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.

Your reference: EA0002836

Our reference: E-100205586, 101/0036004 - C-CPLPO-100104295

Nicholas Bernard Buckley
5 Buckley Drive
Glanmire QLD 4570

CC via email to: accounts@gympielandscapesupplies.com

17 February 2022

Dear Mr Buckley

Take notice: that under the *Environmental Protection Act 1994* (the Act) this environmental protection order (EPO) is issued to Nicholas Bernard Buckley (you) of Gympie Landscape Supplies & Earthworks 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 undertaken under environmental authority EA0002836 (the EA) on land described as Lot 2 on SP207672 situated at 5 Buckley Drive, Glanmire QLD 4570 (the premises). The previously issued EPO with amendments (STAT-E-100108653) dated 5 November 2021 is now withdrawn and this EPO (STAT-E-100205586) is now in force.

A. Grounds

This EPO is issued on the following grounds:

1. In accordance with section 358(d)(i) of the Act, the department requires you to secure compliance with the General Environmental Duty as per section 319 of the Act, which states:

   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).

2. In accordance with section 358(d)(iii) of the Act, the department requires you to secure compliance with condition WT2 of the EA dated 13 May 2021 which states:

   WT2 *The stormwater runoff from disturbed areas, generated by a storm event up to and including a 24-hour storm event with an average recurrence interval of 1 in 10 years must be retained on site or managed to remove contaminants before released offsite.*

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

1. You are the holder of EA0002836.
2. Investigations undertaken by the department confirm you are part owner of the premises and Gympie Landscape Supplies & Earthworks (GLS&E).
3. On 27 October 2020, the department sent you a letter requesting information regarding the disposal/processing of waste observed as being undertaken at the premises.
4. On 10 November 2020, the department received a response from Carl Morandy, Managing Director of Ausrocks Pty Ltd on behalf of GLS&E responding to the department's letter dated 27 October 2020. The response detailed the source of waste and provided justification for landfilling. The letter also stated that GLS&E would be bringing the site into compliance by applying for the additional approval/s as soon as practicable and that GLS&E was unaware of the end of waste (EOW) codes until receiving the department's letter of 27 October 2020.
5. The above response suggested that landfilling was justified onsite to allow a larger area for sediment ponds and filling had ceased at the time as sufficient area was available to allow the design to be initiated. It also stated that all stockpiled demolition concrete will be crushed and screened on site and sold as recycled aggregates. Ausrocks were engaged to obtain an EA for crushing and screening.
6. On 10 May 2021, Ausrocks submitted a final Site Based Management Plan (SBMP) on behalf of GLS&E, providing guidelines for the environmental management of the site in line with the likely requirements of the EA (draft submitted dated 11 February 2021). With regard to stormwater capture and sediment or contaminant control, the SBMP states that proposed environmental management measures are provided in site plans and that sediment control at the perimeter is required. The capture and treatment of contaminated stormwater from the operational area within sediment controls is noted to be designed to council standard. (SC6.1.7.4 of the Gympie Regional Council Planning Scheme V2 2017) and sized adequately to capture a storm event up to and including a 24-hour storm event with an average recurrence interval of 1 in 10 years.
7. On 13 May 2021, the EA was issued to you, as an owner of GLS&E. The EA takes effect on the day the authority was issued (i.e. 13 May 2021).
8. Under the conditions of the EA, you are authorised to undertake Environmentally Relevant Activity (ERA) 54- Mechanical Waste Reprocessing and ERA 62- Resource Recovery and Transfer Facility Operation at the premises.
9. Condition WT2 of the EA states "*The stormwater runoff from **disturbed areas**, generated by a storm event up to and including a **24-hour storm event with an average recurrence interval of 1 in 10 years** must be retained on site or managed to remove contaminants before released offsite".*
10. On 7 July 2021, a proactive site visit was undertaken by the department to investigate compliance with the conditions of the EA. Key observations made by the department are outlined below:
    a. No sediment capture measures, or dirty water diversion drains were evident at the premises or observed outside of the boundary to prevent storm water from flowing freely into the adjacent Mary River. The bund wall and sediment basins identified in the EA as storm water capture were not constructed.
    b. A concentrated stormwater release point was identified on the eastern boundary with water observed leaving the premises during the site inspection. The department was informed that this

was a point of capture in the past but had been pushed out at some point to allow the release of storm water.

