

Notice

Environmental Protection Act 1994

Clean-up Notice

This clean-up notice is issued by the administering authority pursuant to section 363H of the Environmental Protection Act 1994 to advise you of a decision requiring you to take stated actions in regard to a contamination incident.

Mt Cuthbert Resources Pty Ltd
Suite 2 Level 2, 45 Grenfell Street
Adelaide, SA, 5000

Our reference: STAT-E-100510436

9 November 2023

Note: The clean-up notice is amended at the request of Mt Cuthbert Resources Pty Ltd and replaces the clean-up notice that was issued on 13 October 2023. All amendments are identified in the amended notice, new text is shown as underlined and deleted text is shown as strikethrough.

Take notice: that under section 363H of the *Environmental Protection Act 1994* (the Act) a clean-up notice is issued to Mt Cuthbert Resources Pty Ltd (ACN 140 474 693) (you) by the administering authority. The administering authority is the Chief Executive of the Department of Environment and Science (the department).

The clean-up notice is issued in respect to your activities and contamination at the following locations:

- The Mt Watson mine on land described as Lot/plan 4757PH1623 and 59TG40, and mining lease ML90154 (the premises);
- The downstream land and waters impacted by the contamination incident, including but not limited to the unnamed tributary of Eureka Creek which flows north-west from the premises (the receiving environment).

A. Grounds

The amended clean-up notice is issued on the following grounds:

1. A contamination incident has occurred, being an incident involving contamination of the environment that the administering authority is satisfied has caused, or is likely to cause, serious or material environmental harm (363F of the Act).
2. You are a prescribed person for the contamination incident pursuant to section 363G of the Act because you caused or permitted the incident to happen; at the time of the incident you were the occupier of a place at or from which the incident is happening or happened; and you were the owner, or person in control, of a contaminant involved in the incident.
3. The department reasonably considers that the stated actions (requirements) are necessary to assess the nature and extent of the environmental harm, or the risk of further environmental harm from the contamination incident, to keep the administering authority informed and to prevent or minimise contamination.



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

1. You are the holder of Environmental Authority EPML00863313 (the EA) which authorises and regulates mining activities at the premises.
2. You are also the holder of ML90154 which provides for exclusive right of access.
3. The premises is a copper mine, namely the Mt Watson Project, located in Northwest Queensland, 120 km north-west of Cloncurry, which is currently in care and maintenance.
4. Associated with the Mt Watson Project, an uncapped waste rock dump (WRD) which contains potentially acid forming rock, and a run of mine (ROM) pad that holds a low-grade ore stockpile are located on the premises. These structures generate acid mine drainage including low pH, high concentrations of metals and high electrical conductivity that have the potential to cause environmental harm should contaminants be released to the environment.
5. A series of sediment ponds (the sediment ponds) which are designed to precipitate suspended solids in runoff are located along the southern boundary of the copper mine at the premises, and can potentially overflow to the receiving environment.
6. The spillways of the sediment ponds are adjacent to an unnamed tributary of the Eureka Creek which flows north-west from the premises and joins the Leichardt River approximately 20 km north.
7. From 1 to 11 March 2023, the premises received 562.8 mm of rainfall, which was a 1 in 1000 years probability rainfall event (the rainfall event), including 180.6 mm on 7 March 2023.
8. On 14 March 2023, you notified the department that a release of contaminants reasonably expected to be not in accordance with the conditions of the EA had occurred from Sediment Pond 6 (SP6), located at the premises, to the receiving environment.
9. On 28 March 2023, you provided the water quality data from sampling conducted at the sediment ponds and receiving water monitoring sites on 14 March 2023, via email to the department. This data revealed the following:
 - a. Total copper concentrations at Sediment Pond 3 (SP3) and SP6 were 6 mg/L and 92 mg/L respectively, in exceedance of the EA contaminant release limit of 1 mg/L, which is based on the Australian and New Zealand Guidelines for Fresh and Marine Water Quality 2000 (ANZECC 2000) stock water quality guidelines.
 - b. pH at SP3 and SP6 was 5.71 and 4.75 respectively, which is lower than the minimum EA contaminant release limit of 6 for pH.
 - c. Electrical conductivity at SP6 was 1215 μ S/cm, in exceedance of the EA contaminant release limit of 1000 μ S/cm, which is based on the ANZECC 2000 stock water quality guidelines.
 - d. Total aluminium at SP6 was 6.3 mg/L, in exceedance of the EA contaminant release limit of 5 mg/L, which is based on the ANZECC 2000 stock water quality guidelines.
 - e. Dissolved cadmium, cobalt, copper, nickel, selenium and zinc concentrations were in exceedance of the release trigger limits established in the EA, at one or more sampling locations. These limits are based on the ANZECC 2000 default trigger values for 95% of aquatic ecosystems protection.
 - f. The sample collected by the rising stage sampler at SP3 returned a total copper concentration of 1.7 mg/L, in excess of the EA contaminant release limit of 1 mg/L, based on the ANZECC 2000 stock water quality guidelines.
 - g. Total copper concentrations at the downstream receiving waters monitoring sites MW4 and MW5 were 5.5 mg/L and 5.1 mg/L respectively, which are above the ANZECC 2000 copper default guideline value for 95% aquatic species protection of 1.4 mg/L.

