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.

Incitec Pivot Limited
Level 8, 28 Freshwater Place
SOUTHBANK VIC 3006

Your reference: STAT1107 / EPPR00727713
Our reference: CA42899/ CR75521/ 101-0008776

13 February 2017

Dear Sir/ Madam

Take notice: that under the *Environmental Protection Act 1994* (the Act) this Environmental Protection Order (EPO) is issued to Incitec Pivot Limited (you) by the administering authority. The administering authority is the Chief Executive of the Department of Environment and Heritage Protection (the department).

The EPO is issued with respect to the activities of Incitec Pivot Limited at the Primary Distribution Centre on land described as Lease W on Lot 577 SP251252 situated at the corner of Hubert and Archer Streets, South Townsville QLD 4810 (the premises).

A. Grounds

This EPO is issued on the following grounds:

- Section 358(d)(iii) of the Act states that the department may issue an EPO to secure compliance with a condition of an environmental authority.
- Section 358(e)(iii) of the Act states that the department may issue an EPO if the person is, or has been, contravening section 440ZG of the Act.

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

1. Incitec Pivot Limited (IPL) is the holder of Environmental Authority EPPR00727713 (the EA) which authorises ERA 7(4)(b), being chemical manufacturing greater than 5,000 tonne/year, at the premises.
2. IPL manufactures and stores large quantities of ammonia-based granular fertilisers at the premises including urea, mono-ammonium phosphate and di-ammonium phosphate.

ABN 46 640 294 485

3. The Material Safety Data Sheet (MSDS) for these fertilisers identifies that they should not enter sewers or watercourses as at certain concentrations they may promote algae growth and degrade water quality.
4. The MSDS further identifies that human exposure to these fertilisers may cause eye, skin and respiratory irritation.
5. On 8 November 2016 at 9.30am, authorised persons commenced a site inspection at the premises for the purpose of determine IPL's compliance with the conditions of the EA.
6. Whilst undertaken the site inspection it was identified that there was a strong ammonia-type odour emanating from drains identified as P8 and P13 which form part of the underground clean stormwater management system.
7. The ammonia-type odour was at an intensity where departmental officers decided to avoid the area.
8. IPL representatives stated that they could also smell the ammonia-type odour as well.
9. It was further identified that fertiliser was present in the bitumen catchment of the clean stormwater system and within the drain identified as P13.
10. Based on observations from the site inspection, it appears that fertiliser has entered the clean stormwater system where it has reacted with either stormwater or tidal water to create ammonia gas.
11. The department requested the assistance of Queensland Fire and Emergency Services (QFES) to determine the intensity of the ammonia-type odour.
12. QFES officers attended the premises and determined that the peak concentration of ammonia gas within drain P13 was between 50-60ppm and greater than 70ppm within drain P8.
13. Ammonia is a colourless liquid or gas having a distinct pungent, irritating odour.
14. Ammonia gas is slightly lighter than air and once released it will rise and generally does not settle in low-lying areas.
15. Ammonia is a prescribed water contaminant (a gas other than oxygen) within item 2 of Schedule 9, Environmental Protection Regulation 2009.
16. The Occupational Exposure Limits for ammonia are summarised as follows (NIOSH, 1992[1]; OEHHA, 2003[2]):
    a) Short-term (15 Minutes) exposure limit: 35ppm
    b) 8-hour time weighted average: 25ppm
    c) 10-hour time weighted average: 25ppm
    d) Immediately dangerous to life and health: 300ppm
17. Drain P8 is within the bounds of the Naval Cadets premises and directly adjacent to a communal dining/activity area.
18. An authorised person under the Act concluded that the release of ammonia gas may adversely impact and/or threaten the health and safety of persons.
19. In addition, it appeared that an unknown quantity of fertiliser had entered the clean stormwater system.
20. Accordingly, IPL was issued with a verbal Emergency Direction on 08 November 2016.
21. Since then, IPL has flushed, collected, and disposed of contaminated water on numerous occasions.
22. However, the department considers that the underlying cause of the ammonia odour remains.

23. During the inspection, departmental officers observed that granular fertiliser had been released through the corrugations in the tin shed to the footpath of Archer Street, South Townsville.

24. IPL were previously issued with a Penalty Infringement Notice (Ref: Q4017661) on 22 December 2014 for breaching section 440ZG of the Act by releasing fertiliser in the same manner to the same footpath.

25. The EA contains the following conditions:

    C3-1: Contaminants must not be released from the site to any waters or the bed and banks of any waters.

    D5: Any spillage of fertiliser, wastes, contaminants or other materials must be cleaned up as quickly as practicable to prevent such spills entering the stormwater system. Such spillages must be cleaned in a manner which prevents the release of fertilisers, waters, contaminants or material to any stormwater drainage system, roadside gutter or waters.

    B2-1: The release of noxious or offensive odours or any other noxious or offensive airborne contaminants resulting from the activity must not cause a nuisance at any odour sensitive place.

    E3-1: Contaminants must not be released to land.

26. Section 440ZG (a)(ii) of the *Environmental Protection Act 1994* states:

    'A person must not unlawfully deposit a prescribed water contaminant in a roadside gutter or stormwater drainage'.

27. Measures are required to ensure IPL complies with condition C3-1, which will prevent contaminants being released to waters.

28. Measures are required to ensure IPL complies with condition D5, which will ensure the effective clean-up of fertiliser spillage on site and prevent contaminants being released to waters.

29. Measures are required to ensure that IPL complies with condition B1-2, which will prevent the release of noxious or offensive odours or any other noxious or offensive airborne contaminants at any odour sensitive place.

