

Notice

Environmental Protection Act 1994

Environmental Protection Order

This environmental protection order is issued by the administering authority pursuant to section 358 of the Environmental Protection Act 1994.

Mt Cuthbert Resources Pty Ltd
Suite 2, Level 2
45 Grenfell Street
ADELAIDE SA 5000

Your reference: C-CPLRC-100000766; EPML00863313

Our reference: E-100018451

25 August 2020

Dear Directors,

Take notice: that under the *Environmental Protection Act 1994* (the Act) this environmental protection order (EPO) is issued to Mt Cuthbert Resources Pty Ltd (you) by the administering authority. The administering authority is the Chief Executive of the Department of Environment and Science (the department).

The EPO is issued in respect to the activities of Mt Cuthbert Resources Pty Ltd at the Mt Watson mine site on land described as Lot 4757 Plan PH1623 and Lot 59 Plan TG40 situated at Mining Lease ML90154 (the premises).

A. Grounds

This EPO is issued on the following grounds:

- To require you to take reasonable measures to secure compliance with condition C1 of Environmental Authority EPML00863313 (the EA).

Condition C1

Contaminants that will, or have the potential to cause environmental harm must not be released directly or indirectly to any waters except as permitted under the conditions of this environmental authority.

- To require you to take reasonable measures to secure compliance with condition C2 of the EA.

Condition C2

The release of contaminants to waters must only occur from the release points specified in Schedule C – Table 1.



- To require you to take reasonable measures to secure compliance with condition C50 of the EA.

Condition C50

The environmental authority holder must ensure proper and effective measures are taken to avoid or otherwise minimise the generation and/or release of saline, acid rock and/or metalliferous mine drainage.

- To require you to take reasonable measures to secure compliance with condition G3 of the EA.

Condition G3

The consequence category of any structure must be assessed by a suitably qualified and experienced person in accordance with the Manual for Assessing Consequence Categories and Hydraulic Performance of Structures (EM635) at the following times:

- (a) prior to the construction of the structure, if it is not an existing structure; or*
 - (b) if it is an existing structure, by **22 August 2016**; or*
 - (c) prior to any change in its purpose or the nature of its stored contents.*
- To require you to take reasonable measures to secure compliance with the General Environmental Duty under section 358(d)(i) of the Act. The General Environmental Duty (the GED) is detailed in s319 of the Act which states the following:

*A person must not carry out any activity that causes, or is likely to cause, environmental harm unless the person takes all reasonable and practicable measures to prevent or minimise the harm (the **general environmental duty**).*

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

- a) You hold Environmental Authority EPML00863313 (the EA).
- b) The EA authorises the following activity at the premises:
 - Schedule 3 17 – mining copper ore.
 - Ancillary 08 – Chemical storage, 3: storing more than 500 cubic metres of chemicals of class C1 or C2 combustible liquids under AS 1940 or dangerous goods class 3 under subsection (1)(c). Chemical storage, 5: storing 200 cubic metres or more of chemicals that are liquids, other than chemicals mentioned in items 1 to 3, under subsection (1)(d).
 - Ancillary 31 – Mineral processing 2: Processing, in a year, the following quantities of mineral products, other than coke (a) 1,000t to 100,000t.
 - Ancillary 60 – Waste disposal 2: Operating a facility for disposing of, in a year, the following quantity of waste mentioned in subsection (1)(b) (a) less than 2,000t.
 - Ancillary 60 – Waste disposal 1: Operating a facility for disposing of, in a year, the following quantity of waste mentioned in subsection (1)(a) (d) more than 200,000t.
 - Ancillary 63 – Sewage Treatment 1: Operating sewage treatment works, other than no-release works, with a total daily peak design capacity of (b-i) more than 100 but not more than 1500EP is treated effluent is discharged from the works to an infiltration trench or through an irrigation scheme.
 - Ancillary 62 – Resource recovery and transfer facility operation 1: Operating a facility for receiving and sorting, dismantling, baling or temporarily storing- (c) category 2 regulated waste.
 - Ancillary 15 – Fuel burning using fuel burning equipment that is capable of burning at least 500kg of fuel in an hour.

