

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.

Bogside Mining Industries Pty Ltd
Level 5, 10 Eagle Street
BRISBANE QLD 4000

Your reference:

Our reference: C-CPLRC-100071897: STAT-E-100072894

3 February 2021

Dear Sir/Madam,

Take notice: that under the *Environmental Protection Act 1994* (the Act) this environmental protection order (EPO) is issued to Bogside Mining Industries Pty Ltd (ACN 114 041 879) (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 on land described as Mining Lease ML50115, which includes Lot 4 on RP22539, located in New Chum, Queensland (the premises).

A. Grounds

This EPO is issued on the following grounds:

- To secure compliance by you with conditions C1-1 and C1-3 of Environmental Authority EPML02454414, pursuant to section 358(d)(iii) of the Act; and
- You are, or have been, contravening section 440ZG (Depositing prescribed water contaminants in waters and related matters) of the Act, pursuant to section 358(e)(iii).

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

1. You hold Environmental Authority (EA) EPML02454414 on Mining Lease ML50115 for ERA 20(a) - clay pit mining at New Chum, Ipswich. The site is a former coal mine.
2. On 29 January 2021, authorised persons of the department attended the premises in response to a report from a member of the community alleging that you had, without lawful authority, constructed pumping infrastructure to de-water the main mine void (the Austin Street Void) on the premises.



3. During attendance at the premises authorised persons conducted an interview with a representative from Bogside Mining Industries Pty Ltd (Environmental Manager) posing questions concerning the allegation.
4. Based upon statements made by the Environmental Manager and observations by departmental officers, the department is satisfied that:
 - You are pumping water (discharge water) from the Austin Street Void to waters or the beds and banks of a waters, namely a tributary of Six Mile Creek;
 - The flow of the discharge water represents the totality of the off-site flow within the tributary of Six Mile Creek in the immediate vicinity of the site, except in times of wet weather;
 - Pumping infrastructure installed is capable of discharging at 70 Litres per second;
 - Pumping commenced approximately 2 weeks ago (i.e. about 15th January 2021) and that pumping operates 24 hours per day when operational;
 - The pumping equipment is fitted with a continuous monitor for a range of parameters, including pH, dissolved oxygen, electrical conductivity and turbidity. The discharge infrastructure also includes a pH correction unit (Sulphuric acid dosing) with an online monitoring system designed to shut off the pump if discharge water does not comply with the discharge limits specified in Environmental Authority EA0002053 (granted not in effect); and
 - Bogside Mining Industries Pty Ltd's consultant collects periodic samples of water from the Austin Street Void and upstream and downstream water quality in Six Mile Creek, including on 21 January 2021.
5. On 2 February 2021, you provided to the department, amongst other information, sample results from monitoring undertaken on 21 January 2021, with a Certificate of Analysis work order reference EB2101867.
6. The department has considered information that you have supplied and is satisfied that the water within the Austin Street Void which is being discharged from the premises, contains contaminants including dissolved salts expressed as elevated levels of electrical conductivity (EC), sulphate, and boron.
7. You have advised that:
 - The release of water from the Austin Street Void is in anticipation of a favourable appeal in the Planning and Environment Court against a refusal of a development application (Planning and Environment Court (Qld) Proceedings No. 912 of 2020); and
 - The release of contaminants is nonetheless authorised under the company's EA for mining (EPML02454414).
8. You hold EA EPML02454414 for clay pit mining which includes the following conditions listed below:
 - Condition C1-1 of EA EPML02454414 states:

C1-1 Other than as permitted within this authority, contaminants must not be released from the site to any waters or the bed and banks of any waters.
 - Condition C1-3 of EA EPML02454414 states:

C1-3 Contaminants must not be released to surface waters
9. Section 10 (Contamination) of the Act states:

"10 Contamination

Contamination of the environment is the release (whether by act or omission) of a contaminant into the environment."

