

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.

Wolfgang Deimel
14 Chapel Street
Warwick QLD 4370

Your reference: EPVL02214614 (ML100140)

Our reference: C-CPLPO-100082649, E-100095485

~~15 September 2021~~ 26 October 2021

Dear Mr Deimel

Take notice: that under the *Environmental Protection Act 1994* (the Act) this amended environmental protection order (EPO) is issued to Wolfgang Deimel (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 with respect to your activities on land described as ML100140 situated at Carbean Road (Lot 15 B34379) (the premises).

This notice was originally issued on 15 September 2021 and was varied on 26 October 2021 following an internal review. New text in the varied EPO is shown as underlined and deleted text is shown as strikethrough. The original notice remained in force until it was replaced by this notice on 26 October 2021.

A. Grounds

This EPO is issued on the following grounds:

1. The department requires you to take reasonable measures to secure compliance with condition A6 of 'Eligibility Criteria and Standard Conditions for Mining Lease Activities – Version 2', which states: *The holder of the environmental authority must design, install and maintain adequate erosion and sediment control structures wherever necessary to prevent or minimise erosion of disturbed areas and the sedimentation of any watercourse, waterway, wetland or lake.*
2. The department requires you to take reasonable measures to secure compliance with the General Environmental Duty. The General Environmental Duty is detailed in section 319 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 practical actions to prevent or minimise the harm (the general environmental duty).'*

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



1. You are the holder of environmental authority EPVL02214614, which consists of variation conditions and the 'eligibility criteria and standard conditions for mining lease activities – version 2', dated 22 February 2019.
2. On 9 March 2018, the department sent you a letter outlining a matter of concern regarding the failure to install and maintain adequate erosion and sediment control structures on the premises.
3. On 4 October 2019, the department issued you a written warning for a breach of S440ZG of the Act for failure to put in place measures to secure earthen material or to prevent sediment-laden waters from reaching the nearby stream.
4. On 20 April 2021, authorised officers of the department conducted a site inspection of ML100140. During the inspection, authorised officers observed, and photographed sediment deposited in a watercourse and a clear sediment flow path from the southern boundary of ML100140 to an unnamed tributary of Macintyre Brook. A release of sediment from the premises to waters is alleged to have occurred on 27 March 2021.
5. The unnamed tributary of Macintyre Brook constitutes waters as defined in the Act.
6. It is an offence under section 440ZG of the Act to unlawfully release a prescribed water contaminant to waters, or to a place where the contaminant could reasonably be expected to move into waters.
7. Release of sediment from ML100140 to waters is not authorised under any item mentioned in section 493A(2) of the Act, and it is therefore considered that the release was unlawful.
8. During the inspection on 20 April 2021, authorised officers determined that you were carrying out the activity in non-compliance with condition A6 of the EA. Officers observed a lack of adequate erosion and sediment control structures in place to prevent or minimise erosion of disturbed areas and the sedimentation of any watercourse. There was no evidence of adequate erosion control or diversion drains, sediment fences, rollover bunds, sediment traps or basins. The non-compliance was communicated to you following the inspection.
9. On 26 August 2021, authorised officers of the department again inspected the premises and determined that you were still carrying out the activity in non-compliance with condition A6 of the EA. Officers again observed a lack of adequate erosion and sediment control structures in place to prevent or minimise erosion of disturbed areas and the sedimentation of any watercourse. Again, there was no evidence of erosion control or diversion drains, sediment fences, rollover bunds, sediment traps or basins.
10. Lack of erosion and sediment control structures observed on ML100140 indicates you have failed to comply with the general environmental duty, as defined in section 319 of the Act.
11. Lack of adequate erosion and sediment control structures observed on ML100140 represents a contravention of condition A6 of the 'eligibility criteria and standard conditions for mining lease activities – version 2', which forms part of your environmental authority EPVL02214614.
12. Sediment is a prescribed water contaminant under section 6, Schedule 10 of the Environmental Protection Regulation 2019.
13. You have stated in a phone conversation to a departmental officer on 11 March 2021 that you did not have access to the premises at that time. The department is aware that you had access to the premises again from at least 4 May 2021. Regardless of the veracity of your claims regarding access to the premises, the department considers that you had sufficient time, in the months prior to the release event and again between the inspections of 20 April 2021 and 26 August 2021, to undertake the actions required to comply with condition A6 of your EA and the general environmental duty.

