Notice

Environmental Protection Act 1994

Environmental Evaluation

Notice to conduct or commission an environmental evaluation

This notice to conduct or commission an environmental evaluation is issued by the administering authority pursuant to section 326B of the Environmental Protection Act 1994*.*

BHP Coal Pty Ltd ACN: 101 595 721
Level 14
480 Queen Street
BRISBANE CITY QLD 4000

Your reference: CR96701, CR97091

Our reference: C-CPLRC-100001152, C-CPLRC-100001215, STAT-E-100008311

Thursday, 4 June 2020

Take notice: that under the *Environmental Protection Act 1994* (the Act) a notice to conduct or commission an environmental investigation is issued to BHP Coal Pty Ltd [101 595 721] (you) by the administering authority. The administering authority is the Chief Executive of the Department of Environment and Science (the department).

The notice to conduct or commission an environmental investigation is issued in respect of the activities of BHP Coal Pty Ltd at the Blackwater Mine on land described as Mining Lease (ML) 1762 situated at Ardurad Road, Blackwater (the premises).

A. Grounds

The notice to conduct or commission an environmental investigation is issued on the following grounds:

1. The department is satisfied on reasonable grounds that an activity conducted by BHP Coal Pty Ltd has the potential to cause environmental harm.
2. The department is satisfied that the authorised activity (mining black coal) being undertaken by BHP Coal Pty Ltd has the potential to cause environmental harm as a result of unauthorised releases of mine affected water in rainfall events.
3. BHP Coal Pty Ltd holds Environmental Authority (EA) EPML00717813 that authorises environmentally relevant activity (ERA) 13 – mining black coal under Schedule 3 of the Environmental Protection Regulation 2019.

The facts and circumstances forming the basis for these grounds are:

1. The department considers that BHP Coal Pty Ltd is carrying out mining activities under the EA on ML1762 amongst others.
2. The department considers that the unauthorised release of mine affected water with elevated hydrocarbon levels into the receiving environment may result in adverse effect/s or a potential adverse effect/s on the environmental values of the receiving environment.

Queensland Government

3. The environmental values potentially adversely affected are as stated in the 'Mackenzie River Sub-basin Environmental Values and Water Quality Objectives Basin No. 130 (part), including all waters of the Mackenzie River Sub-basin' dated September 2011.
4. The department alleges that mine affected water containing elevated hydrocarbon levels originating from activities conducted by BHP Coal Pty Ltd on ML1762, could potentially adversely affect the stated environmental values of Emu Creek and Blackwater Creek which are situated in the Mackenzie River Southern Tributaries of the Mackenzie River Sub-basin.
5. Condition F2 of the EA states that "Unless otherwise permitted under the conditions of this environmental authority, the release of mine affected water to waters must only occur from the release points specified in Table F1 (Mine Affected Water Release Points)".
6. On 26 January 2020, BHP Coal Pty Ltd submitted a "Notification of release" regarding the Blackwater Mine. The notification stated that there had been a discharge of mine affected water not in accordance or reasonably expected to be in accordance, with the conditions of the EA.
7. On 11 February 2020, BHP Coal Pty Ltd submitted a "Notification of release" regarding Pond 6 at the Blackwater Mine. The notification stated that there had been a discharge of mine affected water not in accordance or reasonably expected to be in accordance, with the conditions of the EA.
8. On 19 February 2020, BHP Coal Pty Ltd submitted further information regarding the alleged unauthorised mine affected water release. This report stated that a release occurred from Pond 6 on 26 January 2020 and that an unknown volume of water was released into Blackwater Creek. A review of the water quality data and Certificates of Analyses were also included in this report.
9. On 5 March 2020, BHP Coal Pty Ltd submitted further information regarding the alleged unauthorised mine affected water release. This report stated that a release occurred from Pond 6 on 11 February 2020 and that an unknown volume of water was released into Blackwater Creek. A review of the water quality data and Certificates of Analyses were also included in this report.
10. On 5 March 2020, departmental officers inspected the area relating to the Pond 6 incidents.
11. During the inspection on 5 March 2020, it was identified that mine affected water was actively being pumped away from Pond 6 during the rainfall events on 26 January 2020 and 11 February 2020. However, due to significant inflows, an unauthorised release of mine affected water to Emu Creek and then Blackwater Creek occurred.
12. Water quality measurements taken at Pond 6 on 26 January 2020 showed a total petroleum hydrcarbons (TPH) C10-C36 fraction sum of 1080µg/L.
13. Water quality measurements taken at Pond 6 on 11 February 2020 showed a TPH C10-C36 fraction sum of 1150µg/L.
14. The Water Quality Objective for TPH in the 'Australan Water Quality Guidelines for Fresh and Marine Waters (ANZECC)' recommends a maximum TPH level of 500µg/L for protection of aquatic ecosystems.
15. The location of the mine affected water release that was not undertaken in accordance with the conditions of the EA was Pond 6, which is located on ML1762.
16. Pond 6 and the surrounding location was subject to an infrastructure upgrade having been completed in late 2019 which included:
    - 16.1 Upgrade of existing pump and pipeline capability to achieve annual exceedance proability (AEP) of less than 1%;
    - 16.2 Installation of system to provide automated operation of duty cycle and high inflow pump system;
    - 16.3 Installation of back up generator power supply to enable pump to continueoperating in the event of mains power failure; and
    - 16.4 Installation of remote monitoring and alarm system with automated notification alerts.

