

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.

Mackay Sugar Limited (ACN 057 463 671)
RACECOURSE MILL PEAK DOWNS HIGHWAY RACECOURSE
MACKAY QLD 4740

Cc:

Marian Sugar Mill
372 Anzac Avenue
MARIAN QLD 4753

Your reference: EPPR00423513

Our reference: C-CPLRC- 100123439

7/09/2021

Dear Directors

Take notice: that under the *Environmental Protection Act 1994* (EP Act) this environmental protection order (EPO) is issued to Mackay Sugar Limited (ACN 057 463 671) (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 the activities of Mackay Sugar Limited at Marian Sugar Mill on land described as Lot 3 on CP907076, Lot 2 on RP721609, Lot 63 on SP278411, Lot 1 on RP727930, Lot 2 on RP895328, Lot 4 on RP895328, Lot 1 on RP710736, Lot 1 on CP892187, Lot 5 on RP709232, Lot 1 on RP702186, Lot 2 on RP702186, Lot 3 on RP702185, Lot 4 on RP702185, Lot 1 on RP719137, Lot 2 on RP719137, Lot 6 on RP702194, and Lot 1 on RP702197 (the premises).

This EPO replaces the EPO issued on 2 September 2021.

A. Grounds

This EPO is issued on the following grounds:

1. You hold environmental authority (EA) EPPR00423513. The EA approves environmentally relevant activities;
(ERA) 28 - sugar milling or refining, consisting of either –
 - a. Crushing or grinding 200t or more of sugar cane in a year; or

b. Manufacturing 200t or more of sugar or other sugarcane products in a year; and

(ERA) 15 – Fuel burning – using fuel burning equipment that is capable of burning at least 5000kg of fuel in an hour.

2. You are, or have been, contravening the following conditions of an environmental authority EPPR00423513.

Condition C1 *Other than permitted within this environmental authority, contaminants must not be released to any **waters**.*

Condition C2 *The only contaminants to be released to surface **waters** are in accordance with Table 2 – Contaminant release points and monitoring point and Table 3 – Contaminant release limits.*

3. This EPO is issued under section 358(d)(iii) to secure compliance with a condition of an environmental authority.

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

1. EA EPPR00423513 authorises the release of contaminants (sugar mill effluent) to Perry Creek through release point (RP) W2.0. Sugar mill effluent is stored in a series of ponds (Pond 1 to Pond 5) at lot 1 on RP727930. Effluent from Pond 5 is released via a cane drain from RP W2.0 and reports to Perry Creek.
2. On 31 August 2021, you emailed the department stating that dissolved oxygen (DO) measured at RP W2.0 as well as Pond 5, was measuring below the minimum limit of 2.0mg/L as per Table 3, Condition C2 of EA EPPR00423513.
3. On 31 August 2021, you informed the department via telephone that approximately 10cm of freeboard remained in Pond 5.
4. On 1 September 2021, the department conducted a compliance inspection at the Marian Sugar Mill effluent ponds.
5. During the compliance inspection, you notified the department that as of approximately 7am that day, an uncontrolled release of effluent was occurring from Pond 5 to the cane drain, entering Perry Creek.
6. Upon inspection of Pond 5 on 1 September 2021, the department observed an uncontrolled release from the pond. Effluent was overtopping on the southern embankment across an expanse of approximately 30m, not from the structurally designed release point. The effluent was flowing into a drain which then flowed into the cane drain that flows to Perry Creek.
7. You estimated that the flow rate of the uncontrolled release was approximately 43.2m³/hour.
8. Sampling conducted by the department at RP W2.0 at 1:05pm on 1 September 2021 identified DO to be 1.02mg/L (or 11.3%), which is below the minimum DO limit of 2.0mg/L as per Table 3, Condition C2 of EA EPPR00423513.
9. Condition C1 of EA EPPR00423513 states that other than has permitted within EA EPPR00423513, contaminants must not be released to any waters.
10. Condition C2 of EA EPPR00423513 states DO as a contaminant and stipulates a release limit of 2mg/L (minimum) at RP W2.0.
11. Waters is defined in EA EPPR00423513 as to include river, stream, lake, lagoon, pond, swamp, wetland, unconfined surface water, unconfined water, natural or artificial watercourse, 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 and any part thereof.

12. The department considers both the drain and Perry Creek meets the definition of waters.
13. Therefore, the department alleges that condition C1 of EA EPPR00423513 was contravened, namely you permitted the release of contaminants to waters not authorised under your EA EPPR00423513.
14. On 2 September 2021, the department issued you an Environmental Protection Order (EPO) requiring you to cease the uncontrolled release, and not commence a controlled release until the release limits stipulated in the EA are met at RP W2.0.
15. On 3 September 2021, the department conducted a compliance inspection at the Marian Sugar Mill effluent ponds. The uncontrolled release was identified to have ceased.
16. Current effluent management measures at Marian Sugar Mill are not effective or sustainable in managing the current effluent storage inventories.
17. You stated during the compliance inspection that Marian Sugar Mill cannot re-commence milling operations until releases from RP W2.0 are permitted, as the current effluent storage inventory cannot be managed without undertaking releases.
18. The department considers that the breaches of condition C1 and C2 of the EA indicate that there are significant issues regarding the management, treatment efficiency and holding capacity of Marian Mills effluent ponds and you need to address this as a matter of priority.

