

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.

Mt Moss Mining Pty Ltd
44-46 SIXTH STREET,
SOUTH TOWNSVILLE, QLD, 4810

Cc: Peter Curtain p.curtain@curtainbros.com.au
Cc: Donna Bath d.bath@curtainbros.com.au

Your reference: EPML00557513

Our reference: STAT1169

Dear Sir/Madam

Take notice: that under the *Environmental Protection Act 1994* (the Act) this environmental protection order (EPO) is issued to Mt Moss Mining Pty Ltd (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 in respect to your activities at Mining Leases 10171 and 10359 on land described as Lot 513 on OL404 and Lot 2 on SP266632 (the project site).

A. Grounds

This EPO is issued on the following grounds:

1. Section 358 (d)(iii) of the Act states that the administering authority may issue an EPO to secure compliance by the person with a condition of an environmental authority.
2. Section 358 (d)(i) of the Act states that the administering authority may issue an EPO to secure compliance by the person with the general environmental duty.

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

- 1) Mt Moss Mining Pty Ltd is the holder of Environmental Authority EPML00557513 (the EA) for the project site.
- 2) The Mt Moss mine site is located on Zig Zag Station near the old mining town of Ewan. The mine is approximately 105km west North West of Townsville and 40km west south west of Paluma.
- 3) Current infrastructure at the mine includes waste rock dumps, tailings storage facility, three open pits, haul roads, ROM pad, processing area, office and workshops, and various laydown and former stockpile areas. The mine site has been securely fenced to prevent vandalism and theft.

- 4) The following environmentally relevant activities (ERAs) stipulated under the *Environmental Protection Regulation 2008* are authorised to be undertaken at the project site:
 - a) ERA 8(1)(c) more than 500m³ chemicals of class C1 or C2 combustible liquids under AS1940 or dangerous goods class 3;
 - b) ERA 31(2)(b) processing, in a year, the following quantities of mineral products, other than coke – more than 10000t;
 - c) ERA 33 crushing, grinding, milling or screening more than 5000t of material in a yr;
 - d) ERA 56 receiving and storing regulated waste;
 - e) ERA 63(1)(b)(i) operating sewage treatment works, other than no-release works, with a total daily peak design capacity of more than 100 but not more than 1500EP if treated effluent is discharged from the works to an infiltration trench through an irrigation scheme;
 - f) ERA 9 a mining activity involving drilling, costeaning, pitting or carrying out geological surveys causing significant disturbance;
 - g) ERA 10 investigating the potential development of a mineral resource by large bulk sampling or constructing an exploratory shaft, adit or open pit; and
 - h) ERA 14 mining iron ore.
- 5) The Mt Moss mine site is currently in care and maintenance.
- 6) A compliance inspection of Mt Moss mine was conducted on 10 November 2016 to assess compliance with the EA and EPO STAT1067. Alan Matthews, Site Senior Executive (SSE) for Mount Moss Mining Pty Ltd, accompanied authorised officers during the inspection.
- 7) During the compliance inspection, authorised officers identified non-compliances with EPO STAT1067 as follows:
 - a) Requirement 1 of EPO STAT1067 states "Immediately upon receipt of this EPO, you must take all necessary actions to prevent any unauthorised release of contaminants from the project site to the receiving environment." During the inspection, officers identified that rock check dams designed to prevent the release of contaminated sediments from the mine site contained sediments trapped prior to the wet season. The rock check dams are required to be emptied to maintain maximum capacity for wet season inflows and prevent the release of these sediments from the project site.
 - b) Requirement 11 of EPO STAT1067 states "Provide written monthly reports to the department detailing all actions taken to ensure compliance with the requirements of this EPO." During the inspection, the requirement to provide monthly reporting was discussed. Monthly reports have not been received by the department.
- 8) Another compliance inspection of Mt Moss mine was undertaken on 8 March 2017. Authorised officers obtained consent from Mt Moss Mining Pty Ltd representatives to enter the project site. The inspection was to assess compliance with the conditions of the EA and EPO STAT1067. No representatives from Mount Moss Mining Pty Ltd accompanied authorised officers during the inspection.
- 9) During the compliance inspection on 8 March 2017, authorised officers identified non-compliances with the EA as follows:
 - a) Condition C1-2 of the EA states "If receiving waters at any site defined schedule C – Table 1, exceed any of the contaminant trigger levels stated in Schedule C - Table 2, the environmental authority holder must: complete an investigation in accordance with the ANZECC (2000) methodology, into the potential

for environmental harm; provide a written report to the administering authority within 3 months of the date of the original exceedance, outlining: details of the investigations carried out; and actions taken to prevent environmental harm." Runoff from the waste rock dump was observed to be reporting to a water storage located off-lease. This water storage is downstream of monitoring location SW1. It was observed that incidental surface water run off was directed from the waste rock dump and haul road surface areas to this water storage via a rock armoured drain which led under the boundary fence of the mining lease. A water sample was taken from this dam (labelled 'East Dam'). The water quality at this sample point was found to contain 7.0 µg/L of copper. This is an exceedance of the EA trigger level (Schedule C – Table 2) of 1.4 µg/L for dissolved copper for surface water. Water released from this water storage flows east for approximately 1.5km to enter the Williams Creek. Water released from this dam flows past sample point location SW3, likely influencing water quality at monitoring points downstream. No monitoring and/or investigation has been received by the department relating to water quality of this water storage and its potential impact on the receiving environment in the event of a release.

