

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 VIA MACKAY QLD 4740

Your reference: EPPR00423513

Our reference: C-CPLRC-100293903

10/08/2022

Dear Director

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 Pleystowe Mill on land described as Lot 31 on SP312691, Lot 32 on SP129018, Lot 3 on SP276550, Lot 5 on RP836242, Lot 4 on RP704212 and Lot 4 on SP105215 (the premises).

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 EA EPPR0042351:

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

3. You are, or have been contravening section 440ZG of the *Environmental Protection Act 1994*:

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; or

(b) unlawfully release stormwater run-off into waters, a roadside gutter or stormwater drainage that results in the build-up of earth in waters, a roadside gutter or stormwater drainage

4. This EPO is issued under section 358(d)(iii) and section 358(e)(iii) of the *Environmental Protection Act 1994* to secure compliance with a condition of an EA and section 440ZG of the *Environmental Protection Act 1994*.

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

1. EA EPPR00423513 authorises the release of contaminants (sugar mill effluent) to Bakers Creek through release point (RP) W3.
2. Pleystowe Mill ceased milling operations in 2009. No sugar mill effluent is produced from Pleystowe Mill. Therefore, the effluent ponds at Pleystowe Mill have not been in use to actively treat effluent from the milling operations since this time.
3. The Pleystowe Mill effluent ponds are adjacent to the bagasse storage pad located on Lot 5 on RP704271.
4. At approximately 3pm on Tuesday 2 August 2022, you phoned the department stating that:
 - a. Between Monday 11 July 2022 and Saturday 30 July 2022, Marian Mill was transferring untreated effluent from Marian Mill to Pleystowe Mill Pond 1 to reduce the volumes of untreated effluent going to the Marian Mill effluent ponds. The aim of this was to facilitate the construction of a surface flow wetland to enhance treatment of effluent from Pond 5 at Marian Mill.
 - b. A total of 29.91ML of untreated effluent was transported from Marian Mill to Pleystowe Mill Pond 1.
 - c. On Monday 1 August 2022, you were notified by the landholder adjacent to Pond 1 that water was pooling on the surface outside of Pond 1 along the western embankment. You inspected Pond 1 at approximately 9am on this day.
 - d. In addition to pooling along the western embankment of Pond 1, you observed water in a culvert underneath a rail line to the south of Pond 1 (location described as -21.15490,149.03437 (GDA2020)) and in a drain which traverses parallel between two cane paddocks to the south of Pond 1 (location described as -21.15511,149.03439 (GDA2020)).
 - e. On Tuesday 2 August 2022, you inspected the site again. Water continued to pool on the outside of the western embankment of Pond 1. You advised that the water was likely untreated effluent seeping from Pond 1 via a bund wall.
 - f. The bund wall was constructed to direct runoff from the bagasse pad into Pond 1.
 - g. You also inspected the drain which traverses parallel between the two cane paddocks and observed liquid to be bubbling out of the ground. You advised the liquid was likely untreated effluent from Pond 1. The untreated effluent was then running into the drain. The drain flows to

Bakers Creek. You observed the untreated effluent to be flowing into Bakers Creek from the drain. You described the untreated effluent as being black in colour.