11. On 12 July 2021, the department sent you a pre-enforcement letter summarising its findings from the site visit and identifying non-compliances with the EA.
12. The department received a response from Ausrocks Pty Ltd on your behalf dated 27 July 2021. This letter confirmed the findings of the site visit and notified the department of interim works that had commenced onsite to mitigate the potential for environmental harm.
13. Scrutiny of aerial imagery (Appendix A) identifies that storm water has been directed offsite through the point identified on the eastern boundary since at least June 2019.
14. On 19 August 2021, the department issued an EPO requiring you to secure compliance with the general environmental duty (as per section 319 of the Act) and to secure compliance with condition WT2 of the EA.
15. On 22 October 2021, Ausrocks, on your behalf, emailed the department notifying that the EPO time frame of 5 November 2021 would not be met due to the volume of concrete still located within the catchment basin.
16. On 27 October 2021, the department officers attended site to review the works undertaken to date and discuss the potential for EPO amendment. This was followed up with a post inspection letter sent by the department on 29 October 2021.
17. On 2 November 2021, Ausrocks, on your behalf, submitted a formal request for an extension to the EPO requirement dates including additional information supporting the request for EPO amendment.
18. On 5 November 2021, the department issued an amended EPO with updated conditions and agreeing to your new proposed time frame for the completion of works on 31 January 2022.
19. On 19 November 2021, Ausrocks, on your behalf, submitted an updated site-based management plan and a letter confirming requirement 6 of the amended EPO, including subsections A-E, had been completed.
20. Authorised officers undertook a site inspection on 24 November 2021 to verify the completed works and assess site performance with recent rainfall. The site inspection was followed up with an email sent by the department on 29 November 2021.
21. On 27 January 2022, Ausrocks, on your behalf, submitted a request for further extension of time for the requirements of the amended EPO. The department did not support the extended time frame proposed due to insufficient evidence demonstrating efforts to complete the required works within the time frame proposed by you.
22. A pre-enforcement email was sent 1 February 2022 inviting you to make representation as to why you should not be subject to enforcement action for failing to achieve Requirement 4 of the amended EPO within the required time frame. Under section 361 (2) of the Act it is an 'Offence not to comply with order' The recipient must not contravene an environmental protection order. A response was received on 2 February 2022.
23. A site inspection was undertaken by authorised officers in your company on 4 February 2022 to discuss the pre-enforcement response and what could be achieved at the site to secure compliance with the EA and another potential EPO. During the site inspection, it was noted that leachate from high nutrient stockpiles of manure were running off into the stormwater capture area.
24. On 17 February 2022, a warning was issued to GLS&E for failing to comply with the amended EPO.

25. Based on the facts and circumstances detailed above, the department requires you to secure compliance with the general environmental duty (as per section 319 of the Act) and to secure compliance with condition WT2 of the EA.

B. Requirements

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

1. By **5:00pm on 25 February 2022,** you must engage an appropriately qualified person (**AQP)** to complete and/or certify the requirements of this EPO.
2. From **21 February 2022**, you must maintain a daily log for the crushing and screening works onsite and submit these to the department by 5.00pm **on the last business day of each month** for the duration of the EPO. The first log is due by 5:00pm **28 February 2022** and must be submitted to the department via email to sunshinecoast.esr@des.qld.gov.au or PO Box 362, Maroochydore QLD 4558. The log must include:
    a. Dates when works are undertaken and the approximate number of hours worked; and
    b. Photographs capturing progress of the works (minimum one per week) from the same photo point to be established by you (ie. a post where replicate photos can be taken and compared for progress); and
    c. Events impacting works such as rainfall (with recorded amounts each day) or mechanical failure with logged timeframe of repair.
3. By **5:00pm on 21 February 2022,** you must fully cover any high nutrient stockpiles such as chicken manure located at the premises, to reduce infiltration from rain resulting in high nutrient leachate accumulating in the stormwater capture area.
4. By **5:00pm on 2 May 2022,** you must have installed and commissioned a stormwater management system for runoff from disturbed areas, generated by a storm event up to and including a 24-hour storm event with an average recurrence interval of 1 in 10 years. The stormwater must be retained on site or managed to remove contaminants before released offsite in accordance with condition WT2 of the EA.
5. By **5:00pm on 2 May 2022,** you must submit to the department a report demonstrating compliance with Requirement 4. The report must be submitted via email to sunshinecoast.esr@des.qld.gov.au or PO Box 362, Maroochydore QLD 4558. The report must include:
    a. As constructed drawings of the stormwater management infrastructure; and
    b. Certification from the **AQP** engaged under Requirement 1, that the stormwater management system has been designed and constructed in compliance with Requirement 4; and
    c. Details of how the stormwater management system is to be operated and maintained to achieve compliance with Requirement 4.
6. **For the duration of the EPO**, you must notify the department within 24 hours of you becoming aware of any unplanned release of water from the site, such as stormwater overtopping the spillway.

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.*

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.

1. The maximum penalty for an individual for wilfully contravening an EPO is 6250 penalty units, totalling $861,562.50 or five years imprisonment.
2. The maximum penalty for a corporation for wilfully contravening an EPO is 31,250 penalty units, totalling $4,307,812.50.
3. The maximum penalty for an individual for contravening an EPO is 4500 penalty units, totalling $620,325.00
4. The maximum penalty for a corporation for contravening an EPO is 22,500 penalty units, totalling $3,101,625.00.

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

- The maximum penalty for an individual is 50 penalty units, totalling $ 6,892.50.
- The maximum penalty for a corporation is 250 penalty units, totalling $ 34,462.50.

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 $ 6,892.50.
- The maximum penalty for a corporation is 250 penalty units, totalling $ 34,462.50.

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

E. Reviews and appeals

The provisions regarding 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 Luke O'Brien on 07 5459 6138.

Signature

17 February 2022

Date

Paul Butcher

Manager (Compliance)

Delegate of the Chief Executive

Department of Environment and Science

Environmental Protection Act 1994

Enquiries:

Department of Environment and Science
PO Box 362, Maroochydore QLD 4558
Ph: (07) 5459 6132
Email: sunshinecoast.esr@des.qld.gov.au