been reported to the appropriate authorities until 26 February 2002. The fact ERA's environmental manager might not have been aware of the critical incident himself until 26 February 2002 is irrelevant. The state of awareness of ERA's employees is sufficient to establish that the operator was aware of the incident (see section 72).

- **Section 9(2)**- *The operator for a mining site must take all reasonable and practicable measures to ensure that every person on the site complies with and does not contravene this Act*

Reasons

I have already outlined above two contraventions of the *Mining Management Act* with respect to this incident. It is clear from the report from the Supervising Scientist into the incident, that ERA had not taken all reasonable and practicable measures to ensure its employees and management comply with and do not contravene the Act. Two statements contained in the report particularly emphasise this point.

1. *It is also evident that there was no effective communication process between the ERA Environment department and the Ranger Mine Department. In addition to being symptomatic of deficiencies in internal reporting and communication systems, the action of the mine department staff also indicates a lack of appropriate environmental awareness amongst some ERA employees.⁴*
2. *This incident has exposed an obvious flaw in those (ERA's) internal monitoring systems. On focusing on the more complex issues such as the correct construction of wetland filters, the ERA Environment Department overlooked the most basic potential failure, the possibility that fresh material would be incorrectly dumped on the Grade 2 Stockpile during the wet season. This is indicative of the deficiencies in ERA's internal environmental inspection and verification processes.⁵*

⁴ Supervising Scientist Investigation of the Stockpiling and Reporting Incidents at Ranger and Jabiluka 2002 page 10.

⁵ Supervising Scientist Investigation of the Stockpiling and Reporting Incidents at Ranger and Jabiluka 2002 page 10.

2. Delayed Reporting at Jabiluka

The Incident

- On 22 January 2002, uranium levels recorded by ERA in Swift Creek (downstream of Jabiluka) were 0.06 parts per billion. This concentration exceeded the action level for uranium. The Jabiluka mine site was identified as the source of the uranium due to significantly higher concentration recorded downstream of the mine (0.06) as opposed to up stream (0.01). According to the commercial laboratory which undertakes the analysis of water samples collected by ERA, the data was reported to ERA on 25 January 2002. ERA should have reported this to OSSS, DBIRD and NLC immediately and commenced an investigation. However, stakeholders were not notified until 15 February 2002, in clear contravention of ERA's reporting commitments.⁶

The Contraventions

This incident has caused ERA, the operator of the Jabiluka project, to contravene (at the very least) the following provisions of the *Mining Management Act 2001*:

- **Section 29 (1)**- *As soon as practicable after the operator for a mining site becomes aware of the occurrence of a serious accident or critical incident on the site, the operator must notify the Chief Executive Officer of the occurrence.*

Reasons

For 21 days ERA was aware of the high concentration of uranium levels in swift creek before notifying the appropriate authorities. The Supervising Scientist describes the delay as a "clear contravention of ERA's reporting commitments."⁷

- **Section 9(2)**- *The operator for a mining site must take all reasonable and practicable measures to ensure that every person on the site complies with and does not contravene this Act*

Reasons

- The failure of ERA to comply with the most basic of reporting requirements is indicative of the fact ERA has failed to take all reasonable and practicable measures to ensure that every person on the site complies with and does not contravene the Act. The supervising scientist, in its report on the Jabiluka incident has stated that "there are clear deficiencies in ERA's internal procedures in the Environment Department to ensure that monitoring data are properly assessed and action taken where appropriate."⁸

⁶ Supervising Scientist Investigation of the Stockpiling and Reporting Incidents at Ranger and Jabiluka 2002 page 12.

⁷ Supervising Scientist Investigation of the Stockpiling and Reporting Incidents at Ranger and Jabiluka 2002 page 12.

⁸ Supervising Scientist Investigation of the Stockpiling and Reporting Incidents at Ranger and Jabiluka 2002 page 13.

Past Incidents-a continuing pattern

The Ranger and Jabiluka incidents are by no means the only "incidents" to have occurred on ERA mine sites. The attached report is a list of environmental incidents at Ranger updated to 2001. It lists 178 separate incidents at the mine site between February 1979 and September 2000.

Of particular concern is an incident that took place in March/April 2000. This incident involved a major leak of about 2,000,000 litres from the tailings return pipeline. ERA first detected the problem on 29 March 2000, but failed to notify the authorities until April 28. The Supervising Scientist's report into this incident also found that ERA had contravened its reporting requirements.⁹ The report highlighted deficiencies within ERA's reporting procedures and made several recommendations aimed at remedying the deficiencies.

In a letter to the Supervising Scientist dated 19 May 2000, R A Cleary Chief Executive of ERA, stated that "the actions taken and planned by ERA in response to the investigation of this incident are extensive and far reaching, and will hopefully satisfy your Minister that the Company has treated this matter seriously and has responded accordingly."

On the basis of these assurances made by the company, no action was taken by the Commonwealth or Northern Territory authorities with respect to the contravention of ERA's reporting requirements flowing from the April 2000 incident at Ranger.

It is clear, as is evident from the latest two mine site incidents, that ERA has failed to treat the continued environmental incidents at its mine sites seriously nor has it responded to the 2000 incident to the extent that was required to avoid further contraventions of relevant legislation.

Given this history, the most recent incidents at the two ERA mine sites are indefensible and warrant prosecution.

We request your immediate advice as to whether you intend to prosecute ERA for its contravention of the *Mining Management Act 2001*.

We await your response as a matter of urgency.

Yours sincerely,

Michael Kerr
Legal Advisor

⁹ Investigation of Tailings Water Leak at the Ranger Uranium Mine. Supervising Scientist Environment Australia June 2000. Page 44.



