

Notice

Environmental Protection Act 1994

Decision to approve a draft transitional environmental program

This notice is issued by the administering authority pursuant to section 340 of the Environmental Protection Act 1994 (the Act) to advise of a decision made on a draft transitional environmental program (TEP).

Aurizon Operations Limited (ACN 124 649 967)
900 Ann Street
Fortitude Valley, QLD 4006

Your reference: CA54377 – MAN19940

Our reference: 101/0030086

27 June 2019

Dear Mark Harris,

Take notice: that under the provisions of the *Environmental Protection Act 1994* (the Act) this notice advising of the decision to approve a draft transitional environmental program (TEP) is issued to Aurizon Operations Limited (ACN 124 649 967)(you) by the administering authority. The administering authority is the Chief Executive of the Department of Environment and Science (the department).

This notice is issued in respect to the activities of Aurizon Operations Limited at Queensland rail corridors and servicing locations on Lot 155 SP126513, Lot 13 SP300658, Lot 101 SP10858, Lot 2 RP17282 and Lot 2 RP17294 situated at Garfield Street, Callemondah QLD 4680, 49 Brookhouse Street, Stuart QLD 4811, Armstrong Beach Road, Jilalan, Sarina QLD 4737, and Davidson Street, Willowburn QLD 4350 (the premises).

Background

Your submission for the approval of a draft TEP was received by the department on 31 May 2019.

This TEP entitled Replacement of firefighting foams used in fire suppression systems on 147 locomotives relates to the withdrawal of fluorinated firefighting foam stocks from service, and replacement with fluorine free firefighting foam.

Decision

The administering authority has decided to approve your application with conditions.

The approved TEP reference number MAN19940 consists of the following:

- the submitted application documents including any amendments made at the request of, or with the agreement of, the administering authority described in transitional environment program titled Replacement of firefighting foams used in fire suppression systems on 147 locomotives, dated 24 May 2019; and



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- any conditions imposed by the administering authority; and
- The TEP will remain in force for the period of 27 June 2019 until **14 January 2022**.

Requirements

Please note that under section 354 of the Act, failure to comply with the approved TEP will remove your immunity from prosecution for the continuation of the original offence stated in the program notice.

Please note that this decision has removed your immunity from prosecution for the continuation of the original offence stated in the program notice.

Fee to assess the draft TEP or amendment to a TEP

Payment of the assessment fee of the TEP is required to be paid

A total fee of \$477.30 has been determined as reasonable for the assessment of the draft TEP. This fee will be requested by an invoice that will follow shortly.

Annual Return and annual return fees

As your TEP is valid for 12 months or more, an annual return in the approved Form: Annual return for a transitional environmental program (ESR/2016/2961) ¹ must be submitted to the administering authority no later than 22 business days after each anniversary of the day the TEP was approved.

The anniversary day for this TEP is ~~25~~ June.

Conditions

The draft TEP is approved subject to the conditions set out in Schedule 1 of this notice.

Grounds

The decision to approve your application with conditions is made under the following grounds:

- The TEP relates to reducing environmental harm from the possession and use of firefighting foams containing fluorinated organic compounds in firefighting systems.
For clarity, the TEP does not request a release of contaminants to the environment, nor is this authorised by the administering authority.
- The submission is considered valid for the following reasons:
 - The TEP was submitted within the required timeframe in the Receipt of program notice issued by the administering authority on 18 April 2019.
 - The TEP was submitted in the approved form.
 - The TEP meets the content requirements of s. 331 of the Act.
- The draft TEP is a program working towards meeting best practice by complying with the DES Operational Policy – Environmental Management of Firefighting Foam. Considering the operators progressive transition towards fluorine free (non-persistent) firefighting foams, the measures are considered consistent with the requirements of the policy.

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.des.qld.gov.au.

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- In accordance with section 338 (1)(b)(i) of the Act, the application has been considered against the standard criteria and
- it has been determined that it is appropriate to impose conditions relating to the storage and release of fluorinated organic compounds in order to prevent environmental harm.
- The operator must take all reasonable and practicable measures to prevent the release of contaminants into the environment, and in this case the approved activity is in relation to the progressive changeout of firefighting foams containing persistent organic compounds.