- c) Condition C1 states: *Contaminants that will, or have the potential to cause environmental harm must not be released directly or indirectly to any waters except as permitted under the conditions of this environmental authority.*
- d) Condition C2 states: *The release of contaminants to waters must only occur from the release points specified in Schedule C – Table 1.*
- e) Condition C50 states: *The environmental authority holder must ensure proper and effective measures are taken to avoid or otherwise minimise the generation and/or release of saline, acid rock and/or metalliferous mine drainage.*
- f) On 31 January 2020, you notified the department of a potential release of contaminated runoff from sediment pond MWSP6 following a rain event on 28 January 2020;
- g) The notification stated that *'acidic copper/metal laden solution seeping from the waste rock dump and reporting to the sediment pond drain system is discharging from the sediment pond (MWSP6) spillway to the environment'*;
- h) Initial in situ sampling results were provided which indicated that the water contained elevated contaminants (pH = 4.50, EC = 1,424µs/cm) with the potential to cause environmental harm;
- i) In this notification, a number of photos were provided that showed blue coloured water seeping from the Waste Rock Dump (WRD) into the sediment pond drain system, which then reports to MWSP6. Additionally, a photo showed the presence of blue coloured water in MWSP6;
- j) The referenced blue coloured water is consistent with acid rock and/or metalliferous mine drainage and indicates the water was impacted by the mine;
- k) Sampling was conducted by you at the MWSP6 spillway during the release, reported amongst other parameters, total copper levels of 136mg/L on 31 January 2020 and 371mg/L on 1 February 2020;
- l) During an inspection of the site undertaken by authorised persons of the department on 17 and 18 February 2020, department officers identified the WRD as the likely source of contaminants associated with the release from MWSP6, with observations including the potential for ponding to occur on top of the WRD as well as the identification of slumping in a number of areas on the side of the WRD;
- m) On 24 February 2020, you provided an updated notification that a second sediment pond MWSP3 had also released on 31 January 2020, following the same rain event;
- n) It was stated in this notification that *'acidic copper/metal laden solution seeping from a low grade stockpile was reporting to the sediment control drainage system and discharging from the sediment pond MWSP3 spillway to the environment'*;
- o) In this notification, a number of photos were provided by you which showed water seeping from the low grade ore stockpile into the adjacent drainage system which reports to MWSP3;
- p) Sampling was conducted by you at the MWSP3 spillway during release, reported total copper levels of 1.83mg/L on 31 January 2020 and 1.84mg/L on 1 February 2020;
- q) All sediment ponds discharge to a tributary of Eureka Creek which flows to the north before eventually joining the Leichardt River;
- r) Downstream compliance monitoring locations MW4 and MW5 are located on this tributary;
- s) On 24 and 28 February 2020 and 20 April 2020, you provided the department with water quality sample results for downstream monitoring points MW4 and MW5;

- t) Sampling conducted on 31 January 2020 shows total Copper concentrations of 2.48mg/L at MW4 and 2.44mg/L at MW5;
 - u) Sampling conducted between 31 January 2020 and 23 February 2020 shows that the level of pH at MW4 ranges from 5.65 to 6.91 and at MW5 ranges from 5.18 to 7.02;
 - v) The EA does not authorise the release of contaminants from MWSP6 or MWSP3;
 - w) Copper and pH (outside of 6.5 – 8.5) are both considered prescribed water contaminants;
 - x) Copper was found to be in concentrations with the potential to cause environmental harm in the receiving environment, exceeding the trigger values for metal toxicants for 80% and 95% species protection in slightly-moderately disturbed freshwater ecosystems, as originally described in ANZECC (2000) and revised in the Australian and New Zealand Guidelines for Fresh and Marine Water Quality (ANZG 2018);
 - y) Based on the information provided in your notifications, the available monitoring data and information gathered during an inspection of the premises by authorised persons of the department on 17 and 18 February 2020, the department reasonably believes:
 - o the releases were not authorised by the EA and in contravention of conditions C1, C2;
 - o the releases had the potential to cause environmental harm;
 - o the main contaminant sources being the WRD and the low grade ore stockpile located on the ROM pad; and
 - o you have failed to ensure proper and effective measures have been taken to avoid or otherwise minimise the generation and release of acid rock and/or metalliferous mine drainage, as required by condition C50 of the EA.
 - z) The department considers that you have also contravened Condition G3 of the EA by failing to provide an updated consequence category assessment for the Mt Watson site due to a change in the nature of the contents stored within the sediment ponds;
- aa) Condition G3 states:
- The consequence category of any structure must be assessed by a suitably qualified and experienced person in accordance with the Manual for Assessing Consequence Categories and Hydraulic Performance of Structures (EM635) at the following times:*
- (a) prior to the construction of the structure, if it is not an existing structure; or
 - (b) if it is an existing structure, by **22 August 2016**; or
 - (c) prior to any change in its purpose or the nature of its stored contents.
- bb) The most recent Consequence Category Assessment undertaken at the Mt Watson site occurred in August 2016;
- cc) The structures considered within this assessment at the time included the Waste Rock Dump Sediment Control System, which was classified as a "Low" consequence and not a "Regulated Structure". This assessment was based on the design, that these ponds intercept water of 'low environmental risk' and runoff that is 'not classified as mine affected water';
- dd) Sampling data provided by you for a number of sediment ponds show a trend over the past few years, which indicates that containment levels found within the ponds were increasing over time (particularly pH, sulphate, total aluminium and total copper), to the extent they were no longer of low environmental