10. Section 11 (Contaminant) of the Act states:

"11 **Contaminant**

A **contaminant** can be—

- (a) a gas, liquid or solid;
 - (b) an odour; or
 - (c) an organism (whether alive or dead), including a virus; or
 - (d) energy, including noise, heat, radioactivity and electromagnetic radiation; or
 - (e) a combination of contaminants."
11. "Waters" is defined under EA EPML02454414 as includes river, stream, lake, lagoon, pond, swamp, wetland, unconfined surface water, unconfined water in natural or artificial watercourses, bed and bank of any waters, dams, non-tidal or tidal waters (including the sea), stormwater channel, stormwater drain, roadside gutter, stormwater run-off, and groundwater or any part thereof.
12. The release is to an upper tributary of Six Mile Creek and is considered to be a release to waters for the purpose of EA EPML02454414.
13. Conditions C1-1 and C1-3 of EA EPML02454414 expressly prohibit the release of contaminants to any waters or the beds and banks of any water (C1-1) and surface waters (C1-3) irrespective of the environmental impact of the release. If the release of a contaminant has an adverse impact on an environmental value, the offence of environmental harm may be established.
14. Section 440ZG of the Act states, in part:

440ZG Depositing prescribed water contaminants in waters and related matters

A person must not—

- (a) unlawfully deposit a prescribed water contaminant—
 - (i) in waters; or
 - (ii) In a roadside gutter or stormwater drainage; or
 - (iii) At another place, and in a way, so that the contaminant could reasonably be expected to wash, blow, fall or otherwise move into waters, a roadside gutter or stormwater drainage.
15. A liquid containing suspended or dissolved solids is a prescribed water contaminant as defined under the *Environmental Protection Regulation 2019*, Schedule 10.
16. The results of analysis as presented in the Certificate of Analysis reference EB2101867 indicates that on 21 January 2021 Bogside Mining Industries Pty Ltd were releasing a prescribed water contaminant from the premises, namely dissolved solids including salts expressed as elevated levels of (EC), sulphate and boron.
17. The release is unlawful as it is not authorised to be done under an instrument listed in section 493A (2) of the Act.
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18. Specifically, EA EPML02454414 does not authorise the release, and in fact prohibits a release to waters (see Conditions C1-1 to C1-3).
19. Although a release of contaminants to waters is contemplated under the uncommenced Bogside Mining Industries Pty Ltd's EA EA0002053 for landfilling activities, including ERA 60 – waste disposal, that EA is not in effect (and will not be in effect until your related development approval 1149/2018/CA takes effect) and therefore does not authorise the release.
20. The release is to an upper tributary of Six Mile Creek and is considered to be a release to waters.
21. The department is satisfied that you have released a prescribed water contaminant to waters.

B. Requirements

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

1. You must immediately cease and not release contaminants from Mining Lease ML50115 to any waters at any time.
2. Requirement 1 remains in force unless or until you hold, or are operating under, an environmental authority that authorises you to release contaminants to waters.

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.

D. Penalty

Failure to comply with an EPO is an offence.

1. The maximum penalty for an individual for wilfully contravening an EPO is 6250 penalty units, totalling \$834,062.50 or five years imprisonment.
2. The maximum penalty for a corporation for wilfully contravening an EPO is 31,250 penalty units, totalling \$4,170,312.50.
3. The maximum penalty for an individual for contravening an EPO is 4500 penalty units, totalling \$600,525.
4. The maximum penalty for a corporation for contravening an EPO is 22,500 penalty units, totalling \$3,002,625.00

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

- The maximum penalty for an individual is 50 penalty units, totalling \$6,672.50.
- The maximum penalty for a corporation is 250 penalty units, totalling \$33,362.50.

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 \$6,672.50.
- The maximum penalty for a corporation is 250 penalty units, totalling \$33,362.50.

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
- be made using the application for review of an original decision form ([ESR/2015/1573](#)).¹

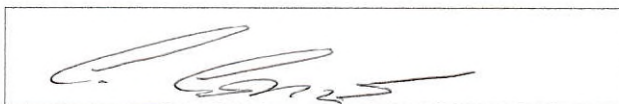
Where an application has been made for a decision to be reviewed, the applicant may also apply to the relevant court for a stay of the decision to secure the effectiveness of the review.

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 John Rice on telephone number (07) 3894 8159



Signature

Gus Gonzo
Manager Compliance
Delegate of the Chief Executive
Department of Environment and Science
Environmental Protection Act 1994

3 February 2021

Date

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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.ehp.qld.gov.au>.