THE HON PAUL HENDERSON MLA

MINISTER FOR BUSINESS, INDUSTRY AND RESOURCE DEVELOPMENT

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Mr Michael Kerr
Legal Advisor
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Dear Mr Kerr

I refer to your letter dated 9 May 2002, concerning two matters, which took place at the Ranger Uranium Mine and the Jabiluka Project earlier this year.

I regret the delay in responding, however, I am sure that you can appreciate that your contention that a number of contraventions of the Mining Management Act had occurred required thorough investigation and proper consideration.

As a result of my investigations, and following the receipt of legal advice in the matter, I advise that I do not propose to take any action in respect of the matters raised by you in your letter. This course of action is supported by my legal advice.

In coming to this decision, I am mindful of the fact that the investigation by the Supervising Scientist into the two incidents concluded that neither incident resulted in any harm to the environment of the Kakadu National Park or to the health of people living in the region. The report further concluded that neither of the incidents constituted a breach of either the Northern Territory or the Commonwealth's statutory requirements of the Energy Resources of Australia (ERA).

The Supervising Scientist's report referred to commitments made by ERA to address failures to have adequate systems in place to ensure implementation of environmental management plans, and the examination and interpretation of data obtained in monitoring programs.



Thank you for bringing these matters to my attention. The Government remains committed to appropriate regulation of uranium mining in the Northern Territory.

Yours sincerely

A handwritten signature in black ink, appearing to be 'P. Henderson', written over a horizontal line.

PAUL HENDERSON

13/11/02



Australian
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INC. ABN 22 007 498 482

4 December 2002

The Hon. Paul Henderson
Minister for Business, Industry & Resource Development
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Dear Minister,

Breaches by ERA of the Mining Management Act 2001

I refer to your letter dated 13 November 2002 in response to my letter of some six months earlier.

As you would probably be aware, the substance of ACF's allegations concerning the breaches of Commonwealth and NT legislation arising from the Ranger stockpiling incident have been presented to the current Commonwealth Senate inquiry into environmental regulation of uranium mining. We are hopeful that this inquiry will investigate ACF's allegations and the adequacy of State and Federal regulation to the fullest extent possible.

In relation to your letter, I would like to make three brief comments in response.

1. The fact that the incident did not result in any harm to the environment of the adjacent Kakadu national park or the health of people living in the region does not mean that ERA has not contravened the *Mining Management Act 2001* ("the Act"). The objects of the Act, as outlined in section 3(b), relate to the protection of the environment and health and safety of all persons on mining sites in the Territory. Consistent with this object, many of the offences and obligations under the Act concentrate on the mine site itself and not off site impacts.

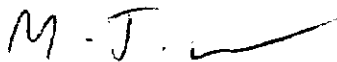
For example, section 39 of the Act states that *the operator for a mining site granted an Authorisation must comply with the Authorisation as in force from time to time*. For the purposes of section 39 of the Act, the Authorisation that is in force with respect to the Ranger mine is the Ranger General Authorisation Number A82/3 ("the Authorisation"). It is a condition of the Authorisation (3.2.5) that ERA shall ensure that operations do not result environmental impacts within the Ranger Project Area which are not as low as reasonably achievable, during mining excavation, mineral processing, and subsequently during and after rehabilitation.

It is logical to assume that ERA's stockpile management plan, approved by DBIRD, was developed to ensure that the environmental impacts within the Ranger Project Area are as low as reasonably achievable. Accordingly, the fact that ERA has acted inconsistently with its stockpile management plan (as concluded by the Supervising Scientist at page 3 of its report) has resulted in a failure by the company to ensure that the environmental impacts within the Ranger Project Area are as low as reasonably achievable thereby contravening the Authorisation and section 39 of Act.

2. Paragraph 4 of your letter, concerning the conclusions of the Supervising Scientist, is factually incorrect. The Supervising Scientist concluded at page 15 of its report that whether or not the actions of ERA legally constitute a breach of the NT Act is most appropriately judged by your department (DBIRD). Based on advice from DBIRD that the actions of ERA did not constitute a contravention of NT legislation, the Supervising Scientist then drew the conclusion that there had been no contravention. Accordingly, to base your decision not to take action against ERA with reference to the conclusion of the Supervising Scientist (which was based on DBIRD's initial advice) is of great concern to us.
3. At paragraph 5 of your letter, you refer to commitments made by ERA to address failures to have adequate systems in place to ensure implementation of environmental management plans, and examination and interpretation of data obtained in the monitoring programs. Two issues arise from this:
 - (i) This commitment to address its "failures" is tantamount to an admission by ERA that it has breached certain provisions of the Act, namely sections: 9(2), 29(1) and 39.
 - (ii) Your paragraph 5 seems to imply that because ERA has made a commitment to address its failures, no action need be taken to hold the company to account for contraventions of the Act. This sends a negative message to ERA and other operators of NT mining sites to the effect that remedial action taken after a contravention of the Act will result in no proceedings being taken by the NT authorities. What is more, we have heard such commitments with no commensurate action before. For example, following the 2000 leak at Ranger, R A Cleary Chief Executive of ERA, stated in a letter to the Supervising Scientist dated 19 May 2000, that "the actions taken and planned by ERA in response to the investigation of this incident are extensive and far reaching, and will hopefully satisfy your Minister that the Company has treated this matter seriously and has responded accordingly."

I await your response to the issues raised above at your earliest convenience.

Yours sincerely,



Michael Kerr
Legal Advisor