

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.

Stapylton Resource Recovery (QLD) Pty Ltd
132-134 Commercial Road
TENERIFFE QLD 4005

CC. Stapylton Resource Recovery (QLD) Pty Ltd
GPO Box 888
BRISBANE QLD 4001

Attention: Balfour Irvine, Director

CC via email: Mark Dekker mark@bmigroup.com.au

CC via email: Peta Rutherford peta.rutherford@bmigroup.com.au

Your reference: P-EA-100287544; C-CPLRC-100467958

Our reference: 101/0010015; STAT-E-100579806

4 March 2024

Dear Mr Irvine

Take notice: that under the *Environmental Protection Act 1994* (the Act), this environmental protection order (EPO) is issued to Stapylton Resource Recovery (QLD) Pty Ltd ACN 611 003 724 (you) by the administering authority. The administering authority is the Chief Executive of the Department of Environment, Science and Innovation (the department).

The EPO is issued with respect to the activities conducted by you on land described as lots 2 and 3 on SP279441 situated at 144 Rossmanns Road, Stapylton QLD 4207 (the premises). You are the holder of environmental authority P-EA-100287544 (the EA) which was issued in relation to your activities at the premises.

A. Grounds

This EPO is issued on the following grounds:

1. Under section 358(d)(iii) of the Act, the administering authority may issue an environmental protection order (EPO) to a person to secure compliance with a condition of an environmental authority;

Condition G5 of the EA, which states:

"Other than as permitted by this environmental authority, the release of a contaminant into the environment must not occur."



The department is satisfied that a release of a contaminant occurred on 1 and 29 November 2023, and 18 January 2024 when observations by authorised persons were made of sediment released from the premises and deposited onto Rossmanns Road as the result of vehicles exiting the premises. The release was not permitted by the EA.

2. Under section 358(e)(iii) of the Act, the administering authority may issue an order to a person if the person is, or has been, contravening a provision being section 440ZG. Section 440ZG of the Act states:

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 water, a roadside gutter or stormwater drainage.*

The department is satisfied that on 1 and 29 November 2023, and 18 January 2024, you have contravened section 440ZG of the Act by unlawfully depositing a prescribed water contaminant, namely sediment, onto Rossmanns Road, where it could reasonably be expected to wash into water, a roadside gutter or stormwater drainage adjacent to that road.

3. Under section 358(d)(i) of the Act, the administering authority may issue an environmental protection order (EPO) to a person to secure compliance with the general environmental duty (GED).

The GED 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 practicable actions to prevent or minimise the harm (the **general environmental duty**).*

The department is satisfied that due to activities at the premises not undertaken in a manner which prevents the unlawful release of a contaminant into the environment, by such means as sealing and maintaining internal roadways to prevent the release of sediment onto Rossmanns Road, you are not taking all reasonable and practical measures to prevent or minimise environmental harm.

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

1. You carry out environmentally relevant activity (ERA) 60 - waste disposal at the premises, under EA P-EA-100287544, which has an effective date of 6 March 2023. As a result, the department considers that you are conducting a prescribed activity where the release of a contaminant will or may cause environmental harm, unless you take all reasonable and practicable measures to prevent or minimise that harm.
2. On 12 April 2023, the department approved your application for a transitional environmental program (TEP) to remedy a contravention of condition G5 of EA P-EA-100287544 for the release of sediment onto Rossmanns Road from the premises. Works undertaken in accordance with conditions and requirements of the TEP included the installation of a wheel wash and the application of a bitumen seal on the roadway leading to the exit point of the premises.
3. On 5 October 2023, authorised persons undertook an inspection of the premises to determine compliance with the TEP. During that inspection, authorised persons observed that sediment continued to be tracked onto Rossmanns Road from the movement of vehicles from the premises despite having installed the wheel wash and a bitumen seal on sections of the exit road. Authorised persons observed sections of the site entrance between the wheel wash and site boundary remained unsealed or in

disrepair, including adjacent to the weighbridge, truck maintenance area and entrance to Resource Recovery Area (RRA) 3.

