Notice

Environmental Protection Act 1994

Decision to accept an Enforceable Undertaking

This notice is issued by the administering authority pursuant to sections 507 of the Environmental Protection Act 1994 to advise of a decision made on an enforceable undertaking.

Isaac Regional Council
Grosvenor Complex
Batchelor Parade
MORANBAH QLD 4744

Our reference: MAN19700 and 101/0003334.

13 September 2017

Take notice: that under the provisions of the *Environmental Protection Act 1994* this notice advising of the decision to accept an Enforceable Undertaking is issued to Isaac Regional Council ABN 39 274 142 600 (you) by the administering authority. The administering authority is the Chief Executive of the Department of Environment and Heritage Protection (the Department).

This notice is issued in respect to your activities at the treated effluent storage dam known as Golf Course Dam located on land adjacent to the Dysart Golf Course on Lot 11 on CNS115 at Dysart Queensland.

A. Application details

On 1 March 2017, the Department received an emailed Enforceable Undertaking application form from you.

Your application included the following documents:

- Application form – Enforceable Undertaking; and
- Signed Statutory Declaration (received on 29 August 2017).

The objective of the Enforceable Undertaking is for you to:

- Secure compliance with the Act; and
- Enhance the protection of the environment.

ABN 46 640 294 485

B. Material considered by the Department in making the decision

In making the decision, the Department had before it:

a. *Environmental Protection Act 1994;*
b. Guideline: Enforceable Undertakings under the *Environmental Protection Act 1994;*
c. Completed application form dated 1 March 2017;
d. Signed Statutory Declaration received on 29 August 2017;
e. Written submission received by you on 2 November 2016;
f. Brief of Evidence prepared by the Department's Investigations Unit; and
g. Enforcement Guidelines.

C. Application of legislation to the decision

Section 507 of the *Environmental Protection Act 1994* provides that:

a. the administering authority may accept a written undertaking (Enforceable Undertaking) made by a person in relation to a contravention or alleged contravention by the person of the *Environmental Protection Act 1994*, other than an indictable offence; and
b. the administering authority must give the person written notice of the administering authority's decision to accept or reject the Enforceable Undertaking, and the reasons for the decision.

D. Decision

The administering authority has decided to accept your application for an Enforceable Undertaking. The approved Enforceable Undertaking is attached to this decision notice.

E. Reasons for the decision

1. You promptly notified the Department about the incident and have since acted professionally and cooperatively with the Department in your response to the incident.
2. The incident was caused (in part) by heavy rain, approximately 113 millimetres in the three (3) days prior to the incident. This rainfall damaged road infrastructure in the storm corridor and caused severe local flooding. You did not foresee this level of rainfall.
3. Since the incident, you have commenced the implementation of a significant program of works to provide appropriate short and long term improvements to the performance and operations of the various effluent storage dams. This program of works extends beyond the dam the subject of the incident. The program of works includes construction of a spillway, dam wall piezometer data capture, dam wall remediation works, investigation into overall sewage treatment management and the treated effluent storage dam, and a staged program of works to implement the investigation findings.
4. There are significant public interest considerations that weigh against a decision to prosecute. The Isaac Regional Council area has a limited permanent population and hence a limited rate base. You face onerous responsibilities and risks in managing infrastructure transferred from mining operators to your asset base, including the dam subject of this incident and other effluent storage dams. Whilst legislation administered by the Department is to be applied equally to the private and public sector, in your case it is the ratepayer that ultimately bears the cost of any penalty or costs imposed by the court in a court proceeding.
5. Any penalty or costs imposed by the court in a court proceeding can be more effectively used in progressing the program of works for the rehabilitation of the dam that was the subject of this incident and improving the overall sewage management at Dysart.

6. Implementation of the program of works will deliver benefits for local industry and businesses through their involvement in the delivery of the infrastructure improvement projects.
7. Implementation of the program of works will also deliver benefits for the local community, by improving the quality and availability of recycled water for local business and community organisations for beneficial re-use. This will create improved amenity for the people of Dysart.
8. In the circumstances, given prompt notification to the Department, heavy rainfall, actions taken since the incident, public interest considerations and benefits to local industry, local business and the local community, the Application by you to enter into an Enforceable Undertaking has been accepted.

F. Additional information

Obligations under the Act

In addition to the requirements of the Enforceable Undertaking and the conditions imposed, you must also meet your obligations under the *Environmental Protection Act 1994*, and the regulations made under the *Environmental Protection Act 1994*. For example:

- you must comply with the following provisions of the Act:
  - general environmental duty (section 319); and
  - duty to notify of environmental harm (sections 320 - 320G);
- you must also ensure that you do not commit offences in relation to the *Environmental Protection Act 1994,* including but not limited to, the following:
  - causing serious or material environmental harm (sections 437 - 439);
  - causing environmental nuisance (section 440);
  - depositing prescribed water contaminants in waters and related matters (section 440ZG); and
  - placing contaminant where environmental harm or nuisance may be caused (section 443).

Should you have any queries in relation to this notice, please contact Alisha Stewart, Compliance Delivery Manager of the Department, or the person acting in that position, on telephone number (07) 4999 6886.

Signature

13/9/17

Date

Dean Ellwood
Deputy Director-General
Delegate of the Chief Executive
Department of Environment and Heritage Protection
Environmental Protection Act 1994

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