

17 December 2021

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* Associated Firm

** In cooperation with
Trench, Rossi e Watanabe
Advogados

MARQUE Lawyers Pty Ltd
Level 4, 343 George Street
Sydney NSW 2000

Attention: [REDACTED]

Dear [REDACTED]

Email communication sent by 350 Australia dated 30 November 2021 and linked Video titled "Reckless Empire Energy"

1. We refer to:
 - (a) the email sent by Shani Taylor of 350 Australia on or about 30 November 2021 ("**Email**");
 - (b) the video entitled "Reckless Empire Energy" a link to which was set out within the Email ("**Video**");
 - (c) our letter to 350 Australia dated 2 December 2021 ("**Our Letter**"); and
 - (d) your letter to us dated 9 December 2021 ("**Your Response**").

Unless otherwise defined, capitalised terms used in this letter have the meaning give to them in Our Letter.

2. We note that 350 Australia has indicated it intends to publish Our Letter, Your Response as well as any subsequent correspondence on the matter.
3. Our clients are very committed to transparency and have no objection to publication provided that statements put into the public domain are factually correct. For these reasons, our clients wish to:
 - (a) repeat the objections set out in Our Letter regarding Statements 1-8 in the Email and Video; and
 - (b) correct several additional misstatements by yourselves and 350 Australia in Your Response.
4. Our clients request that 350 Australia considers the issues raised in this letter and takes the next steps set out in paragraph 19 below.

Additional Misstatements by 350 Australia regarding Statements 1-2

5. Your Response regarding Statements 1-2 contained six (6) further misstatements:

- (a) Your Response incorrectly states that EPA alleged that our client's subsidiary "*was responsible for two substantial oil spills*" and "*committed serious environmental offences*". We note:
- (i) the US EPA does not characterise the events of 5 March 2021 and 22 May 2021 as "*substantial*" oil spills or "*serious*" environmental offences anywhere in the Complaint and Consent Agreement/Final Order (**Order**). These are your words; and
 - (ii) for the record, the amount of oil and produced water discharged was limited to:
 - (A) approximately 1 barrel of oil and 5 barrels of produced water, on 5 March 2019 ; and
 - (B) approximately 0.5 barrels of oil and 9.5 barrels of produced water, on 22 May 2019.
- (b) Your Response also incorrectly states that the "*objective facts are not in dispute*" and describes the circumstances recited the Order as the "*relevant facts*" and "*pertinent facts*". The circumstances recited in the Order have not been admitted by our clients or their subsidiary. This is expressly noted in paragraph 39 of the Order.
- (c) Your Response also incorrectly states that the US EPA "*issued a complaint in respect of the company's failures*". The US EPA never issued our client's subsidiary with a complaint. This is expressly noted in paragraph 2 of the Order, which states:

the U.S. Environmental Protection Agency Region 7 ("EPA") and Respondent, Empire Energy E&P, LLC ("Respondent"), have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

Additional Misstatements by 350 Australia regarding Statements 3-5

6. While Your Response claims that 350 Australia is "*committed to transparency*". Statements 3-5 and Your Response fail to acknowledge that our clients have obtained the full and informed consent of Traditional Owners of the land underlying EP187 in accordance with the process set out in the *Aboriginal Land Rights Act (Northern Territory Act 1976)* (Cth) (**Land Rights Act**).
7. Our clients note that:
- (a) the land underlying EP187 is Aboriginal Land under the *Land Rights Act* and the process for obtaining the consent of Traditional Owners of such land to an exploration licence such as EP 187, is set out in the *Land Rights Act*; and
 - (b) Our clients respect that process and fully complied with it.