- b) Condition A3-1 of the EA states "The environmental authority holder must ensure: a) That all measures, plant and equipment necessary to ensure compliance with the conditions of this environmental authority are installed ;and b) That such measures, plant and equipment are maintained in a proper condition; and c) That such measures, plant and equipment are operated in a proper manner." The maintenance of all measures, plant and equipment necessary to ensure compliance with the conditions of the EA was not observed to have occurred at the project site. The clean and dirty water diversion bunds and rock check dams were observed to require maintenance as they contained sediments which could impede flow and efficient operation during a rain event.
- c) Condition C1-4 of the EA states "Contaminants that will, or have the potential to cause environmental harm must not be released directly or indirectly to any waters as a result of the authorised mining activities, except as permitted under conditions of this environmental authority."
- Contaminants in concentrations with the potential to cause environmental harm were identified in water quality samples collected from the water storage located outside the mine lease ML10171 (labelled as "East Dam").
 - Mineral concentrate was identified on the hard stand and loading area surfaces. During rain events, this material is likely to be transported to the naturally forming drainage lines appearing on the earthen surfaces.
 - Runoff from the operational area of the mine is reporting to Zig Zag Dam. Zig Zag Dam is not a regulated structure under the EA (Schedule H - Table 2). The water quality at this sample point was found to exceed the EA trigger level for dissolved copper. The sample result was 8.0 µg/L compared to the EA trigger level of 1.4 µg/L. Water released from Zig Zag Dam flows east for approximately 1.6km to enter the Williams Creek, which flows south for approximately 5.0km and joins Running River. Water released from Zig Zag Dam flows past sample point location SW3, likely influencing water quality at monitoring points downstream. No monitoring and/or investigation has been received by the department relating to water quality of this water storage and its potential impact on the receiving environment in the event of a release.
- d) Condition H2-14 of the EA states "The mandatory Reporting Level (MRL) must be marked on a regulated dam in such a way that during routine inspection of that dam, it is clearly observable." The Mandatory Reporting Level (MRL) marker was not identified at the Tailings Storage Facility during the site inspection.

- 10) During the compliance inspection authorised officers identified non-compliances with EPO STAT1067 as follows:
- a) Requirement 1 of EPO STAT1067 states "Immediately upon receipt of this EPO, you must take all necessary actions to prevent any unauthorised release of contaminants from the project site to the receiving environment." Authorised officers observed silt and sediment collected in rock check structures, while other rock check structures were constructed with rock material of a large aggregate size which could potentially allow the free movement of sediment laden water to leave the site.
 - b) Requirement 2 a) of EPO STAT1067 states "Ensure appropriately qualified and experienced personnel are at the project site to ensure compliance with this EPO; and." No personnel were observed/encountered onsite to maintain the existing controls required to comply with the EA and prevent environmental harm.
 - c) Requirement 2 b) of EPO STAT1067 states "Secure and maintain all infrastructure necessary to ensure compliance with the requirements of the EPO and that may be required for the ongoing mitigation of environmental risks and/or site rehabilitation is functional and operable; and". No mobile plant or equipment was observed at the project site in a ready state, or actively undertaking tasks for the ongoing mitigation of environmental risks or rehabilitation purposes.
 - d) Requirement 2 c) of EPO STAT1067 states "Maintain fuel supplies and access to power to ensure the ongoing operation of required measures, plant and equipment to ensure compliance with this EPO." Fuel tanks supply lines were observed to be disconnected from electrical power generation equipment, required to supply electrical power to equipment such as electrical sump pumps.
 - e) Requirement 6 of EPO STAT1067 states "Provide quarterly written updates to the administering authority on the progress of the investigations and findings to date and inclusive of all groundwater monitoring and analysis conducted during each period." No quarterly written report relating to the progress of investigations and findings to date relating to groundwater monitoring and analysis has been received by the department.
 - f) Requirement 11 of EPO STAT1067 states "Provide written monthly reports to the department detailing all actions taken to ensure compliance with the requirements of this EPO." No monthly reports have been received by the department.
- 11) Mt Moss Mining Pty Ltd has not complied with conditions of the EA, as stated above, and is considered to have committed an offence under section 430(1) of the Act.
- 12) Mt Moss Mining Pty Ltd has not complied with requirements of the EPO, as stated above, and is considered to have committed an offence under section 361(1) of the Act.
- 13) Mt Moss Mining Pty Ltd has not exercised the general environmental duty by taking all reasonable and practicable measures to prevent or minimise harm to the environment while undertaking out an environmentally relevant activity.