- h. You undertook sampling at Pond 1 which identified the dissolved oxygen (DO) to be 0.25mg/L and the pH to be 6.05. You described the water as black with a green tinge.
 - i. You undertook sampling of the untreated effluent pooling along the embankment of Pond 1 which identified the DO to be 0.49mg/L and the pH to be 7.29. You described the water to be a pale brown in colour.
 - j. You undertook sampling of the untreated effluent pooling from the underground irrigation pipe that was flowing into Bakers Creek which identified the DO to be 0.33mg/L and the pH to 6.02. You described the water to be black in colour.
- 5. You undertook the following immediate actions:
 - a. Constructed a small sump/pit downstream of where the liquid was bubbling out of the ground to capture any residual flow (location described as -21.15530,149.03435 (GDA2020)).
 - b. Constructed a bund at the end of the drain to inhibit further flows from the drain into Bakers Creek (location described as -21.15748,149.03390 (GDA2020)).
- 6. At approximately 4pm on Tuesday 2 August 2022, the department inspected Pleystowe Mill Pond 1, the pooling water on the western embankment of Pond 1, the drain and Bakers Creek.
- 7. The department conducted water quality monitoring at the following locations:
 - a. Pond 1 (location described as -21.15384,149.03412 (GDA2020)).
 - b. The water pooled on the western embankment of Pond 1 (location described as -21.15427,149.03387 (GDA2020)).
 - c. The railway crossing culverts (location described as -21.15490,149.03437 (GDA2020)).
 - d. The sump/pit (location described as 21.15530,149.03435 (GDA2020)).
 - e. Bakers Creek entry point (location described as -21.15762,149.03386 (GDA202)).
 - f. Bakers Creek upstream (location described as -21.15738,149.03302 (GDA2020)).
 - g. Bakers Creek downstream (location described as -21.15863,149.03609 (GDA 2020)).
- 8. Condition C1 of EA EPPR00423513 states that other than as permitted within EA EPPR00423513, contaminants must not be released to any waters.
- 9. Condition C2 of EA EPPR00423513 permits the release of contaminants in accordance with the release limits stated in Table 2 at the authorised release locations stated in Table 3.
- 10. The release of untreated effluent from Pleystowe Mill Pond 1 was not authorised by condition C2 of EA EPPR00423513.
- 11. Therefore, the department alleges that you are not in compliance with condition C1 of EA EPPR00423513.
- 12. Section 440ZG of the *Environmental Protection Act 1994* prohibits a person depositing a prescribed water contaminant in waters.
- 13. Schedule 10 of the *Environmental Protection Regulation 2019* defines prescribed water contaminants.

14. Untreated mill effluent is a liquid food processing waste which is considered a regulated waste pursuant to schedule 9, part 1, item 34 of the *Environmental Protection Regulation 2019*.
15. Schedule 10, item 17 of the *Environmental Protection Regulation 2019* defines regulated waste as a prescribed water contaminant.
16. 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.
17. The department considers that Bakers Creek meets the definition of waters as per the EA EPPR00423513.
18. You stated in your notification to the department that the untreated effluent was observed releasing from the underground irrigation pipe via a drain reporting to Bakers Creek.
19. You estimated that 50,000L of untreated effluent was released to Bakers Creek.
20. The department alleges that you have permitted the release of a prescribed water contaminant to waters as a result of the underground irrigation pipeline connected to Pond 1 that was releasing untreated mill effluent to Bakers Creek.
21. The department considers that the cause of the breach of condition C1 of EA EPPR00423513 and section 440ZG of the *Environmental Protection Act 1994* needs to be remedied 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 immediately cease the release of untreated effluent from Pleystowe Mill Pond 1 to Bakers Creek.										
Requirement 2	The following visual observations must be undertaken at the locations described in Table 1: a) Water colour, clarity, surface scums, odour, presence of aquatic life or fish kills. Table 1: Monitoring locations for visual observations <table border="1" style="margin-left: 40px;"> <thead> <tr> <th>Monitoring point</th><th>Location (GDA2020)</th></tr> </thead> <tbody> <tr> <td>Seepage at Pond 1</td><td>-21.15395,149.03406</td></tr> <tr> <td>QR rail culverts</td><td>-21.15490,149.03437</td></tr> <tr> <td>Sump in drain</td><td>-21.15564,149.03427</td></tr> <tr> <td>Bund at end of drain</td><td>-21.15748,149.03390</td></tr> </tbody> </table>	Monitoring point	Location (GDA2020)	Seepage at Pond 1	-21.15395,149.03406	QR rail culverts	-21.15490,149.03437	Sump in drain	-21.15564,149.03427	Bund at end of drain	-21.15748,149.03390
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Requirement 3	The monitoring as per Requirement 2 is to be undertaken daily from the date of this EPO until 14 August 2022 and in the event of rain, inclusive.										
Requirement 4	The quality of waters must be monitored at locations listed in Table 2 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) Visual inspections, including observations such as water colour, clarity, surface scums, odour, presence of aquatic life or fish kills. Table 2: Monitoring point locations <table border="1"> <thead> <tr> <th>Monitoring point</th><th>Location (GDA2020)</th></tr> </thead> <tbody> <tr> <td>Pond 1</td><td>-21.15354,149.03440</td></tr> <tr> <td>Bakers Creek upstream</td><td>-21.15751,149.03358</td></tr> <tr> <td>Bakers Creek downstream 1</td><td>-21.15772,149.03402</td></tr> <tr> <td>Bakers Creek downstream Old Pleystowe Road</td><td>-21.16152,149.04616</td></tr> <tr> <td>Bakers Creek downstream Pugsley Street</td><td>-21.15936,149.05134</td></tr> </tbody> </table>	Monitoring point	Location (GDA2020)	Pond 1	-21.15354,149.03440	Bakers Creek upstream	-21.15751,149.03358	Bakers Creek downstream 1	-21.15772,149.03402	Bakers Creek downstream Old Pleystowe Road	-21.16152,149.04616	Bakers Creek downstream Pugsley Street	-21.15936,149.05134
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Requirement 5	Notwithstanding Requirement 4, 5 Day Biological Oxygen Demand is only required to be monitored Monday to Friday.												
Requirement 6	The monitoring of waters as detailed in Requirement 4 points a) to g) is to be undertaken daily from the date of this notice until 14 August 2022, inclusive.												
Requirement 7	The monitoring of waters as detailed in Requirement 4 points a) to g) is to be undertaken as follows: a) Twice weekly (minimum three (3) days apart) between 15 August 2022 and 28 August 2022, inclusive; and b) Weekly between 29 August 2022 and 11 September 2022, inclusive.												
Requirement 8	You must submit a progress report to the department by 5pm on each of the following dates: a) Friday 12 August 2022 b) Friday 26 August 2022 c) Friday 9 September 2022												
Requirement 9	The progress reports required by Requirement 8 must include all water quality monitoring data undertaken in accordance with the requirements of this EPO.												
Requirement 10	By Monday 22 August 2022, you must engage a suitably qualified RPEQ to undertake a structural stability assessment of Pond 1 (including the bund) and Pond 2.												
Requirement 11	The assessment required by Requirement 10 must include the following:												