4. On 1 and 29 November 2023, and 18 January 2024, authorised persons undertook boundary inspections of the premises in response to community reports of dust nuisance and road safety concerns. During those inspections, authorised persons observed contaminants, namely sediment, had been released onto Rossmanns Road from the wheels of exiting vehicles.
5. The sediment on the roadway was observed to result in the release of dust from the movement of vehicles on Rossmanns Road.
6. Section 11 of the Act states a contaminant can be a gas, liquid, or solid.
7. Section 8 of the Act defines environment to include -
 - (a) *ecosystems and their constituent parts, including people and communities; and*
 - (b) *all natural and physical resources; and*
 - (c) *the qualities and characteristics of locations, places and areas, however large or small, that contribute to their biological diversity and integrity, intrinsic or attributed scientific value or interest, amenity, harmony and sense of community; and*
 - (d) *the social, economic, aesthetic and cultural conditions that affect, or are affected by, things mentioned in paragraphs (a) to (c).*
8. The release of sediment onto Rossmanns Road has affected the natural and physical resources of the area, impacting air and water quality as well as the amenity of the location.
9. The department considers that you have failed to comply with condition G5 of the EA by failing to prevent the release of a contaminant into the environment not authorised by the EA and as such have committed an offence under s430(3) of the Act.
10. Furthermore, Schedule 10 of the Environmental Protection Regulation 2019 lists sediment as a prescribed water contaminant.
11. The department has determined in this instance that you have unlawfully deposited sediment onto Rossmanns Road, and as such have placed a contaminant in a location where it is reasonably expected to wash, blow, fall or otherwise move into water, the roadside gutter or stormwater drainage. As such, the department considers that you have contravened condition 440ZG(a)(iii) of the Act.
12. In correspondence provided by you to the department on 3 June 2022, you stated that the gravel roadway would be replaced with concrete. You stated that this would be completed by December 2022.
13. Alternative measures were implemented under the TEP but failed to address the release of contaminants. You have since identified that concreting of roadways is a reasonable and practicable measure.
14. Authorised persons of the department identified during an inspection of the premises on 5 October 2023 that vehicle traffic moved between unsealed and sealed sections of the internal roadway after the wheel wash and before the site exit, particularly between the maintenance area, Resource Recovery Area 3 and Land Fill area 2 were resulting in the tracking of sediment onto sealed surfaces.
15. On 29 November 2023, authorised persons undertook a drive-by inspection of your premises and observed sediment on the road deposited by trucks exiting the site. A penalty infringement notice (No. 2000000 80070898) was issued to you on 11 January 2024 in response to this matter for breaching condition G5 of your EA P-EA-100287544.

16. You provided information to the department on 4 December 2023 that the release had occurred as the result of rain making it difficult to manage roadway mud, despite employing some mitigation measures. You further advised that approval had been sought for concreting the site entrance and bitumen sealing of some internal roadways. This has not yet been completed.
17. Again, on 18 January 2024, authorised persons of the department observed sediment on Rossmanns Road deposited by vehicles exiting your site.
18. The department considers that you have failed to take all reasonable and practicable measures to prevent the release of sediment onto Rossmanns Road that is causing and is likely to cause harm to environmental values, including public amenity and safety. Therefore, it is alleged that you are not complying with the GED.
19. Furthermore, the department is not satisfied that concreting the area between the weighbridge and site entrance, on its own, will be sufficient to prevent the release of sediment onto the Rossmanns Road given the two-coat bitumen seal has thus far not prevented the release of sediment onto the roadway. A holistic review of traffic and contaminant movement is required given the significant number of vehicles entering and exiting the site, and ongoing vehicle movement between sealed and unsealed roadways near the site entrance.
20. As a result of the ongoing non-compliances identified above, the department considers it reasonable to require you to investigate effective methods to prevent the release of sediment onto Rossmanns Road from the premises to ensure you are meeting your general environmental duty and other obligations under the Act.

B. Requirements

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

1. By 5pm on 12 March 2024, you must engage an independent Appropriately Qualified Person(s) (AQP) to complete the requirements of this notice and confirm the engagement to the department in writing to GoldCoast.es@des.qld.gov.au. You must provide evidence of qualifications and experience of the AQP to the department for consideration by this date.