B. Requirements

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

Requirement 1	On and from the date of this EPO you must reduce the volumes of treated effluent in the Marian Mill effluent ponds as far as practicable in accordance with condition E2 of the EA.
Requirement 2	An appropriately qualified person must determine an appropriate number of aerators to be installed at the Marian Mill effluent Pond 5.
Requirement 3	The aerators required by Requirement 2 must be installed by 5pm on 28 September 2021 .
Requirement 4	The quality of waters must be monitored at locations listed in Table 1 for the following quality characteristics: a) pH (in-situ); b) DO (in-situ); c) Temperature (in-situ); d) 5 Day Biological Oxygen Demand; e) Total Suspended Solids; f) Nitrogen (oxidised nitrogen (NO_x), Ammonia, organic nitrogen) g) Total Organic Carbon; and h) Visual inspections, including observations such as water colour, clarity, surface scums, odour, presence of aquatic life or fish kills. Table 1: Release Point and Monitoring Point Locations

	Release Point / Monitoring Point (MP)	Location (GDA94)
	RP W2.1	-21.1757, 148.9562
	RP W2.0	-21.2355, 148.9874
	MP Site 1	-21.2475, 148.9972
	MP Site 2	-21.2563, 149.0046
	MP Site 3	-21.2709, 148.9971
	MP Site 4	-21.2766, 148.9992
	MP Site 5	-21.2887, 149.0056
	MP Site 6	-21.2842, 149.0221
	MP Site 7	-21.2773, 149.049
	MP Site 8	-21.2809, 149.0823
Requirement 5	The monitoring of waters as detailed in Requirement 4 points a), b), c) and h) must be undertaken daily between 7 September 2021 and 10 September 2021, inclusive.	
Requirement 6	The frequency of monitoring of waters as detailed in Requirement 4 points a) to h) must be undertaken as follows: a) Twice weekly (minimum three (3) days apart) between 11 September 2021 and 25 September 2021, inclusive; and b) Weekly between 26 September 2021 and 24 October 2021, inclusive.	
Requirement 7	You must submit a progress report to the department by 5pm on the following dates: a) 17 September 2021; and b) 1 October 2021; and c) 15 October 2021; and d) 29 October 2021; and	
Requirement 8	The progress reports required by Requirement 7 must include the following information: a) All water quality monitoring data undertaken in accordance with the requirements of this EPO; and b) Actions taken to reduce the volume of effluent being stored in Pond 5 to ensure releases meet the EA conditions.	
Requirement 9	By 5pm on 10 September 2021 you must engage an RPEQ to undertake a failure impact assessment of Marian Mill effluent Pond 1, Pond 2, Pond 3, Pond 4 and Pond 5.	
Requirement 10	By 5pm on 22 November 2021 a final report must be provided to the department which details the following: a) An assessment of Marian Sugar Mill's effluent releases from RP W2.0 including volume, quality, and potential impact to the environment considering	

	the environmental values, water quality objectives and management objectives of Perry Creek, Ross Creek and Sandy Creek as detailed in the Environmental Protection (Water) Policy 2009 Pioneer River and Plane Creek Basins Environmental Values and Water Quality Objectives (2013); b) The assessment required by (a) must consider all water monitoring data conducted as required under this EPO; c) The failure impact assessment as required by Requirement 9; and d) A summary of the actions taken for the management of effluent at the ponds at Marian Sugar Mill to ensure releases meet the EA conditions.
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Definitions

Appropriately qualified person is defined as a person or persons who has professional qualifications, training, skills or experience relevant to the nominated subject matter and can give authoritative assessment, advice and analysis of performance relative to the subject matter using the relevant protocols, standards, methods or literature.

Waters is defined as a river, stream, lake, lagoon, pond, swamp, wetland, unconfined surface water, unconfined water, natural or artificial watercourse, 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 and any part thereof.

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 \$620,325.00 for an individual or \$3,101,625.00 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 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 Naomi Camilleri on (07) 4999 6888 or via email, CWES_Mackay@des.qld.gov.au.

Notice
Environmental Protection Order



Signature

7/09/2021

Date

Kate Grayson

Manager - Compliance

Delegate of the Chief Executive

Department of Environment and Science

Environmental Protection Act 1994

Enquiries:

COMPLIANCE CENTRE: Mackay

Ph: (07) 4999 6861

Email: CWES_Mackay@des.qld.gov.au