

Notice

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.

NEW WILKIE ENERGY PTY LIMITED
(Receivers and Managers Appointed) (Administrators Appointed)
c/o FTI Consulting
GPO Box 3127
BRISBANE QLD 4001

CC: ben.campbell@fticonsulting.com; Carla.Fairweather@fticonsulting.com

Your reference: EPML00563313

Our reference: C-CPLPO-100656208; STAT-E-100658976

24 May 2024

Dear Sir/Madam

Take notice: that under the *Environmental Protection Act 1994* (the Act) this Environmental Protection Order (EPO) is issued to NEW WILKIE ENERGY PTY LIMITED (Receivers and Managers Appointed) (Administrators Appointed) ACN 007 683 454 (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 in respect to the activities carried out by New Wilkie Energy Pty Ltd at the Wilkie Creek Coal Mine site located on Mining Lease (ML) ML5908, ML50208, ML50214, ML50215, ML50276 and ML55004, situated at Wilkie Creek Coal Mine, QLD (the premises).

A. Grounds

This EPO is issued to you:

1. To secure compliance by you with the “general environmental duty” pursuant to section 358(d)(i) of the Act.

The general environmental duty is defined pursuant to section 319(1) of the Act as follows:

*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. To secure compliance by you with conditions of Environmental Authority (EA) EPML00563313 pursuant to section 358(d)(iii) of the Act.

The conditions of the EA which are directly relevant are conditions A2, A3, D1 and F2 which are as follows:

A2 *The holder of this environmental authority must:*

- a) Install all measures, plant and equipment necessary to ensure compliance with the conditions of this environmental authority;*
- b) Maintain such measures, plant and equipment in a proper and efficient condition;*
- c) Operate such measures, plant and equipment in a proper and efficient manner; and*
- d) All instruments and devices used for the measurement or monitoring of any parameter under any condition of this environmental authority must be calibrated, and appropriately operated and maintained.*

A3 *No change, replacement or alteration of any plant or equipment is permitted if the change, replacement or alteration increases, or is likely to increase, the risk of environmental harm by the mining activities.*

D1 *Contaminants that will, or have the potential to cause environmental harm must not be released to any waters except as permitted under the conditions of this environmental authority.*

F2 *General - Other than as authorised under this environmental authority, contaminants must not be released to land in a manner which constitutes environmental nuisance, or material or serious environmental harm.*

The facts and circumstances forming the basis for the issue of this EPO are as follows:

1. This EPO is issued to NEW WILKIE ENERGY PTY LIMITED (Receivers and Managers Appointed) (Administrators Appointed) as you are:
 - (a) the holder of mining lease ML5908, ML50208, ML50214, ML50215, ML50276, ML55004;
 - (b) the holder of EA EPML00563313
 - (c) the person with legal ownership, possession, and control over the premises.
2. On 9 January 2024 KordaMentha was appointed as Administrator. FTI Consulting was subsequently appointed as Receiver and Manager on 11 January 2024.
3. EA EPML00563313 authorises environmentally relevant activities including mining and associated activities at the premises, subject to the conditions of the EA.
4. There is disturbed land and infrastructure on the premises including an open cut pit, tailings dams, a processing plant and other water storages that have the potential to generate contaminated water and/or seepage.