The written confirmation of the engagement must include each AQP's academic and professional qualifications, suitable skills, experience and training, relevant to the nominated subject matter and that the AQP can give authoritative assessment, advice and analysis of performance in relation to stormwater management and engineering using the relevant protocols, standards, methods or literature relevant to this notice.
2. By 5pm on 19 March 2024, you must submit to the department a list, developed by the AQP, of proposed interim **measures** to prevent the release of sediment onto Rossmanns Road from the activity. This must include, but not be limited to:
 - a) preventing movement of vehicles from unsealed areas to, or across, sealed areas unless doing so via wheel wash (excluding passenger vehicles and motorcycles where use of the wheel wash is unsafe); and
 - b) ensure a sufficient source of clean water is maintained in the wheel wash at all times during operational hours; and
 - c) training and enforcement of appropriate use of the wheel wash, including speed limits.

For the purpose of this notice, **measures** has the broadest interpretation and includes plant, equipment, physical objects, bunding, containment systems, monitoring, procedures, actions, directions and competency.

3. By 5pm on 19 March 2024, you must commence implementing all interim **measures** identified in accordance with Requirement 2 and continue to maintain these measures while this notice remains in effect.
4. By 5pm on 16 April 2024, you must submit to the department a report completed by the AQP which:
 - a) identifies all sources of roadway sediment between the Resource Recovery Area (RRA) 1 entrance and the exit to the premises as identified in Attachment 1, as a result of all traffic movement including, but not limited to:
 - i. traffic entering and exiting the site via the weighbridge;
 - ii. movement of vehicles to and from the maintenance area, RRA 3 and the site office; and
 - iii. progressive movement of waste material and clean earth to and from the area marked cut/fill area.
 - b) assesses the ability and effectiveness of the current roadway sediment control infrastructure, including but not limited to the wheel wash and sealed bitumen roadway, in preventing the release of sediment from the premises from all sources of roadway sediment identified under Requirement 4(a).
 - c) recommends improvements, upgrades and/or replacement of sediment control systems and infrastructure to prevent the release of sediment from the premises including but not limited to:
 - i. improved traffic control;
 - ii. extended concreting of unsealed or temporary sealed roadways; and
 - iii. management and maintenance of the wheel wash.
5. By 5pm on 7 May 2024, you must submit a plan to the department detailing how you will implement all recommended improvements, upgrades and/or replacement of sediment control systems specified in the report under Requirement 4. The plan must include, but not be limited to:
 - a) associated milestones and indicative timeframes for completion of proposed works;
 - b) methods to manage traffic during and after the proposed work period;
 - c) methods to manage entry and exit to the wheel wash during the proposed work period;
 - d) detailed stormwater management for each stage of the proposed work period taking into consideration the department's [Stormwater and Environmentally Relevant Activities Guideline](#); and
 - e) details of any interim measures for ensuring that sediment is not tracked off-site for the period of proposed works.

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 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 \$ 967,500.00 or five years imprisonment for an individual or \$4,837,500 for a corporation.
- The maximum penalty for contravening an EPO is 4500 penalty units, totalling \$696,600.00 for an individual or \$3,483,00.00 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 \$7,740.00, for an individual or \$38,700.00 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 \$7,740.00 for an individual or \$38,700.00 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 Act.

A person who is dissatisfied with an original decision made by the Department of Environment, Science and Innovation (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, Science and Innovation: 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.

Notice
Environmental Protection Order

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 to 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 Stephanie Maguire, Team Leader (Compliance) of the department on (07) 5626 6848.

All correspondence relating to this EPO must be sent to Stephanie.Maguire@des.qld.gov.au and goldcoast.es@des.qld.gov.au



Signature



Date

Paul Butcher

Manager (Compliance)

Delegate of the Chief Executive

Department of Environment, Science and Innovation

Environmental Protection Act 1994

Enquiries: Stephanie Maguire
Compliance Centre: Gold Coast
Ph: (07) 5626 6871
Email: goldcoast.es@des.qld.gov.au

Attachment 1. Site Plan

