

EARTH PROTECTORS HARM & SUBMISSIONS DOSSIER

STATEMENT OF[name of defendant]

Age of defendant (if over 18, enter "over 18"):

This statement (consisting of pages) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false, or do not believe to be true.

CONTENTS

enter name of name of Company X, State Authority Y or Other Entity Z [X/Y/Z]

1. NATURE OF HARM/RISK OF HARM

- A. specific immediate harm that is faced (summary - see Section 5 below for full details)
- B. wider harm of which this forms/will form a part
- C. comparators: example(s) of other communities adversely affected by similar harm
- D. context: other countries (countries that have banned or suspended similar activities)

2. URGENCY OF ACTION

- A. reasons why critical to stop now
- B. immediacy of operations - current/imminent
- C. cumulative impact: widespread, long-term or severe (identify which applies)

3. COMPANY X/STATE AUTHORITY Y/OTHER ENTITY Z [X/Y/Z] BACKGROUND

Include (and if unknown, request disclosure from the court):

- record of breach(es) of any orders/ regulations (current or previous) for similar activities/use of hazardous materials, pollution or waste
- record of obstruction of justice (eg letters sent threatening legal action against protectors)
- permits, agreements or contracts obtained contrary to community social licence
- concealment of harmful nature of activity
- ignoring risks identified by community

4. LEVEL OF CULPABILITY OF SENIOR PERSON(S) OF X/Y/Z

Name the individuals concerned. If the following is unknown, request disclosure from the court:

- previous convictions/cautions of senior person(s)
- any issuance of notice of harm sent to senior person(s) (this helps to establish knowledge)

Identify whether the senior person(s) acts or omissions were subjectively or objectively reckless: either where the perpetrator has knowledge (subjective), or ought to have knowledge (objective) of the likelihood of ecological, climate and/or cultural harm.

- A. *Subjective Recklessness* (perpetrator knew of a risk but chose to ignore risk): actual foresight of, or wilful blindness or consent or connivance of, or to be attributable to any neglect of, on the part of a director, manager, secretary, senior official or other similarly senior person within the body corporate, state body or other entity, a risk of offending but the risk nevertheless taken. *[wording is taken from company servant liability legislation, which the court will seek to evaluate]*
- B. *Objective Recklessness* (perpetrator ought to have known risk): offence committed through act or omission which a person exercising reasonable care would not commit.

5. PREVALENCE OF HARM AND COMMUNITY IMPACT STATEMENT

A community impact statement is a document providing information to the court about the impact of harm on the community, current and future. Identify how the activities of ...[X/Y/Z]... will (or may be expected to) cause or contribute to serious ecological, climate or cultural loss or damage to, or destruction of

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ecosystems in your area and contribute to harm elsewhere; provide evidence of other communities and territories harmed from similar activities elsewhere. Identify what adverse community impact, solastalgia and pre-traumatic stress has occurred or is likely to occur.

- A. location of the offence, for example, near housing, schools
- B. livestock, environmentally sensitive sites
- C. record of incidents of harm arising from activities of...[X/Y/Z]...in community or elsewhere
- D. adverse community impact, solastalgia, pre-traumatic stress that has occurred or is likely to occur
- E. established evidence of wider/community impact
- F. ancillary harm - eg from infrastructure - increase of traffic/fumes/noise pollution
- G. financial gain/economic claims by ...[X/Y/Z]...
- H. specific comparator activities elsewhere and consequences for their communities
- I. evidence of steps requested of/refused by ...[X/Y/Z]...to remedy problem
- J. Community impact of obstructions to justice (eg where any injunctions/letters/correspondence from company Y have had a chilling effect)

6. LEVEL OF SERIOUSNESS OF NATURE OF HARM

- A. previous unlawful or harmful conduct
- B. attempts to avoid detection
- C. attempts to conceal or dispose of evidence of harm
- D. exposure of others to more than usual danger
- E. history of non-compliance
- F. warnings by regulator
- G. non-isolated incident
- H. polluting material of a dangerous nature, eg. hazardous chemicals
- I. major or significant or minor (localised) adverse effect or damage to: air or water quality, amenity/property value, or property
- J. polluting material was noxious, widespread or pervasive with long-lasting or significant or minor adverse effect on: human health or quality of life, animal health, flora or other living ecosystems
- K. major or significant or low costs incurred/will be incurred through: clean-up, site restoration or animal/ecosystem rehabilitation
- L. major or significant or limited interference with, prevention or undermining of other lawful activities or regulatory regime due to activity of ...[X/Y/Z]...
- M. risk of other major or significant or minor harm not listed above
- N. evidence of similar harm by ...[X/Y/Z]... elsewhere

7. OTHER AVENUES EXPLORED

Establish that other routes to prevent the harm have been explored (by you or the concerned community). Provide documentation. Have all other routes been exhausted? The court must be satisfied that there has been consistent attempts through democratic process to address the issue: for example, petitions by your community or by others, documents that have put elected representatives, officials, corporate or other senior persons on notice of the harm, details of local meetings. Present evidence that your questions and concerns were not satisfactorily answered and/or that the information you provided was disregarded.