5. There are significant risks of environmental harm associated with the activities authorised by EA EPML00563313 on the premises. This includes, but not limited to:
 - environmental risks associated with disturbance to the land resulting from the activities;
 - environmental risks associated with the mobilisation of contaminants in rainfall runoff from disturbed areas;
 - environmental risks associated with the discharge of mine wastes (e.g. process waters); and
 - environmental risks associated with equipment, plant and infrastructure utilised in the carrying out of activities (e.g. residual process chemicals, chemical and fuel storages).
6. Active management of these risks is required to mitigate the potential for environmental harm.
7. One of the primary ways by which the environmental risks set out in paragraph 5 above are managed at the premises, is through capture and containment of contaminated water, to prevent the release of contaminated water from the premises.
8. The water storages at the premises that capture and/or contain contaminated water are set out in *MNP-027 Wilkie Creek Mine Management Plan Water*, Revision 3, Reviewed 19 October 2023 (the MPW 2023 Report). Several water storages are regulated structures. Water storages at the premises include:
 - Storage Area A (Regulated Structure)
 - Storage Area B (Regulated Structure)
 - E Pit
 - E Pit sediment basin
 - C Pit sediment basin
 - North Tailings Dam (Regulated Structure)
 - East Tailings Dam (Regulated Structure)
 - West Tailings Dam 1 (Regulated Structure)
 - West Tailings Dam 2 (Regulated Structure)
 - West Tailings Dam 3 (Regulated Structure)
 - A Pit Levee Dam
 - B Pit Dam
 - B Pit South Pit.
9. Section 3.9 of the *NWE-ENV-PLN-0007 Management Plan Environmental Emergency*, reviewed 12/10/2022, (the MPEE 2022 Report) lists tailings or storage dam areas where failure could occur at New Wilkie Energy as: Storage Area A, Storage Area B, West Tailings Dam 1, West Tailings Dam 2, North Tailings Dam, East Tailings Dam. Section 3.9.1 outlines the management measures to be implemented on site to reduce the risk of tailings dam failure. One of the measures listed is: “*Regular site inspections and dewatering as per the operational plan to maintain safe operational water levels*”.

10. Section 3.10 of the MPEE 2022 Report identifies the potential to overtop in relation to: Storage Area A, Storage Area B, E Pit, E Pit sediment basin, C Pit sediment basin, North Tailings Dam, East Tailings Dam, West Tailings Dam 1, West Tailings Dam 2, West Tailings Dam 3, B Pit South Pit. Section 3.10.1 outlines the management measures to reduce the risk of overtopping, including: Regular site inspections as per operational plan to maintain safe operational water levels; and adequate pumping infrastructure to transfer volumes between dams in the event of an emergency.
11. On 22 May 2023, the department received revised consequence category assessments from the EA holders compiled by the consulting engineers ATC Williams recommending that the regulated dams West Tailings Dam 1, West Tailings Dam 2, West Tailings Dam 3, North Tailings Dam and East Tailings Dam not be treated as regulated structures. The department notes the comments contained within the Regulated Structures - 2021 Inspection and Review Report that *"No DSA (design storage allowance) and MRL (mandatory reporting level) requirements apply to these dams, given current status. Notwithstanding, it is recommended that water level existing within these storages at any times remain below a level of 2.5m below the lowest perimeter containment level within the former storage area."*
12. The holders of EPML00563313 have not updated the EA to reflect the revised consequence categories, therefore all structures listed in the EA are still considered regulated structures by the department. This was communicated to you by the department in correspondence dated 15 April 2024.
13. On 5 May 2024 the department requested updated information relating to the dam levels which you surveyed on 3 May 2024. This information was supplied by you in an email dated 7 May 2024 (Table 1).

Table 1 – Dam levels at Wilkie Creek supplied by FTI Consulting on 07/05/2024 from a survey which occurred on 03/05/2024 (Storage A and B not surveyed)

Dam	Maximum Operating Levels (2023 annual reg dams report (121213.04 R01 Rev0))	Mandatory Reporting Level (2.5m below maximum containment level per Regulated Structures 2021 Report)	Survey Level	MRL Exceeded
North Tailings Dam	RL 346.0m	RL 343.5m	RL 343.5m	At MRL
East Tailings Dam	RL329m	RL 326.5m	RL 327.15m	Yes
West Tailings Dam 1	RL 346.0m	RL 343.5m	RL 342.62m	No
West Tailings Dam 2	RL 344m	RL 341.5m	RL 339.17m	No
West Tailings Dam 3	RL 339m	RL 336.5m	not surveyed – water level approximately 20m below maximum operating level	Unknown

14. Structures at or above MRL have an increased risk of release to the environment.
15. On 7 May 2024 you noted that North Tailings Dam was at its MRL and that the East Tailings Dam was 650mm above its MRL. You advised the department of the following:

- You stated that the relevant piping infrastructure was already in place to enable removal of excess water from these North Tailings Dam and East Tailings Dam to West Tailings Dam 3.
 - You stated that you were in the process of relocating a pump to reduce the water levels in East Tailings Dam.
 - You stated that the Open Cut Examiner (OCE) would monitor the dams daily as pumping was undertaken.
 - You stated that level indicators had been installed so that a real time assessment could be made without the need for a surveyor.
16. On 17 May 2024 you provided the department with the following update by email:
- You stated that pumping from the East Tailings Dam had commenced on 9 May 2024.
 - You stated that 39mm of rain had occurred on the weekend (11-12 May 2024) and consequently the East Tailings Dam was yet to return below the MRL despite the pumping.
 - You stated that despite the 39mm of rain, North Tailings Dam remained below MRL.
 - You stated that once the East Tailings Dam was sufficiently below the MRL, pumping would then commence at the North Tailings Dam.
17. *WRM Water Balance Model Update – 2023* (dated 18 October 2023) (the WRM Report) states that East Tailings Dam receives overflows from North Tailings Dam and overflows offsite to Wilkie Creek. It is not stated if this dam receives groundwater inflows. Satellite Imagery shows that East Tailings Dam is adjacent to Wilkie Creek (stream order 4) with drainage lines extending to the north of the tailings dam and to the south.
18. Based on the WRM Report the three water storages designated as inactive tailings facilities (West Tailings Dam 1, East Tailings Dam, North Tailings Dam) are to be managed through pumped transfers to keep water levels in these areas to a minimum and to prevent accumulation of water.
19. The department holds data in relation to the contaminated water quality onsite. EC levels supplied to the department by Paul Kahler (then employed by New Wilkie Energy) on 30/11/2023 showed EC levels as listed below:
- Storage Area A - 2068us/cm
 - Storage Area B - 4904us/cm
 - North Tailings Dam – (*note: measured on 23 May 2024 by the department*) 3860us/cm
 - West Tailings Dam 1 - 3801us/cm
 - West Tailings Dam 2 - 5944us/cm
 - West Tailings Dam 3 - 5278us/cm
 - East Tailings Dam (*note: measured on 23 May 2024 by the department*) - 327.5us/cm

20. These EC levels exceed release limits of 1000uS/cm outlined in Table D6 of the EA. The department is not aware of any stock watering (limit of 4000uS/cm based on Table D7) or irrigation (limit of 3000uS/cm based on Table D8) activities occurring using water on site.
21. It is considered that any release of contaminated water in appreciable quantities from the premises has potential to cause environmental harm to the downstream environment, including to groundwater. Any release from East Tailings Dam or North Tailings Dam is likely to migrate to Wilkie Creek.
22. The environmental values and water quality objectives Wilkie Creek include aquatic ecosystem, irrigation, farm supply, stock water, visual recreation, industrial use and cultural use.
23. The contaminated water stored and generated at the premises needs to be actively and appropriately managed, such that it does not accumulate to a point where an uncontrolled and/or unlawful release occurs to the receiving environment.
24. To manage the risk of a release, the department understands from both the WRM Report and the MPW 2023 Report and conversations with staff during the previous inspections (on 13 February 2024 and 24 October 2023) that the Wilkie Creek Coal Mine pumps water between storages to ensure all storage water levels are kept below MRL requirements.
25. The department notes that in the NWE response to post inspection letter dated 12 March 2024 it was stated that NWE have a monthly pumping schedule in place to actively manage water levels on site. The department also notes that in order to manage the risk of seepage in Storage Area B, it was proposed that water levels for that storage would be kept below a DSA level of 1.1m and that water levels would be pumped down if further seepage occurred.
26. Wilkie Creek Coal Mine is currently in care and maintenance, therefore none of the water storages can reduce their capacity through operational demands from the Coal Handling and Processing Plant (CHPP) or from the use of water for dust suppression. The department must conclude that as mining operations have been suspended, in the event of further rainfall, the present water management strategy would rely solely on the transfer of water between storages to prevent water releases from the site. This requires sufficient personnel and critical infrastructure (pumps, pipework, fuel) to remain on site to implement such a water management strategy.
27. On 20 May 2024, during a meeting, FTI advised the department and other regulatory agencies that while they hoped to secure additional operational funding within 24–48 hours, they only had current funding to continue 'care and maintenance' operations to approximately 24 May 2024.
28. In that meeting FTI also advised that leased plant and equipment was being demobilised from site.
29. On 23 May 2024, during a meeting, KordaMentha advised the department and other regulatory agencies that they have no funding to continue 'care and maintenance' operations should the Receiver Managers (FTI) be unable to continue.
30. During an inspection on 23 May 2024, authorised officers were advised by representatives of NWE that:
 - All light vehicles that were on-hire, have been removed from site. Six vehicles owned by NWE remain on site.