8. Specifically, our clients undertook a 4 year consultation and negotiation process (12 April 2010 to 5 February 2014) with the Traditional Owners of the Mambaliya Rrumburriya Wuyaliya Aboriginal Land Trust land underlying EP187 (**Traditional Owners**) who were represented in those negotiations by the Northern Land Council (**NLC**) - there were three phases to this consultation process:
- (a) during the first phase, the NLC was responsible for ensuring that the Traditional Owners understood the implications of the development proposed by our clients;
 - (b) during the second phase, our clients presented their proposal to the Traditional Owners and answered questions and clarified points raised by Traditional Owners and the NLC;
 - (c) during the third phase, the NLC spoke with each of the Traditional Owner representatives to establish whether or not they consented to the activities they had heard about. Although our clients were not permitted to be (and were not) involved in these third phase meetings, we note that the NLC is not permitted to give its consent to any development on Aboriginal Land Trust land (such as EP187) unless the NLC is satisfied that:
 - (i) the traditional Aboriginal owners of the land understand the nature and purpose of the proposed action and **as a group consent to it**; and
 - (ii) any Aboriginal community or group that may be affected by the proposed action has been consulted and has had adequate opportunity to express its views to the NLC.

Noting that the NLC signed a comprehensive Exploration Deed with IOG on 5 February 2014, pursuant to which, amongst other things the Traditional Owners consented to exploration activities being undertaken by IOG on EP187, our clients do hold the full and informed consent of the Traditional Owners of the land underlying EP 187 in accordance with the *Land Rights Act*.

9. The NLC is a Commonwealth statutory body that has been specifically set up to facilitate consultation with and represent traditional owners and other aboriginal people interested in proposed developments on land the subject of the *Land Rights Act*.
10. Our clients respect the process set out in the *Land Rights Act* and the work that the NLC does on behalf of all Traditional Owners in this regard. Our clients followed that process and obtained the collective consent of the Traditional Owners of the land underlying EP187.
11. Our clients accept that there may be some Traditional Owners of the land underlying EP187 who object to hydraulic fracturing being undertaken on their land and our clients respect the rights of such Traditional Owners to hold such views. Your Response appears to identify two (2) such Traditional Owners.

12. However, Statements 3-5 in the Email and Video did not refer to just "two" Traditional Owners telling Parliament that they have not consented Empire Energy fracking on their Country or just "two" Traditional Owners saying NO to Empire Energy.
13. Statements 3-5 use the collective term "Traditional Owners" which, in the absence of any qualifying statement, suggests that the Traditional Owners as a group have not consented to Empire Energy conducting exploration activities on EP187 - which is simply not correct. This interpretation of Statements 3-5 is unavoidable, particularly in circumstances where 350 Australia:
 - (a) claims that it is "*committed to transparency*";
 - (a) but fails to acknowledge anywhere in the Email or Video or Your Response that our clients **have obtained** the full and informed consent of the Traditional Owners of the land underlying EP187 in accordance with the process set out in the *Land Rights Act*.
14. Our clients also **strongly** reject Our Letter being characterised as an attempt to "*silence dissent against their operations*" and "*whitewash the fact that the strident and widespread expression of that fact is a historical fact*". Our clients simply seek the correction or retraction of demonstrably false and misleading claims made by your client and, in Your Response, by yourselves.

Statements 6, 7, 8

15. Our clients repeat the objections set out in paragraph 12 of Our Letter, to your clients describing them and/or their conduct as "*reckless*".
16. That said, we appreciate you clarifying in Your Response that 350 Australia's "opinion" that Empire Energy is "reckless" is based purely on its involvement in a project that your client is philosophically opposed to; not that Empire Energy has acted recklessly in any specific manner in undertaking those activities.

Next Steps

17. We note that 350 Australia has refused to comply with our clients' request set out in paragraph 13 of Our Letter, and has indicated that it intends to publish Our Letter, Your Response as well as any subsequent correspondence on the matter.
18. From our clients' perspective, this is not acceptable.
19. Our clients request that:
 - (a) 350 Australia publishes:
 - (i) a specific retraction and/or correction in respect of Statements 1-8 in the Email and Video; and
 - (ii) to the extent that Your Response is also published by 350 Australia, a specific retraction and/or correction in respect of the various misstatements by yourselves identified in this letter; and

(b) to the extent your client publishes Our Letter, Your Response and this letter, 350 Australia provides our clients with details of that publication.

20. Our clients continue to reserve all rights.

Yours faithfully

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