Local/national

- A. letters to elected representatives (provide proof of recorded delivery if sent), corporate or other senior persons, with responses if any
- B. local meetings (documentation of questions asked and answers received)
- C. requests to local authorities or other state/public bodies to address ecological/health adverse impacts, with responses if any
- D. requests to government or other state authority to intervene where harm is present/threatened, with responses if any
- E. national petitions
- F. decisions or recommendations made by elected, other government/public, professional or expert body which have been overridden or ignored by government or other state authority (identify which local and national elected representatives have done this/voted to do this)

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International

- G. 22 years of climate negotiations, Paris Agreement has no legal enforcement but is evidence of prior knowledge by governments and business.
- H. significant civil litigation increase: (The Status of Climate Litigation, a Global Review, UNEP 2017)

8. CLIMATE ECOCIDE: EVIDENCE OF CARBON MAJOR HARM

Establish that ...[X/Y/Z]... is contributing to a far more serious harm of climate ecocide which is inconsistent with global and national emission reduction commitments. See: Climate Accountability Institute report: CDP (2017) The Carbon Majors Database [www.cdp.net/en/reports/archive] for evidence of industry harm.

- A. ascertain ...[X/Y/Z]'s national/international market share of the industrial activity
- B. ascertain government targets for the industry as a whole
- C. establish how ...[X/Y/Z]'s activity at its peak shall escalate your nations greenhouse gas emissions
- D. where ...[X/Y/Z]'s activity proceeds, serious harm shall occur and establishing a normative for other industries to follow.

9. ALTERNATIVES THAT EXIST

- A. establish that there are safe alternative solutions already in existence
- B. provide evidence and statements by experts

10. MISSING LAW SUBMISSION

Where there is missing law, there is missing justice. There is a disproportionate burden upon communities to seek justice from all other routes in the face of missing law and unjust laws that have been passed by a government that seeks to enable companies and/or other entities to proceed with dangerous industrial activity. The activities of the company/entity in question have accrued rights without the community's social licence and whilst this may be legal, it is not just. The absence of a forum to determine justice on the basis of harm that shall be endured by the community is in itself a missing justice. It cannot in all conscience be just to cause ecocide. In the overall interest of justice, where there is an absence of protection from harm, there is missing law.

How we govern our Earth when there is missing justice comes down to the conscientious objector. For it is our conscience that governs our actions. Whatever the honest apprehension of danger is to the community, an Earth Protector acts in peace. The circumstances in this case are exceptional in terms of wider implications, not only for the immediate community at threat but also elsewhere. Where one community is harmed, many more may be expected to follow.

Where political will fails, what is sought is for the rule of law to prevail - from a place of justice. And although ecocide is not yet in force as a crime, the court may have recourse to the higher law of a moral code that is universally understood - one that puts life first and is premised on the prevention of harm.

11. DEFENCE OF CONSCIENCE SUBMISSION

In light of the above facts and evidence, you will see that both the defendant's options elsewhere have been explored to a remarkable degree. Governments are not stopping the industries that cause the most serious harm, and the continuance of the activities of ...[X/Y/Z]...serve to reinforce the establishment of this serious harm. Every time this industry is given the go-ahead, by granting of permits or otherwise, what is reinforced is moral and legal upholding of an injustice.

This is why the fund of which this Earth Protector is a Trustee is financing a law to make it a crime to commit ecocide. Although the law is not yet in place, this court can act justly and with conscience.

As we examine more closely the harm that is being wreaked upon our planet, our capacity to perceive the enormity expands. The size, duration or impact of any ecocide provides us with the parameters of serious harm. *[Example given here is gas extraction - enter the cumulative harm of the dangerous industrial activity your community faces here]* Whilst a fracking well in isolation tells nothing of the cumulative

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impact, the scaling up to 20 - 30,000 wells will do so. One well is an indicator of many more to come. When a given industrial activity is scaled up, where the significant adverse impact is ecocide, ours is a duty to prevent. Whilst in business terms economies of scale make an industry profitable, in ecocide terms scale *per se* makes an industry unworkable. Any company, business owner or senior executive that recklessly fails to address the cumulative impact, or any government official or judge that refuses to face the mounting evidence and instead grants permits or concessions where earlier evidence of harm already exists or where similar activities elsewhere have been deemed dangerous/hazardous, is acting without conscience. The pervasive lack of conscience stimulates an industry of ecocide so widespread, long-term or severe as to severely diminish the peaceful enjoyment of inhabitants.

A court is a guarantor of fairness, not just of the laws that exist. This also applies to the consequences that can arise from its application. A court when confronted by the risk or occurrence of serious harm, must act to ensure justice and fairness. To do so arises from a collective duty of care, not only to the Earth Protector that stands here in this court, but also on behalf of a far wider community. Where there is a conscience and the evidence is clear of a pending or existing ecocide, a court cannot say "I sanction this activity." Even in respect of a crime yet to be legally upheld, to recognise there is missing law and to prevent a more serious harm is to do what is just and right. As members of the judiciary, yours is a role that reaches beyond the black letter law, therefore your decisions are premised not just upon the law but importantly how that law is applied to ensure that fairness and justice is done when the law falls short or is absent and thereby failing to prevent clear harm. In acting from a position of conscience, and in light of what is presented above, the Earth Protector's circumstances are exceptional. The court is invited to accept the premise upon which this defendant has presented his case and acquit.

CHECKLIST

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7. OTHER AVENUES EXPLORED
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Signed:

Date:

(To be completed if applicable:[name of Earth Protector]
being unable to read the above statement I,[name of witness]
of[address of witness]
read it to[name of Earth Protector]
before he/she signed it.

Signed:

Date:)