	a) An assessment of the structural stability and suitability of the bund that was created at the bagasse pad adjacent to Pond 1 which is permitting the seepage at Pond 1 to occur. b) Determination on if the bund is fit for purpose. c) An assessment of the structural stability of Pond 1, Pond 2, Pond 3, Pond 4, Pond 5 and Pond 6 at Pleystowe Mill to determine: a. Their suitability in storing the volumes of effluent currently being stored; and b. Their risk of failure (failure impact assessment).
Requirement 12	You must undertake an investigation into the origin of the underground irrigation pipeline to: a) Determine how it is connected to Pond 1 and/or the seepage; and b) Identify options for appropriate actions to isolate or remove the underground irrigation pipeline to prevent any further unauthorised releases that was identified to be causing the release of untreated effluent to Bakers Creek.
Requirement 13	By 5 September 2022, you must implement appropriate actions identified as a result of Requirement 12 to isolate or remove the underground irrigation pipeline to prevent any further unauthorised releases of untreated effluent to Bakers Creek.
Requirement 14	By 17 October 2022, you must investigate options to remove or treat the untreated effluent from Pond 1 and Pond 2 at Pleystowe Mill in accordance with any provisions under the <i>Environmental Protection Act 1994</i> and the EA.
Requirement 15	By 24 October 2022, you must remove or treat the untreated effluent from Pond 1 and Pond 2 at the Pleystowe Mill in accordance with any provisions under the <i>Environmental Protection Act 1994</i> and the EA.
Requirement 16	By 4pm Monday 7 November 2022, a final report must be provided to the department which details the following: a) An assessment of Pleystowe Mill's untreated effluent releases including volume, quality, and potential impact to the environment considering the environmental values, water quality objectives and management objectives of Bakers 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 structural stability assessment required by Requirement 10 and 11; and d) Confirmation and provide evidence that all untreated effluent has been removed or treated in Pond 1 and Pond 2 at Pleystowe Mill in accordance with requirement 15.

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

It is important that you know the impact to you personally as an individual or as a corporation for not meeting your obligations.

Failure to comply with an EPO is an offence.

- The maximum penalty for wilfully contravening an EPO is 6250 penalty units, totalling \$898,437.00 or five years imprisonment for an individual or \$4,492,187.00 for a corporation.
- The maximum penalty for contravening an EPO is 4500 penalty units, totalling \$646,875.00 for an individual or \$3,234,375.00 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 \$7,187.00, for an individual or \$35,937.00 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 \$7,187.00, for an individual or \$35,937.00 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, A/Team Leader on (07) 4999 6861 telephone number.

Notice
Environmental Protection Order



Signature

Kate Grayson
Delegate of the Chief Executive
Department of Environment and Science
Environmental Protection Act 1994

10/08/2022

Date

Mackay Compliance Centre
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