17. Pond 6 is not an authorised release point prescribed within Table F1 and as such, is considered to be an unauthorised release point.
18. On 16 April 2020, the department provided you with the opportunity to make representations on the alleged non-compliance with conditions F1 and F2 of the EA.
19. On 1 May 2020, BHP Coal Pty Ltd provided a response to the pre-enforcement letter. This response requested that an EE be issued to BHP Coal Pty Ltd requiring an investigation be undertaken to investigate and identify opportunities to further improve water management at Pond 6 and Blackwater Mine more generally.
20. The department is satisfied that the operations in the locality were conducted by, or were persons engaged by BHP Coal Pty Ltd and the activity was for the purposes of mining; therefore, is subject to the limitation of conditions F1 and F2 of the EA.
21. The department is of the view that the mine affected water releases that occurred on 26 January 2020 and 11 February 2020 respectively were undertaken from Pond 6, which is not a release point prescribed within Table F1 of the EA. Therefore BHP Coal Pty Ltd has undertaken two mine affected water releases that are contrary to the permissible release points prescribed within condition F2 of the EA.

B. Requirements

The report on the environmental investigation must address the following relevant matters:

1. The recipient of this notice must prepare a report on the environmental investigation. The report on the environmental investigation must address the following relevant matters:
    (a) An investigation into catchments flowing to Burngrove Creek, Taurus Creek, Deep Creek and Emu Creek which identifies:
        (i) The environmental values associated with the receiving environment including Burngrove Creek, Taurus Creek, Deep Creek and Emu Creek;
        (ii) The clean and mine affected water catchments as per the definition in the environmental authority including catchment size, that may flow into Burngrove Creek, Taurus Creek. Deep Creek and Emu Creek during rainfall events;
        (iii) The existing water management and erosion and sediment control infrastructure associated with catchment that may flow to Burngrove Creek, Taurus Creek, Deep Creek and Emu Creek during rainfall events; and
        (iv) The annual exceedance probability (AEP) of the key infrastructure identified under Requirement 1(a)(iii).
    (b) A risk assessment, including actual and potential risks, in relation to water management, contaminant removal and erosion and sediment control for the catchments referenced in 1(a). This includes the development of a risk register which:
        (i) Describes the risk consistent with the principles of ISO31000;
        (ii) Scores the risk based on severity and likelihood; and
        (iii) Provides a risk rating for each risk identified and detail how this risk relates to BHP Coal Pty Ltd's corporate risk acceptance criteria.
    (c) A review of the Water Management Plan and the Erosion and Sediment Control Plan to ensure that the documents meet the requirements of EA EPML00717813. The review must:
        (i) Provide an audit schedule that clearly specifies the timing and criteria for assessing the ongoing operation and maintenance of all the structure used for contaminant management and erosion and sediment control in the catchments referenced in 1(a);

(ii) Provide minimum standards and requirements of contaminant management and sediment control structures in the catchments referenced in 1(a); and

(iii) Where appropriate, state the revisions proposed to the Water Management Plan and Sediment Control Plan.