risk. For example, in March 2019, the following copper concentrations were reported; MWSP2 19.4mg/l, MWSP3 2.86mg/l, MWSP4 74.7mg/l, MWSP6 174mg/l.

- ee) These concentrations are environmentally significant, with reference to published guidelines and indicated that the nature of the stored contents had changed.
- ff) Therefore, in accordance with Condition G3, the department considers that an updated Consequence Category Assessment was required to be completed.
- gg) The department also considers that you are currently not complying with the General Environmental Duty as you are carrying out an activity that causes, or is likely to cause, environmental harm and have not taken all reasonable and practicable measures to prevent or minimise the harm.
- hh) On 22 August 2016 you submitted the Water Management Plan (WMP) as per Condition C49 of the EA;
- ii) This Water Management Plan details the water management of the Mt Watson site and includes the WRD and ROM pad in as likely contaminant sources (suspended solids and EC);
- jj) At the time of submission, it was determined that the risk of mine affected water run-off was low and that the Mt Watson site was only expected to contain oxide and transitional material;
- kk) From May 2017, low grade ore was stockpiled on the ROM pad. The ROM pad forms part of the WMP, however, potential contamination from the low grade ore stockpile is not considered within the WMP;
- ll) From the information provided by you, the WRD is a potential source of environmentally significant contaminants (including heavy metals and low pH) and this is not reflected in the WMP;
- mm) Additionally, no action appears to have been taken to review or update the water management plan following the deterioration of water quality with the structures over time, as highlighted in point dd) above.
- nn) The department has determined that the WMP and Consequence Category Assessment reports (dated August 2016) do not align with the current operational risk posed by the activities at the premises.
- oo) The department considers that you are not complying with the General Environmental Duty as you are carrying out an activity that causes, or is likely to cause environmental harm, and you do not have controls in place commensurate with the environmental risk posed.
- pp) In consideration of the facts and circumstances detailed in this notice, an Environmental Protection Order (EPO) is issued to you under section 358 of the *Environmental Protection Act 1994* to secure compliance with Conditions C1, C2, C50, G3 of the EA and the General Environmental Duty (s319).

B. Requirements

In accordance with this EPO, you are required to do the following:

Requirement 1.

By no later than close of business **15 November 2020**, remove entirely the low grade ore stockpile material from the run of mine (ROM) pad and relocate the material to a location lawfully able to accept the material.

Requirement 2.

By no later than close of business **16 November 2020**, provide a written report to the department which details the actions taken to comply with requirement 1, and the outcome achieved.

Requirement 3.

Engage a Suitably Qualified Person/s (SQP/s) to undertake an assessment of:

- a) the Waste Rock Dump and associated design and management plans; and
- b) The site Water Management Plan and associated supporting material, including any consequence category assessments completed for dams located on the site.

Requirement 4.

By no later than close of business on **1 October 2020**, the SQP/s must submit the following report/s to the department:

- a) A Waste Rock Dump repair plan, which if implemented will achieve compliance with the EA conditions.
- b) An updated Water Management Plan, which if implemented will achieve compliance with the EA conditions.

Requirement 5.