30. Measures are required to ensure that IPL complies with condition E3-1, which will prevent fertiliser from being spilt to any land surrounding the premises.

31. Measures are required to ensure IPL complies with section 440ZG (a)(ii) of the Act, which will prevent any prescribed contaminant from being deposited into a roadside gutter or stormwater drainage system.

B. Requirements

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

(1) As soon as practicable, but not later than 5.00pm on 31 March 2017, you are required to implement systems and procedures that prevent any contaminants from entering the sites stormwater system.

(2) As soon as practicable, but not later than 5.00pm on 7 April 2017, you are required to provide EHP with a report that outlines the steps and measures taken to achieve Requirement 1. This report should include photographic evidence and a water management plan in text and shown on a site map.

(3) As soon as practicable, but no later than 5.00pm on 31 March 2017, you are required to design and implement a Water Monitoring Program that includes, but is not limited to, the following:

    a. An onsite rainfall monitoring system; and

    b. Sampling points at drains P8, P13, and the exit point of the stormwater to the Archer Street stormwater drain; and

c. A sampling regime that includes, but is not limited to, analysis for the following parameters:
    i. Ammonia as N
    ii. pH
    iii. Nitrite and Nitrate as N
    iv. Total Nitrogen as N
    v. Total Phosphorous as P
    vi. Total Recoverable Hydrocarbons
    vii. Total Petroleum Hydrocarbons

d. The abovementioned sampling regime must occur at the following intervals:
    i. A weekly sample of drains P8, P13 and the exit point of the stormwater to Archer Street;
    ii. Sampling of P8, P13 and the exit point of the stormwater to Archer Street following any rain event;
    iii. A monitoring record of each sample interval will be taken, with the following information included:
        1. The date, time, sample point and sample collectors name
        2. The parameters that are to be analysed
        3. A description of the water being sampled including the colour, odour and other noticeable characteristics of the sample
        4. All monitoring records must be kept on file for a minimum of 5 years and must be available to EHP upon request.
    iv. If there is insufficient water at any sampling point at any time to collect a sample, the following must occur:
        1. A monitoring record of the date, time, sample point and sample collectors name must be noted.
        2. A date stamped photograph of the sample point/ drain must be taken that confirms that there is insufficient water to sample
        3. All monitoring records must be kept on file for a minimum of 5 years and must be available to EHP upon request

e. Evidence that a suitably qualified person is employed/ contracted to conduct the sampling

f. Evidence that all monitoring samples collected are analysed by a NATA accredited laboratory

g. The program must be in place for at least one (1) year from the date of issue of this EPO.

(4) By no later than 5.00pm on 28 April 2018, you are required to provide the department with evidence that Requirement 3 (the abovementioned water monitoring program) has been implemented in the form of raw and collated data, all monitoring records and a written annual monitoring report that summarises the data.
(5) As soon as practicable, but no later than 5.00pm 31 March 2017, you are required to implement permanent measures to prevent the spillage of fertiliser from the bulk storage shed to any land surrounding the premises.

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 6250 penalty units, totalling $761,875.00 or five years imprisonment.
- The maximum penalty for a corporation for wilfully contravening an EPO is 31,250 penalty units, totalling $3,809,375.00.
- The maximum penalty for an individual for contravening an EPO is 4500 penalty units, totalling $548,550.00
- The maximum penalty for a corporation for contravening an EPO is 22,500 penalty units, totalling $2,742,750

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

- The maximum penalty for an individual is 50 penalty units, totalling $6095.00.
- The maximum penalty for a corporation is 250 penalty units, totalling $30,475.00.

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

- The maximum penalty for an individual is 50 penalty units, totalling $6095.00.
- The maximum penalty for a corporation is 250 penalty units, totalling $30,475.00.

Section 3 of the Penalties and Sentences Regulation 2015 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 (EM709).[1]

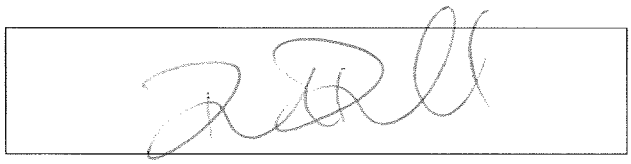
Where an application has been made for a decision to be reviewed, the applicant may also apply to the relevant court for a stay of the decision to secure the effectiveness of the review.

Once the original decision has been reviewed, a person who is dissatisfied with the review decision may be able appeal against that decision to the relevant court within 22 business days after receiving notice of the review decision.

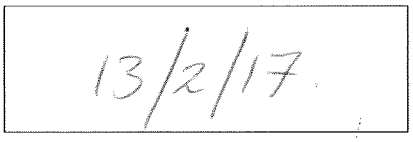
A person whose interests are or would be adversely affected by a decision of the department may also be able to request a statement of reasons for a decision or a statutory order review under the *Judicial Review Act 1991*.

For further information about reviews and appeals see the information sheet - internal review and appeal to the Planning and Environment Court (EM1866). 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 Kirsten Wright on telephone number (07) 4722 5362.



Signature



Date

David Darvall

Manager (Compliance)

Delegate of the Chief Executive

Department of Environment and Heritage Protection

Environmental Protection Act 1994

Enquiries:

Level 10 Verde Tower

445 Flinders Street Townsville QLD 4810

PO Box 5391 Townsville QLD 4810

Ph: (07) 4722 5362

Email: kirsten.wright@ehp.qld.gov.au

[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>.