Environmental Enforcement Order

NOTICE ID	**STAT-E-100754490**
Date of issue	7 November 2024
Issued to	Mainstream Aquaculture Queensland Pty Ltd (ACN 625 858 693)
Registered address	73-79 Lock Ave, WERRIBEE VIC 3030 Australia
Site address (the premises)	Captain Cook Highway, Killaloe QLD
Land reference	Lot 204 on Plan SP264765
Administering Authority	Chief Executive of the Department of Environment, Tourism, Science and Innovation (the department)
Legal reference	*Pursuant to s362 Environmental Protection Act 1994*
Service method	☒ Registered post ☐ Hand delivered ☒ Also by email ☒ Orally (s369(2))
Contact	If you have any questions about this EEO, please contact: Sophie Mickelbourgh, Cairns Compliance Office Email: ESTownsville@des.qld.gov.au Telephone: (07) 4222 5247

Please read the Information Sheet - Recipient of an Environmental Enforcement Order (desi.qld.gov.au) for further information (search for ESR/2024/6802 on www.desi.qld.gov.au).

Terms used in this Environmental Enforcement Order (EEO) have their meaning defined in the ***Definitions*** *section in* ***Appendix A*** *of the EEO or, if not defined, in the* Environmental Protection Act 1994 *(the Act).*

Why the department is issuing this Order to you:

For the purpose of this Notice, "you" means the recipient of this Notice or your authorised representative.

The department has responsibility for enforcing the Act. The delegate for the department is issuing this EEO to you, pursuant to s362 Environmental Protection Act 1994 of the Act , because an enforcement ground exists, specifically s359(f)(ii) of the Act, in relation to activities being conducted at the premises.

This EEO is issued to you under:

1. The department believes that you are contravening section 440(2) of the Act, which states: A person must not unlawfully cause an environmental nuisance. This is an enforcement ground, pursuant s359(f)(ii) of the Act.

Queensland Government

Background and relevant matters:

1. You are the occupier of the land described as Lot 204 on Plan SP264765 on Captain Cook Highway, Killaloe (the premises).
2. You are authorised to undertake environmentally relevant activities (ERA) 1(1b) Cultivating or holding crustaceans in enclosures that are on land and have a total area of more than 10ha but not more than 100ha, ERA 1(2b) Cultivating or holding marine, estuarine or freshwater organisms, other than crustaceans and ERA 27 Seafood processing, under Environmental Authority (EA) P-EA-100205095.
3. On 30 October 2024, authorised officers inspected the premises where it was identified that fish deaths had occurred on 24 October 2024, due to a disease.
4. During the inspection on 30 October 2024, a large quantity of dead fish were observed on land at the rear of your property.
5. During the inspection on 30 October 2024, a large quantity of dead fish were also observed in a pond (known as pond 40).
6. In late October and early November 2024, the department received complaints from 6 (six) members of the public regarding offensive odours at their residences, allegedly emanating from the premises. These residences are located up to 1.2km from the premises.
7. The residences are considered to be sensitive places.
8. Following receipt of the complaints about offensive odours allegedly emanating from the premises, authorised officers inspected the premises again on 6 November 2024.
9. Authorised officers observed that the odour from the pond referred to as pond 40 was offensive and had a very strong 'rotten egg gas' smell.
10. During the inspection on 6 November 2024, you advised that you were aware of the rotten egg gas smell and its cause.
11. On 6 November 2024 authorised officers visited several nearby residences. The authorised officers detected odour at several sensitive places (residential properties) downwind of the premises.
12. The odour was described by the officers as a 'rotten egg gas' smell.
13. The officers also went to another residential property located downwind of your premises and at this location the officers also identified a rotten egg gas smell which they considered to be unpleasant, intense, persistent and strong.
14. There are several other residential properties located near your premises; it is reasonable to assume that when meteorological conditions result in these properties being downwind of your premises, they would also experience strong and offensive odours from your premises.

Grounds for issuing this Order:

1. Based on the observations made by the authorised officers on 6 November 2024, the department considers that an enforcement ground exists, namely s359(f)(ii) of the Act. S 359(f)(ii) states:

   (f) the person is contravening any of the following provisions, or has contravened any of the following provisions in circumstances that make it likely the contravention will continue or be repeated—
   (ii)section 440;

2. Section 440(2) of the Act states:

   A person must not unlawfully cause an environmental nuisance.

3. Section 15 of the Act states:

   Environmental nuisance is unreasonable interference or likely interference with an environmental value caused by:

   (a) aerosols, fumes, light, noise, **odour**, particles or smoke; or
   (b) an unhealthy, **offensive** or unsightly condition because of **contamination**; or
   (c) another way prescribed by regulation.

4. Section 9 of the Act states (in part)

   Environmental value is

   (b) a quality or physical characteristic of the environment that is conducive to public health, safety or **amenity**; or
   (c) a quality or physical characteristic of the environment that contributes to its biological diversity and integrity, intrinsic or attributed scientific value or interest, **amenity**, harmony and sense of community.

5. Section 11 of the Act states:

   A ***contaminant*** can be—
   (a)a gas, liquid or solid; or
   (b) **an odour**; or
   (c)an organism (whether alive or dead), including a virus; or
   (d)energy, including noise, heat, radioactivity and electromagnetic radiation; or
   (e)a combination of contaminants.