- One pump is currently operational and during the inspection it was observed transferring water from East Tailings Dam to West Tailings Dam 3;
- Two hire pumps were observed on the ROM, these were 'off hire' and waiting to be removed from site. These pumps have been disconnected from the water management system. However, no pumps had been removed at the time of the inspection;
- Smouldering (a pre-cursor to spontaneous combustion) was observed in Stockpile C on the ROM Pad. Approximately 80,000t of coal remains on the ROM pad. Approximately 5,000t of product coal is stockpiled near the CHPP and 2,000t of product coal is stockpiled near the rail head;
- The Contractor Emeco and its employees remained on site, however it was stated that all hire equipment, including that belonging to Emeco, Komatsu and Hitachi had been 'off-hired';

31. A WA600 digger and a CAT349 excavator remain on site, as these are owned by NWE. During the inspection, authorised officers were shown the pump information Table 2). It was noted during this meeting that one pump was at East Tailings Dam, the two hire pumps were on the ROM and the remaining pumps were in the maintenance area (except for the pontoon pumps floating on Storage Area A which were operating as normal).

Table 2 – New Wilkie Energy's Wilkie Creek Coal Mine pumps listed during inspection of 23 May 2024

Asset number	Name	Capacity (L/s)	Ownership
404	Perkins	70	NWE
405	Allight	70	NWE
402	Queen Pumps	70	NWE
407	Warman	120	HIRED
408	Legra	120	HIRED
403	Sykes	-	NWE
453	Durapower	-	NWE
406	Yangdong	-	NWE

32. During the inspection on 23 May 2024, authorised officers observed signs that seepage may be continuing at Storage Area B. Authorised officers also observed rilling on the Storage Area B wall and tunnelling on the crest of the dam. E Pit was inaccessible during the inspection but was observed that significant areas of the pit remained flooded.
33. During the inspection, authorised officers observed Storage Area A and Storage Area B water levels were below the respective MRL marker for each storage.

34. The latest Bureau of Meteorology three-month climate outlook (July to September 2024) indicates that rainfall is likely to be above median for the eastern half of Australia. The Bureau of Meteorology Climate Driver Update issued on 14/05/2024 states: "El Niño–Southern Oscillation (ENSO) is currently neutral. There are some early signs that a La Niña might form in the Pacific Ocean later in 2024. As a result, the Bureau's ENSO Outlook has shifted to La Niña Watch. When La Niña Watch criteria have been met in the past, a La Niña event has subsequently developed around 50% of the time. There is about an equal chance of neutral ENSO conditions in the same outlook period". La Niña events increase the chances of above-average rainfall for northern and eastern Australia during spring and summer.
35. It is the department's assessment that in the event of above median rainfall, further measures may be required to ensure that contaminated water stored and generated at the premises does not release to the environment in contravention of EA EPML00563313 release limits.
36. Based on the information set out in facts and circumstances, the department is of the view that there is an unacceptable risk of environmental harm occurring as a result of your activities. The department considers that it is reasonable to require you to take further action to secure compliance with the general environmental duty and with conditions of EA EPML00563313.