10. On 27 June 2023, you provided the *'Mt Watson March 2023 release investigation and harm assessment'* report (the investigation report) to the department, which includes the *'Mount Watson Rainfall Event Assessment – 28 February to 10 March 2023'* (by ATC Williams, dated 26 June 2023). The investigation report findings include:
- a. Hydraulic modelling of the sediment pond system estimated a release volume of 32.4 ML of mine affected water, which occurred in conjunction with a total of 155.3 ML of flows in the unnamed tributary of Eureka Creek.
 - b. Modelling of the rainfall runoff during the release indicates that all the site sediment ponds released to some degree as a result of the rainfall event however, predominantly this was from one sediment pond to the next via the integrated control system.
 - c. When the site was first accessed on 14 March 2023, the rising stage samplers located at SP3, SP4 and SP6, were found to have collected water samples, indicating the water level in these sediment ponds had reached the spillway and therefore confirming releases from these locations had occurred.
 - d. Following the release, copper concentrations in stream sediments at the nine receiving environment monitoring sites ranged between 210 mg/kg and 540 mg/kg. These results are above the Australian and New Zealand Guidelines for Fresh and Marine Water Quality 2018 (ANZECC 2018) sediment quality toxicant default guideline value (DGV) of 65 mg/kg for all monitoring sites, and above the ANZECC 2018 sediment quality high guideline (GV-high) value of 270 mg/L for all except one of the monitoring sites.
 - e. The reference sites stream sediment copper concentrations from samples collected on the same date as the receiving environment ranged between 7 mg/kg and 46 mg/kg.
 - f. Elevated copper in stream sediments (540 mg/kg) was present at the furthest downstream monitoring location outlined in the investigation report (named DS7), which is located approximately 3km downstream of the boundary of ML90154.
11. Sediment sampling conducted by the department at the receiving environment monitoring sites MW4 and MW5 on 19 July 2023 returned total copper concentrations of 547 mg/kg and 303 mg/kg respectively. These results are above both ANZECC 2018 sediment quality DGV (65 mg/kg) and GV-high (270 mg/kg).
12. Spatial extent and impact of the contamination incident on the receiving environment has not been delineated, particularly in relation to the elevated copper concentrations that have been reported in the receiving environment monitoring sites following the release.
13. Environmental harm is any adverse effect, or potential adverse effect (whether temporary or permanent and of whatever magnitude, duration, or frequency) on an environmental value, and includes environmental nuisance.
14. Under the *Environmental Protection (Water and Wetland Biodiversity) Policy 2019* (EPP Water), all Queensland waters have prescribed environmental values and water quality objectives.
15. The environmental values for the receiving waters outlined above under paragraph 5, include aquatic ecosystems (slightly to moderately disturbed), cultural and spiritual, and livestock watering.
16. The released contaminated water is reasonably expected to have impacted the relevant environmental values given the concentrations of toxicants found to be in excess of the ANZECC 2000 stock water quality guideline values and default guideline values for 95% of aquatic ecosystems protection, as outlined under paragraph 9.
17. The stream sediment copper concentrations which were found to be in excess of the ANZECC 2018 sediment quality toxicant values (DGV and GH-high) after the release, as outlined under paragraph 10,

are reasonably expected to have an impact on the relevant environmental values. As stated under ANZECC 2018, the DGVs indicate the concentrations below which there is a low risk of unacceptable effects occurring, and should be used to protect aquatic ecosystems. In contrast, the 'upper' guideline values (GV-high), provide an indication of concentrations at which you might already expect to observe toxicity-related adverse effects.

18. The department is reasonably satisfied that the release from the premises has, or is likely to cause, material environmental harm (section 16 of the Act):
 - a. that is not trivial or negligible in nature, extent or context; or
 - b. that causes actual or potential loss or damage to property of an amount of, or amounts totalling, more than the threshold amount but less than the maximum amount; or
 - c. that results in costs of more than the threshold amount but less than the maximum amount being incurred in taking appropriate action to— (i) prevent or minimise the harm; and (ii) rehabilitate or restore the environment to its condition before the harm.
19. You are considered to be a prescribed person for a contamination incident pursuant to section 363G of the Act because:
 - a. You caused or permitted the incident to happen;
 - b. At the time of the incident you were the occupier of a place from which the incident happened; or
 - c. You are the owner or person in control, of a contaminant involved in the incident.
20. Having considered the circumstances surrounding the release event, including the investigation report and additional information you provided to the department on 31 July 2023, the department considers:
 - a. That the incident is appropriately characterised as a contamination incident, per section 363F of the Act; and
 - b. You are a prescribed person for a contamination incident pursuant to section 363G of the Act; and
 - c. It is appropriate to issue you with a clean-up notice.

