

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.

Lemura Sand Company Pty Ltd
as trustee for Lemura/Bugeja Discretionary Trust
154 Yorkeys Knob
YORKEYS KNOB, QLD 4878

Your reference: EPPR00443213

Our reference: 101/0008870; STAT-E-100049274

5 March 2021

Dear Sir/Madam

Take notice: that under the *Environmental Protection Act 1994* (the Act) this Environmental Protection Order (EPO) is issued to Lemura Sand Company Pty Ltd (ACN 010 110 184) as trustee for Lemura/Bugeja Discretionary Trust (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 Lemura Sand Company Pty Ltd as trustee for Lemura/Bugeja Discretionary Trust at the Barron River sand plant on land described as Lots 1 and 2 on SP173007 (the premises).

A. Grounds

This EPO is issued on the following grounds:

- The department may issue an order to a person under section 358(d)(i) of the Act to secure compliance with general environmental duty.

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

1. You operate environmentally relevant activity (ERA)'s 54 – Mechanical waste reprocessing 2: Operating a facility for receiving and mechanically reprocessing, in a year, the following quantity of general waste – (c) more than 10,000t; ERA 54 - Mechanical waste reprocessing 3: Operating a facility for receiving and mechanically reprocessing, in a year, the following quantity of category 2 regulated waste - (b) more than 5,000t but not more than 10,000t; ERA 60 – Waste disposal 2: Operating a facility for disposing of, in a year, the following quantity of waste mentioned in subsection (1)(b) (e) more than 20,000t but not more than

50,000t; ERA 62 – Resource recovery and transfer facility operation 1: Operating a facility for receiving and sorting, dismantling, baling or temporarily storing – (a) scrap metal, non-putrescible waste or green waste only; and ERA 57 - Regulated Waste Transport: Transporting end-of-life tyres.

2. The premises is located on land described as Lot 1 and 2 on SP173007 and Lot 32 on RP851525 which is located at the Barron River Sand plant, accessed via Lake Placid Road, Caravonica.
3. The department considers you are carrying out an environmentally relevant activity at the premises.
4. Section 319(1) of the Act states: *a person must not carry out an 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).*

In deciding the measures required to be taken under subsection (1), regard must be given to, for example

- a) *The nature of the harm or potential harm; and*
 - b) *The sensitivity of the receiving environment; and*
 - c) *the current state to technical knowledge for the activity; and*
 - d) *the likelihood of successful application of the different measures that might be taken; and*
 - e) *the financial implications of the different measures as they would relate to the type of activity.*
5. On 16 October 2020 at 1:13am Queensland Fire and Emergency Services (QFES) were notified that there was a fire at the landfill. Emergency crews arrived on site at approximately 1:40am.
 6. Environmental harm is defined in section 14 of the Act as follows:

Environmental harm is any adverse effect, or potential adverse effect (whether temporary or permanent and of whatever magnitude, duration or frequency) on an environmental value, and includes environmental nuisance.

Environmental harm may be caused by an activity—

- a) *whether the harm is a direct or indirect result of the activity; or*
 - b) *whether the harm results from the activity alone or from the combined effects of the activity and other activities or factors.*
7. Environmental nuisance is defined under section 15 of the Act as follows:

Environmental Nuisance is unreasonable interference or likely interference with an environmental value caused by—

- a) *aerosols, fumes, light, noise, odour, particles or smoke; or*
 - b) *an unhealthy, offensive or unsightly condition because of contamination; or*
 - c) *another way prescribed by regulation.*
8. Environmental Value is defined in section 9 of the Act as follows:
Environmental value is—
 - a) *a quality or physical characteristic of the environment that is conducive to ecological health or public amenity or safety; or*
 - b) *another quality of the environment identified and declared to be an environmental value under an environmental protection policy or regulation.*
 9. Public amenity is an environmental value prescribed in the Act that may be adversely affected by odour.