14. In summary, the department considers that, given the facts and circumstances detailed above, you have failed to take all reasonable and practical measures to prevent or minimise the risk of environmental harm, and have failed to comply with condition A6 of the 'eligibility criteria and standard conditions for mining lease activities – version 2', which forms part of your environmental authority EPVL02214614.
15. ~~Because of these failures,~~ The department considers that it is appropriate to require you to take reasonable steps, which include installation of appropriate erosion and sediment control structures and development of an erosion and sediment control plan, to rectify these failures.

B. Requirements

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

1. By ~~5pm on 29 September~~ **9 November 2021**, you must engage an **appropriately qualified person** (AQP) to develop an erosion and sediment control plan relevant to ML100140 and submit the name, qualifications and relevant experience of the AQP to the department via email to southwest.es@des.qld.gov.au or PO Box 731, Toowoomba QLD 4350.
2. By ~~5pm on 27 October~~ **7 December 2021**, you must submit the erosion and sediment control plan to the department at the above address for review and comment. Any comments made by the department must be considered and, where determined appropriate in consultation with the department, must be included or implemented into the plan.
3. By ~~5pm on 15 December 2021~~ **24 January 2022**, you must design and install adequate erosion and sediment control structures to prevent the release of sediment from ML100140 to waters.
4. By ~~5pm on 15 December 2021~~ **24 January 2022**, you must implement the erosion and sediment control plan in its entirety.

Definitions:

Appropriately qualified person(s) (AQP) means a person or persons who has professional qualifications, training, skills and experience relevant to the EPO requirements and can give authoritative assessment, advice and analysis in relation to the EPO requirement using the relevant protocols, standards, methods and/or literature.

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 EP 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 wilfully contravening an EPO is 6250 penalty units, totalling \$861,562.50 or five years imprisonment for an individual or \$4,307,812.50 for a corporation.
- The maximum penalty for contravening an EPO is 4500 penalty units, totalling \$620,325 for an individual or \$3,101,625 for a corporation.

Failure to provide written notice to the buyer of the existence of the order is an offence.

- The maximum penalty is 50 penalty units, totalling \$6,892.50, for an individual or \$34,462.50 for a corporation

Failure to provide written notice to the department within 10 business days of ceasing the activity to which an environmental protection order relates is an offence.

- The maximum penalty is 50 penalty units, totalling \$6,892.50 for an individual or \$34,462.50 for a corporation.

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

E. Reviews and appeals

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

~~A person who is dissatisfied with an original decision made by the Department of Environment and Science (the department) may apply to have that decision internally reviewed.~~

Information about initiating an appeal in relation to this notice is contained within the Internal Reviews and Appeals Information Sheet (available at www.qld.gov.au using the publication number ESR /2015/1742 as a search term)

~~A request for review or appeal is to be made using the approved form 'Application for review of original decision' (available at www.qld.gov.au using the publication number ESR/2015/1573 as a search term.~~

~~Applications for reviews are to be sent to Permit and Licence Management, Department of Environment and Science: via email at palm@des.qld.gov.au, or by mail to the following address: GPO, Box 2454, Brisbane, QLD, 4001.~~

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 be able to request a statement of reasons for a decision or a statutory order review under the *Judicial Review Act 1991*.

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

Pursuant to section 540 of the Act, the department is required to maintain a register of certain documents and information authorised under the Act. A copy of this document will be kept on the public register. The register is available for inspection by members of the public who are able take extracts, or copies of the documents from the register. Documents that are required to be kept on the register are published in their entirety, unless alteration is required by the Act. There is no general discretion allowing the department to withhold documents or information required to be kept on the public register. For more information on the department's public

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register, search 'public register' at www.qld.gov.au. For queries about privacy matters please email privacy@des.qld.gov.au or telephone 13 74 68.

Should you have any queries in relation to the notice, please contact Jessica Johnson on (07) 4529 8371 telephone number.



Signature

Paul Butcher Aimee Maxwell

Manager (Compliance)

Delegate of the Chief Executive

Department of Environment and Science

Environmental Protection Act 1994

~~15 September 2021~~

26 October 2021

Date

Enquiries: ~~Lauren Flohr~~ Jessica Johnson

COMPLIANCE CENTRE: Toowoomba

Ph: (07) 4529 8371

Email: southwest.es@des.qld.gov.au