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

- Fluorinated organic compounds, including per- and poly- fluoroalkyl substances (PFAS), are very stable, resisting physical, chemical and biological degradation and can have bioaccumulative and toxic properties. Their high solubility in water means that PFAS readily leach from soil to surface water and groundwater, where they can move long distances entering creeks, rivers and lakes and become part of the food chain.
- On 7 July 2016, the Department signed into effect the Operational Policy – Environmental Management of Firefighting Foam (the policy). The policy sets out the expectations for the handling, transport, storage, use, release, waste treatment, disposal and environmental protection measures relevant to the use of firefighting foam. The policy provides operational guidance to operators on how to meet their General Environmental Duty under the the Act.
- The policy states that full compliance with the policy shall be achieved by 7 July 2019.
- A relevant consideration of the policy in relation to Aurizon Operations Limited is the use of non-compliant fluorinated firefighting foams onboard locomotives.
- On 5 April 2019 a program notice under s. 350 of the Act was received from Aurizon Operations Limited for the progressive change-out of firefighting foam on board locomotives across Queensland extending past 7 July 2019.
- On 18 April 2019 a receipt of program notice was issued to Aurizon Operations Limited in accordance with s. 352 of the Act, which set the due date for submission of the draft Transitional Environmental Program as 7 June 2019.
- Aurizon Operations Limited voluntarily submitted an application to approve a draft Transitional Environmental Program on 31 May 2019. The due date for the Department's assessment of the draft Transitional Environmental Program is 20 business days following the submissions, which is 28 June 2019.
- The transitional environmental program states that Aurizon has identified a permanent solution to replace non-compliant firefighting foams. Due to the configuration of the fire suppression system componentry, it will require replacement of the entire fire suppression system on each locomotive.
- The timing of the replacement of fire suppression systems and their associated foams will extend past the 7 July 2019 policy compliance date as the works have to be carried out in alignment with each locomotives scheduled major maintenance service.
- In the event of a fire, foam fills the engine compartment and following the incident is retained in the engine bay and drains into the engine bay's sludge tank, being completely enclosed within the sludge tank. This provides full containment and the waste is then removed by a licensed waste contractor.



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- The proposed transitional environmental program manages the progressive replacement of fire suppression systems past the 7 July 2019 compliance date through until 14 January 2022. The program provides certainty as to the timeframe for the completion of the full replacement of fluorinated foams aboard locomotives operated by Aurizon Operations Limited.

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 administering authority, may be able to apply to have the administering authority 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 administering authority to decide the application for review; and
- be made using the application for review of an original decision form (ESR/2015/1573)².

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 administering authority 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)².

You may have other legal rights or obligations and should seek your own legal advice.

Should you have any queries in relation to this notice, please contact Josh Brown of the department on telephone number 3330 5576.

² 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.des.qld.gov.au.



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Signature

27 JUNE 2019

Date

Robert Black
 Manager Compliance
 Delegate of the Chief Executive
 Department of Environment and Science
Environmental Protection Act 1994

Enquiries:

Josh Brown
 Ph: (07) 3330 5576
 Email: josh.brown@des.qld.gov.au

Attachments

Information sheet – Internal review and appeal to Planning and Environment Court ([ESR/2015/1572](#))

Form: Annual return for TEP (ESR/2016/2225)³

Copy of draft TEP MAN19940

³ 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.des.qld.gov.au.



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**Schedule 1—Conditions of transitional environmental program reference number
MAN19940**

The transitional environmental program at the location described above must be conducted in accordance with the following conditions of approval.

Condition schedule: General	
Condition number	Condition
1	Firefighting foam containing fluorinated organic compounds must not be released to land or waters .
2	A containment system must be installed and maintained to capture any release of firefighting foam containing fluorinated organic compounds.
3	All fluorinated firefighting foam concentrate waste and related wastes must be disposed at a facility that can lawfully accept the waste.
4	6 monthly reports as stipulated in the transitional environmental program are to be submitted no less than every 6 months. The due dates for reporting following the establishment of the TEP on 27 June 2019 are as follows: • 1 December 2019 • 1 June 2020 • 1 December 2020 • 1 June 2021 • 1 December 2021 • 14 January 2022 (End of Program)
Definitions	Related wastes include wastes which contain residues of fluorinated organic compounds removed as part of system maintenance and replacement, and also wastes generated as a result of an activation of a fire suppression system. Containment system means a system designed, installed and operated to prevent any release of contaminants from the system, or containers within the system, to land, groundwater, or surface waters. Waters includes 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.