10. Public safety is an environmental value prescribed in the Act that may be affected by smoke and other emissions from the fire.
11. The term nuisance is used to describe the cumulative effect on people caused by repeated events of annoyance over an extended period of time. Nuisance results when people are affected by an odour they can perceive in their living environment, at home, at work or during recreational activities, and
 - a) The appraisal of the odour is negative;
 - b) The perception occurs repeatedly;
 - c) It is difficult to avoid perception of the odour; and
 - d) People believe that the odour has a negative effect on their well-being.
12. On 16 October 2020, the department received numerous community reports alleging smoke and odour nuisance and health impacts from emissions released by the fire.
13. Community reporters stated that the smoke impacted their ability to enjoy the amenity of their residence. They also stated that the smoke had affected their general health, including complaints about headaches. Community members stated that it was hard to breathe as a result of the fires fumes. Other community members reported visible particles from the smoke at their residences and on their property, which was difficult to clean.
14. Smoke has the potential to cause an environmental nuisance to sensitive receptors in the area, including but not limited to the residents of the surrounding suburbs, residents of the nearby aged care facility (Caravonica Waters) and the Caravonica State School. Contaminants in the air caused by the fire have the potential to impact on human health.
15. Officers of the Department of Environment and Science (the department) attended the premises from 9:30am on 16 October 2020 and observed smoke and a strong burning plastic odour. Wind was observed by officers to be coming from a south-easterly direction pushing smoke towards the suburbs of Lake Placid and Caravonica.
16. The fire commenced at approximately 1:13am on 16 October 2020 and hot spots continued smouldering until 22 October 2020. On 16 October 2020, QFES officers attended the site and were required to extinguish the fire.
17. It is likely that a lack of appropriate stockpile management by Lemura was a contributing factor to the fire.
18. In December 2020, the department released the *Guideline – Prevention of fires in waste stockpiles* (ESR/2020/5409) to assist operators with waste stockpiles in meeting their general environmental duty.
19. The department considers it necessary to require you to take certain reasonable and practicable measures to prevent or minimise the risk of a future fire occurring and causing environmental harm, thereby securing compliance with the general environmental duty.

B. Requirements

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

1. By **5pm on 19 March 2021**, you must engage the services of an independent, **appropriately qualified and experienced person/s** to conduct an investigation into stockpile management and fire hazard management practices at the premises, including in the Resource Recovery Area, and to prepare a Recommendation Report that includes at least the following:

- a) A review of the current stockpile processes and practices on the premises against the provisions of the *Guideline – Prevention of fires in waste stockpiles* (ESR/2020/5409) (the guideline) to determine the extent to which current practices are in accordance with the guideline;
- b) Where current practices are not in accordance with the guideline, provide an assessment of additional processes and practices that need to be implemented at the premises to align stockpile management with the guideline.
- c) Recommendations of additional stockpile management practices or measures, which may be implemented to avoid or minimise surface landfill fires from your premises and bring management of stockpiles into alignment with the guideline; and
- d) A review of the current fire hazard management practices and control measures at the premises against best practice fire hazard management practices and control measures relevant to the activities being conducted at the premises;
- e) An assessment of the feasibility of additional fire hazard management practices and control measures that may be implemented at the premises. Where a practice or measure is deemed not to be feasible, provide detailed justifications as to why the implementation is not reasonable or practicable;
- f) Recommendations of feasible additional fire management practices or measures, with consideration of **best practice environmental management**, which may be implemented to avoid or minimise surface landfill fires from your premises; and
- g) For all recommendations, state which measures can be implemented:
 - Immediately (within 1 month);
 - The short term (1 to 6 months); and
 - In the long-term (greater than 6 months); and

identify a completion date for each recommendation.

- 2. By **5pm on 16 April 2021**, you must submit the Recommendation Report to the department.
- 3. You must incorporate any comments from the department on the Recommendation Report prior to implementing it.
- 4. By **5pm on 30 April 2021**, you must commence implementing the recommendations in accordance with the Recommendation Report and any amendments required by Requirement 3.
- 5. You must complete the implementation of the recommendations in the Recommendation Report in accordance with the timeframes stipulated for each recommendation in the Recommendation Report.

Definitions:

Appropriately qualified and experienced person/s means a person/s who has professional qualifications, training and experience relevant to the nominated subject matter and who can give authoritative assessment, advice and analysis on performance relative to the subject matter using relevant protocols, standards, methods and literature.

Best practice environmental management, as defined under section 21 of the *Environmental Protection Act 1994*.

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 or five years imprisonment.
- The maximum penalty for a corporation for wilfully contravening an EPO is 31,250 penalty units, totalling \$ 4,170,312.
- 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.

Failure to provide written notice to the buyer is an offence.

- The maximum penalty for an individual is 50 penalty units, totalling \$ 6,672.
- The maximum penalty for a corporation is 250 penalty units, totalling \$ 33,362.

Failure to provide written notice within 10 business days of ceasing the activity to the department is an offence.

- The maximum penalty for an individual is 50 penalty units, totalling \$ 6,672.
- The maximum penalty for a corporation is 250 penalty units, totalling \$ 33,362.

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; and

Notice
Environmental Protection Order

- 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 this notice, please contact Kerwin Swanson, Environmental Officer of the department on telephone number (07) 4222 5597.



Signature

5 March 2021

Date

Paul Butcher
Manager (Compliance)
Delegate of the Administering Authority
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.