6. Based on the observations by the authorised officers of offensive odour at the residential properties, the department believes that the fugitive odour emissions emanating from your premises constitute unlawful environmental nuisance as:
   a) The odour emitted from your premises is a contaminant, which is considered to be offensive; and
   b) The odour emissions are an unreasonable interference with an environmental value. The environmental value is the qualities of the air environment that are conducive to human health and wellbeing.

7. On 6 November 2024 the department determined that it was appropriate to issue an Environmental Enforcement Order to you to take reasonable steps to address the fugitive odour emissions at the premises.

8. On 6 November 2024 authorised officer Mark Cavicchiolo gave a verbal direction pursuant to s369(2) of the Act to take reasonable steps to address the fugitive odour emissions, as per the terms listed below in the section 'Required actions'. The verbal direction was effective immediately and this written environmental enforcement order confirms the verbal direction .

Required actions:

The required actions listed below are to be remedied in full by the required dates and remain in force until this Order is amended, repealed, finalised or stayed.

Pond waters:

1. Immediately commence and continue to implement measures to ensure that odour from the premises does not cause environmental nuisance at any sensitive place or commercial place.

2. By 5pm Thursday 7 November 2024 provide written advice to the department of what measures are being implemented and the timing of the commencement of implementation of those measures..
3. The measures you have taken must be fully implemented by 5pm Friday 8 November 2024.
4. By 5pm Friday 8 November 2024, you must ensure that odour from your premises does not cause environmental nuisance at any sensitive place or commercial place.
5. In determining appropriate measures to be implemented you must, as a minimum, consider the following:
   a) Chemical treatment of the pond water and/or pond sludge (eg dosing the pond with hydrogen peroxide); and
   b) Microbiological treatment of the pond water and /or pond sludge; and
   c) Removal and lawful disposal of pond water and/or pond sludge.; and
   d) Any other reasonably practical measures that will prevent or minimise odour.
6. By 5pm Monday 11 November 2024, provide written confirmation to the department of:
   a) The measures you *considered* in order to comply with requirement 5 of this notice; and
   b) the measures you have i*mplemented* to comply with this notice; and
   c) Justification for the choice of the measures you have implemented.
   d) Confirmation that the odour nuisance at sensitive places or commercial places have been resolved.
7. The written confirmation must be provided by email to: ESTownsville@des.qld.gov.au

Issued by MC

Mark Cavicchiolo
Compliance Delivery Manager
Delegate of the Administering Authority

Department of Environment, Tourism, Science and Innovation
PO Box 7230Cairns Queensland 4870

Considerations

The general emission criteria and human rights were considered prior to issuing this EEO.

Offences

Failure to comply with this EEO is an offence unless you have a reasonable excuse. The maximum penalties are significant and are provided in s369A of the Act.

Appendix A: Definitions used in this Order (that are not exactly as the Act defines or implies them)

Authorised representative	Is a representative that has been nominated by the person this Order relates to, for acting on their behalf when dealing with the Queensland Government to manage matters. For more information, read the guideline Authorisation letter to nominate an Authorised Holder Representative (available at www.qld.gov.au using the publication number ESR/2019/5168 as a search term).
Commercial place	Commercial place means a place, or part of a place, used as a workplace, an office or for business or commercial purposes.
Land	This refers to the cadastral reference of the premises referenced in this Order.
Sensitive place or	Sensitive place includes places and parts of places as follows: a) a dwelling, residential allotment, mobile home or caravan park, residential marina or other residential premises; or b) a motel, hotel or hostel; or c) a kindergarten, school, university or other educational institution; or d) a medical centre or hospital; or e) a protected area under the *Nature Conservation Act 1992*, the *Marine Parks Act 2004* or a World Heritage Area; or f) a public park or garden; g) for noise, a place defined as a sensitive receptor for the purposes of the Environmental Protection (Noise) Policy 2019.

Penalties and obligations

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

- If you propose to dispose of the place or business to which the EEO relates, you must advise the buyer of the existence of this EEO. **Failure to provide a written notice to the buyer of the existence of the order is an offence.** The maximum penalty is provided in s369C of the Act.
- If you cease to carry out the activity to which this EEO relates, you must give written notice of ceasing to carry out the activity to the department within 10 days of ceasing the activity. **Failure to provide written notice to the department within 10 business days of ceasing the activity to which an EEO relates is an offence.** The maximum penalty is provided in s369D of the Act.

Right of review and appeal

The provisions regarding reviews of decisions and appeals are found in s519 to s539 of the Act.

A person who is dissatisfied with an original decision made by 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.

For a decision that is not an original decision, there are no formal review and appeal rights for a person who is dissatisfied with the decision made by the administering authority. The person may have other legal rights and may wish to seek legal advice.

Privacy statement

Section 540 of the Act requires the department 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 redaction in part 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.

Accessibility

Contact us if you need this information in an accessible format such as large print or audio.

Interpreter assistance

If you need interpreter assistance or want this document translated, please contact us and advise your preferred language. If you are deaf, or have a hearing or speech impairment, contact us through the National Relay Service