B. Requirements

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

- 1) Immediately upon receipt of this EPO, you must take all necessary actions to prevent any unauthorised release of contaminants from the project site to the receiving environment.
- 2) Within five (5) business days of receipt of this EPO, you must provide in writing to the department the name and contact details of a suitable representative who is authorised to act on your behalf. Should these details

change, or the contact person change, you must provide a written update to the department within twenty-four (24) hours of either change occurring.

- 3) In accordance with the Act, Section **360 Form and content of order**, an environmental protection order: *"may impose a reasonable requirement relevant to a matter or thing mentioned in section 358;"*
 - a) It is considered a reasonable requirement relevant to securing compliance by you with the general environmental duty and the conditions of your environmental authority to state that the actions required by this program must be completed by an **appropriately experienced and qualified person**.
 - b) An **appropriately experienced and qualified person** is, a person who has professional qualifications, training, and experience relevant to the nominated subject matter, and who can give authoritative assessment, advice and analysis on performance relative to the subject matter using relevant protocols, standards, methods and literature.
- 4) Within fifteen (15) business days of receipt of this EPO, you must submit to the department a program which determines the likelihood and consequences of environmental harm which may occur as a result of an unauthorised release of contaminants from the project site to the receiving environment. The program must include the ongoing controls and management to prevent the unauthorised release of contaminants from the project site. The program must, as a minimum:
 - a) Assess erosion and stability of the waste rock dump, topsoil stockpile, mineral concentrate stockpile, tailings storage facility and any other stockpiled materials;
 - b) Assess the current structural state and hydraulic performance of the Tailings Dam, Zig Zag Dam, and the water storage located immediately east of the mine lease boundary for ML10171, including any containment ponds and ancillary works associated with these structures;
 - c) The assessment must be in accordance with the "Manual for assessing consequence categories and hydraulic performance of structures" (ESR/2016/1933).
 - d) Identify all potential sources of contaminants on site;
 - e) Identify contamination pathways from identified contaminant sources to the receiving environment;
 - f) Where contamination pathways have been identified, the program must detail the control measures to be implemented by you to prevent the unauthorised release of contaminants to the receiving environment;
 - g) Identify all necessary infrastructure, plant, equipment and measures required to comply with this EPO and the EA;
 - h) Include timeframes for the completion of Requirements 4 a) to 4 g); and
 - i) Include ongoing monitoring of the site and continuous review of the program.
- 5) The program detailed in Requirement 4 must be developed by an **appropriately qualified and experienced person**.
- 6) You must not materially alter or dispose of any infrastructure, plant or equipment on the site that is necessary to ensure compliance with the requirements of EPO and the EA.
- 7) You must maintain fuel supplies and access to power to ensure the ongoing operation of required measures, plant and equipment to ensure compliance with this EPO and the EA.
- 8) Implement the program within the nominated timeframes in accordance with Requirement 4 h).

- 9) By 1 November each year, storage capacity must be available in each regulated dam (or network of linked containment systems with a shared DSA volume) to meet the Design Storage Allowance (DSA) volume for the (or network of linked containment systems).
- 10) You must provide a report to the department on 1 November and 1 April every year while this EPO remains in force. The report must address the requirements of this EPO, and must provide an update on progress the works being undertaken.
- 11) You must notify the department within twenty-four (24) hours of becoming aware of any non-compliance with the requirements of this EPO.
- 12) The requirements of the EPO continue to apply to you despite environmental authority EPML00557513 being cancelled, surrendered, suspended or otherwise brought to an end including by force of law.

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 \$788,437.50 or five years imprisonment.
- The maximum penalty for a corporation for wilfully contravening an EPO is 31,250 penalty units, totalling \$3,942,187.50.
- The maximum penalty for an individual for contravening an EPO is 4500 penalty units, totalling \$567,675.
- The maximum penalty for a corporation for contravening an EPO is 22,500 penalty units, totalling \$2,838,375.

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

- The maximum penalty for an individual is 50 penalty units, totalling \$6,307.50.
- The maximum penalty for a corporation is 250 penalty units, totalling \$31,537.50.

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 \$6,307.50.
- The maximum penalty for a corporation is 250 penalty units, totalling \$31,537.50.

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 ([ESR/2015/1573](#)).¹

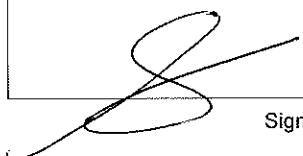
Where an application has been made for a decision to be reviewed, the applicant may also apply to the relevant court for a stay of the decision to secure the effectiveness of the review.

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 Genevieve Tassan on telephone number (07)4722 5360.



Signature

14 September 2017

Date

Natalie Simpson
Delegate of the Chief Executive
Department of Environment and Heritage Protection
Environmental Protection Act 1994

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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.