2. Where revisions are proposed to the Water Management Plan or Erosion and Sediment Control Plan under requirements 1(c)(iii), the recipient of the notice must submit revised plans to the administering authority.

3. The recipient of this notice must develop and submit to the administering authority a program of works, as a result of the investigations and reviews required under Requirements 1(a) to (c). The program of works must include:

(a) Works to be undertaken to mitigate risks identified under Requirement 1(b), and timeframes for completion; and

(b) Works to be undertaken to construct new erosion and sediment control structures or to bring existing structures identified in catchments identified in 1(a)(iii) into conformance with the new minimum standards and requirements under Requirement 1(c)(ii), and timeframe for completion.

The environmental investigation must be carried out, and the environmental report prepared by an appropriately qualified person. An appropriately quality person is defined as a person who has professional qualifications, training, skills or experience relevant to the nominated subject matter and can give authoritative assessment, advice and analysis on performance relative to the subject matter using the relevant protocols, standards, methods or literature.

The environmental report must be submitted to the department on or before: Monday, 2 November 2020

As the recipient of this notice, you are also required to provide a statutory declaration in the form attached, to accompany the environmental report submitted to the department.

Take notice:

1. The requirements of the notice to conduct or commission an environmental investigation take effect immediately upon service of this notice;
2. This notice remains in force until further notice from the department; and
3. You are responsible for meeting the costs of conducting or commissioning the environmental evaluation, preparing the environmental report and providing any further information as requested by the department.

C. Reviews and appeals

The provisions regarding reviews of decisions and appeals are found in sections 519 to 539 of the Act.

A person who is dissatisfied with certain decisions of the department, may be able to apply to have the department review that original decision.

Generally, a request to have a decision reviewed must:

- be made within 10 business days of the decision being notified to the person;
- be supported by enough information to enable the department to decide the application for review; and

- be made using the application form, Application for review of original decision (ESR/2015/1573) available on the Queensland Government website at www.qld.gov.au, using the publication number (ESR/2015/1573) as a search term.

Where an application has been made for a decision to be reviewed, the applicant may also apply to the relevant court for a stay of the decision to secure the effectiveness of the review.

Once the original decision has been reviewed, a person who is dissatisfied with the review decision may be able to appeal against that decision to the relevant court within 22 business days after receiving notice of the review decision.

A person whose interests are or would be adversely affected by a decision of the department may also be able to request a statement of reasons for a decision or a statutory order review under the *Judicial Review Act 1991*.

For further information about reviews and appeals see the information sheet, Internal review and appeals (ESR/2015/1742) available on the Queensland Government website at www.qld.gov.au, using the publication number (ESR/2015/1742) as a search term.

The information sheets are available on the Queensland Government website at www.qld.gov.au, using the publication number as a search term.

You may have other legal rights or obligations and should seek your own legal advice.

D. Penalty

Failure to comply with a notice to conduct or commission an environmental evaluation is an offence.

1. The maximum penalty for an individual is 300 penalty units, totalling $40,035.00.
2. The maximum penalty for a corporation is 1500 penalty units, totalling $200,175.00.

Should you have any queries in relation to this notice, please contact Brianna Ryan of the department on telephone number (07) 4837 3499.



Signature

4 June 2020

Date

Debbie-Jo MacDonald

Manager (Compliance)

Delegate of the Chief Executive

Department of Environment and Science

Environmental Protection Act 1994

Enquiries:

Rockhampton Compliance

Ph: (07) 4837 3499

Email:
CWES_Rockhampton@des.qld.gov.au