B. Requirements

In accordance with this clean-up notice, you must carry out the following stated actions:

1. By **24 October 2023**, you must:
 - a. Appoint and retain an independent **appropriately qualified person (AQP)** to assess:
 - i. The extent of impact caused by the release to the receiving environment, including water and sediment monitoring for relevant parameters (including, but not limited to, copper) with locations and frequency sufficient to delineate the extent of impact;
 - ii. The nature and extent of the environmental harm, or the rise of further environmental harm, from the concentrations of contaminants identified in the receiving environment stream sediments following the release;
 - iii. The bioavailability of contaminants in stream sediments to aquatic ecosystems once remobilised by a flow event;
 - iv. The current environmental risk of locations affected by the contamination incident; and

- v. Whether any rehabilitation or restoration activities are recommended to mitigate or remedy the effects of the incident, and specific details on the works required.
- b. Notify the department of the appointment.
2. By ~~7 December 2023~~, **22 December 2023**, you must provide the department with a report prepared by the appointed AQP on the findings of the assessments outlined under Requirement 1a of this notice. The report must clearly outline if rehabilitation or restoration of the receiving environment is required and provide advice regarding the works required.
3. By ~~4 January 2024~~, **31 January 2024**, you must consider and implement any comments from the department with regard to requirement 2.

Should rehabilitation or restoration activities be recommended by the AQP within the report undertaken as per requirement 2, and this recommendation be agreed to by the department, the following requirements will also apply to this notice:

4. By ~~25 January 2024~~, **15 February 2024**, you must prepare a Restoration Plan following the AQP advice and provide this to the department.
5. By ~~12 February 2024~~, **4 March 2024**, you must consider and implement any comments made by the department regarding the Restoration Plan.
6. By ~~15 March 2024~~, **5 April 2024**, have completed any required rehabilitation or restoration activities as recommended by the AQP and outlined in the Restoration Plan.
7. By ~~19 April 2024~~, **15 May 2024**, you must provide an AQP report to the department which documents the following in relation to the activities contemplated in requirement 4:
 - a. The vertical extent of watercourses impacted by the contamination incident.
 - b. Stated objectives of the clean-up operations, including clean-up end-point criteria and justification for those endpoints.
 - c. The locations where clean-up activities have been undertaken.
 - d. The locations where contamination has been identified, and clean-up activities have not been undertaken.
 - e. Methods used for clean-up.
 - f. Validation sampling to assess the effectiveness of the cleanup works.
 - g. The estimated mass of each contaminant of concern removed during clean-up.
 - h. The disposal locations.
 - i. Details of engagements undertaken with relevant stakeholders.

An **appropriately qualified person** is defined as ‘a person who has professional qualifications, training, skills, and experience relevant to the nominated subject matter and can give authoritative assessment, advice and analysis on performance relating to the subject matter using the relevant protocols, standards, methods, or literature’.

Note:

- The requirements of the clean-up notice take effect immediately upon service of the notice.
- This notice remains in force until further notice from the administering authority.

- You may recover as a debt, from another person who caused or permitted the contamination incident to happen, the amount of loss or expense incurred by you in complying with the notice or extent to which you complied with the notice.

C. Appeal rights

The provisions regarding reviews of decisions and appeals are found in sections 519 to 539 of the Act. Internal review of the decision to issue a clean-up notice is not available however if you are dissatisfied with the decision to issue this clean-up notice, you can appeal against the decision in the Planning and Environment Court (the Court) within 22 business days after receiving the notice.

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).

After initiating an appeal, a dissatisfied person can apply to the Court to grant a stay of the decision to issue the clean-up notice, to secure the effectiveness of the appeal. In deciding whether to grant the stay for a clean-up notice, the court must have regard to:

- the quantity and quality of contamination of the environment that is likely to be caused if the stay is granted; and
- the proximity of the place at or from which the contamination incident is happening or happened to a place with environmental values that may be adversely affected by the contamination.

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.

D. Public Register

Pursuant to section 540 of the EP Act, the Department is required to maintain a register of certain documents and information authorised under the EP 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 EP 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.

E. Penalties

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

Under 363I of the Act failing to comply with a clean-up notice is an offence unless you have a reasonable excuse.

If the offence is committed wilfully:

- The maximum penalty for contravening a clean-up notice is 6,250 penalty units, totalling \$898,437 or five years imprisonment for an individual, or \$4,492,185 for a corporation.

Otherwise:

- The maximum penalty for contravening a clean-up notice is 6,250 penalty units, totalling \$898,437 or five years imprisonment for an individual, or \$4,492,185 for a corporation.

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

If you fail to comply with the clean-up notice, an authorised person may also take any of the actions stated in the notice and the department may issue you a cost recovery notice under section 363N to recover from you the costs incurred in taking the actions.

Should you have any queries in relation to the notice, please contact Angela Sinopoli on telephone number angela.sinopoli@des.qld.gov.au or 07 4722 5361.



Signature

9/11/2023

Date

Tariq Khan

Manager Compliance - Minerals

Department of Environment and Science

Delegate of the Chief Executive

Environmental Protection Act 1994

Enquiries:

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