

Case study: debt management action

Summary

- On 31 March 2017 a Supreme Court judge ordered Marlborough Nickel to be wound up and a liquidator appointed.
- Marlborough Nickel owes the department over \$204,000 from unpaid fees.

Facts

During November 2016, officers from EHP suspended Marlborough Nickel's Environmental Authority (EA) due to unpaid annual fee of \$101,120 (which was due on 29 August 2016).

While the EA remained suspended Marlborough Nickel was not lawfully able to mine nickel ore.

As per EHP's timeline procedure for the cancellation/suspension of EAs, Marlborough Nickel had received:

- a reminder telephone call
- a reminder letter
- a notice of proposed action to suspend the EA
- two (2) follow-up emails explaining the consequences of suspension as the annual fee had not been paid in full.

The notice of proposed action was issued on 29 September 2016.

The week commencing 5 December 2016, outstanding fees were still unpaid and EHP issued a statutory demand under the Corporations Act for annual fees owed by Marlborough Nickel Pty Ltd totalling \$101,750.

On 10 January 2017 the department issued an annual notice to Marlborough Nickel for a separate EA, with an annual fee of \$101,120 payable by 28 February 2017.

Marlborough Nickel served an application to court to set aside the statutory demand. The application alleged that there was a genuine dispute about the debt on the basis that:

- no mining is occurring on the site and so a much lower annual fee should apply
- company is entitled to a 50% reduction in the annual fee
- the annual fee is not a debt but a charge for fees in advance.

The application was heard by the Supreme Court in Brisbane on 24 January 2017. The Court dismissed the application, and Marlborough Nickel was ordered to pay the department's costs.

As at 10 February the department filed an application with the Supreme Court to wind up Marlborough Nickel Pty Ltd. The application was heard on 31 March 2017.

The judge refused the application for a two week adjournment and ordered that Marlborough Nickel be wound up and a liquidator appointed. The liquidator is Nick Combis of Vincents Chartered Accountants.

The amount of any payment will not be known for some time. The sites subject of the EAs do not pose an environmental risk, with only minor, historical disturbance present on the sites.

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