To the extent that the Waste Rock Dump repair plan requires site works or the establishment of infrastructure, this work must be completed prior to **31 October 2020**.

Requirement 6.

By no later than close of business **1 November 2020**, provide a written report to the department, which details the actions taken to comply with Requirement 5 and the outcome achieved.

Requirement 7.

To the extent that the updated Water Management Plan requires site works or the establishment of infrastructure, this work must be completed prior to **15 November 2020**.

Requirement 8.

By no later than close of business **16 November 2020**, provide a written report to the department, which details the actions taken to comply with Requirement 7 and the outcome achieved.

Requirement 9.

You must notify the department of any release of water from the Mt Watson Sediment Control System for the duration of this EPO, within 24 hours of you becoming aware of the release.

Requirement 10.

For any release of water from the Mt Watson Sediment Control System for the duration of this EPO you must undertake water quality sampling at all sediment ponds contained within the Mt Watson Sediment Control System for the contaminants in the below table.

The sampling must:

- a) occur daily during any release event, with the first sample taken within 12 hours of the commencement of the release;
- b) record both total and dissolved amounts for the relevant parameters listed in the table below;
- c) include an estimation on volume released from the sediment pond for the duration of the release.

Electrical conductivity	Cobalt
pH	Copper
Turbidity	Lead



Suspended solids	Manganese
Sulphate	Mercury
Aluminium	Molybdenum
Arsenic	Nickel
Boron	Selenium
Cadmium	Zinc
Chromium	-

Requirement 11.

You must provide to the department a written copy of any results of water sampling under this EPO, within 24 hours of receiving the results.

C. Obligations

If you propose to dispose of the place or business to which the EPO relates, you **must** advise the buyer of the existence of this EPO.

If you cease to carry out the activity to which this EPO relates, you **must** give written notice of ceasing to carry out the activity to the department within 10 days of ceasing the activity.

Take notice:

- the requirements of this order take effect immediately upon service of the order;
- failure to comply with this order is an offence under the Act;
- this order remains in force until further notice from the administering authority.

D. Penalty

Failure to comply with an EPO is an offence.

- The maximum penalty for an individual for wilfully contravening an EPO is 6250 penalty units, totalling \$834,062.50 or five years imprisonment.
- The maximum penalty for a corporation for wilfully contravening an EPO is 31,250 penalty units, totalling \$4,170,312.50.
- The maximum penalty for an individual for contravening an EPO is 4500 penalty units, totalling \$600,525.
- The maximum penalty for a corporation for contravening an EPO is 22,500 penalty units, totalling \$3,002,625.

Section 3 of the Penalties and Sentences Regulation 2015 prescribes the monetary value of a penalty unit.

E. Reviews and appeals

The provisions regarding review of decisions and appeals may be 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;
- be made using the application for review of an original decision form ([ESR/2015/1573](#)).¹

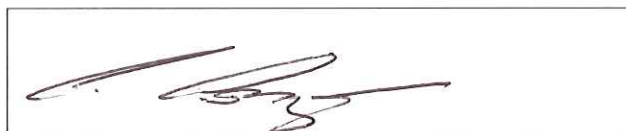
Where an application has been made for a decision to be reviewed, the applicant may also apply to the relevant court for a stay of the decision to secure the effectiveness of the review.

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.

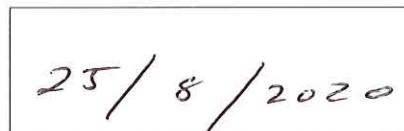
A person whose interests are or would be adversely affected by a decision of the department may also be able to request a statement of reasons for a decision or a statutory order review under the *Judicial Review Act 1991*.

For further information about reviews and appeals see the information sheet - internal review and appeal to the Planning and Environment Court ([ESR/2015/1572](#)). You may have other legal rights or obligations and should seek your own legal advice.

Should you have any queries in relation to the notice, please contact Wing Leung on (07) 4722 5367 or wing.leung@des.qld.gov.au or Tara Beazley on (07) 4722 5372 or tara.beazley@des.qld.gov.au.



Signature



Date

Gus Gonzo

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Delegate of the Chief Executive

Department of Environment and Science

Environmental Protection Act 1994

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¹ This is the publication number. The publication number can be used as a search term to find the latest version of a publication at www.des.qld.gov.au.