B. Requirements

1. From the date of this EPO, you must take all necessary actions to prevent a release of contaminants from the premises, unless such release is otherwise permitted under EA EPML00563313.
2. At all times you must have available:
 - a. appropriately qualified and experienced staff to ensure compliance with this EPO;
 - b. measures, plant and equipment necessary to ensure compliance with this EPO; and
 - c. fuel supplies and access to power to ensure the ongoing operation of measures, plant and equipment to ensure compliance with this EPO.
3. All measures, plant and equipment necessary to ensure compliance with this EPO must be maintained in a functional and operable manner.
4. You must not, without the department's prior written approval, dispose of, materially alter, or remove any measures, plant or equipment on the premises, necessary to:
 - a. ensure compliance with the requirements of this EPO, or
 - b. that reasonably reduce the risk of a release of contaminants not otherwise permitted under EA EPML00563313.
5. From the date of this EPO, you must provide a written report to the department each alternative Friday (fortnightly report) which details:
 - a. for the fortnightly reporting period, daily rainfall totals for the premises.
 - b. for the fortnightly reporting period, any actions taken to reduce the water inventory over the reporting period.

- c. for the fortnightly reporting period, the estimated daily volume of water removed from the water inventory, listed for each day, separated by each method, including details of the measurements, calculations, and assumptions that the estimate is based.
 - d. the storage capacity available in each of the water storages on site (as detailed in paragraph 8) at the end of the fortnightly reporting period. This should include the current water level RL and the remaining volume in Megalitres (ML)
6. You must notify potentially affected downstream landholders as soon as possible (but within 24 hours) of any release of contaminants that are not reasonably expected to be authorised by EA EPML00563313.
7. Any written notification or submission to the department, as required by this notice, must be provided via email to southwest.es@des.qld.gov.au.

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

Failure to comply with an EPO is an offence.

- The maximum penalty for an individual for wilfully contravening an EPO is 6,250 penalty units, totalling \$967,500.00 or five years imprisonment.
- The maximum penalty for a corporation for wilfully contravening an EPO is 31,250 penalty units, totalling \$4,837,500.00 .
- The maximum penalty for an individual for contravening an EPO is 4,500 penalty units, totalling \$696,600.00
- The maximum penalty for a corporation for contravening an EPO is 22,500 penalty units, totalling \$3,483,000.00.

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

3. The maximum penalty for an individual is 50 penalty units, totalling \$7,740.00.
4. The maximum penalty for a corporation is 250 penalty units, totalling \$38,700.00.

Failure to provide written notice within 10 business days of ceasing the activity to the department is an offence.

5. The maximum penalty for an individual is 50 penalty units, totalling \$7,740.00.
6. The maximum penalty for a corporation is 250 penalty units, totalling \$38,700.00.

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

E. Reviews and appeals

The provisions regarding review of decisions and appeals may be found in sections 519 to 539 of the Act.

A person who is dissatisfied with certain decisions of the department, may be able to apply to have the department review that original decision.

Generally, a request to have a decision reviewed must be made:

- within 10 business days of the decision being notified to the person;
- be supported by enough information to enable the department to decide the application for review; and
- be made using the application for review of an original decision form ([ESR/2015/1573](#)).¹

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 also be able to request a statement of reasons for a decision or a statutory order review under the *Judicial Review Act 1991*.

For further information about reviews and appeals see the information sheet - internal review and appeal to the Planning and Environment Court ([ESR/2015/1572](#)). You may have other legal rights or obligations and should seek your own legal advice.

Should you have any queries in relation to the notice, please contact Benjamin Newman on telephone number (07) 4529 8330.

¹ This is the publication number. The publication number can be used as a search term to find the latest version of a publication at <www.ehp.qld.gov.au>.

Notice
Environmental Protection Order



Signature

24/5/2024

Date

Alisha Stewart
Manager Compliance (Coal)
Delegate of the Chief Executive
Department of Environment, Science and Innovation
Environmental Protection Act 1994

Enquiries:
Toowoomba Compliance Centre
PO Box 731
TOOWOOMBA QLD 4350
Ph: (07) 4529 8336
Email: southwest.es@des.qld.gov.au