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.

BHP Billiton Mitsui Coal Pty Ltd
Level 14, 480 Queen Street
BRISBANE CITY QLD 4000

Your reference:

Our reference: STAT1231; CA46284; EPML00712313; 101/0000133

18 October 2017

Dear Directors

Take notice: that under the *Environmental Protection Act 1994* (the Act) this environmental protection order (EPO) is issued to BHP Billiton Mitsui Coal 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 the activities of BHP Billiton Mitsui Coal Pty Ltd at South Walker Creek Coal Mine on land described as Mining Leases ML4750 and ML70131 (the premises).

A. Grounds

This EPO is issued on the following grounds:

- To secure compliance with Environmental Authority (EA) EPML0071233 Condition A4.

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

- A compliance inspection was conducted by the Department of Environment and Heritage Protection (the department) on 28 July 2017 to evaluate compliance of environmentally relevant activites (ERA) with conditions prescribed in the EA EPML0071233. Seepage from the mine affected water storage C Dam release point RP2 (GPS: E652610, N7591840) was observed.
- Further information was requested by the department in the post inspection letter dated 24 August 2017 on whether engineering or geotechnical investigations have been conducted to assess release point RP2 integrity and the current potential for a failure of the C Dam wall associated with the seepage at RP2.

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- On 6 September 2017 the department received a response from BHP Billiton Mitsui Coal Pty Ltd which included the report titled *BMC South Walker Creek Mine Dam C Rapid Release Outlets, Engineering Assessment*. The report was an engineering assessment of C Dam to determine what operational controls are required to minimise the risk of embankment instability. The report identifed the following:
    - C Dam was not constructed in accordance with the original design and construction plans;
    - The pressure pipes have not been installed in a manner normally adopted for water retaining structures; and
    - Potential failure modes with the current arrangement may result in seepage and eventual collapse of the structure.
- C Dam wall in the vicinity of the seepage is utilised as the main heavy vehicle haul road for South Walker Creek Coal Mine.

B. Requirements

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

C Dam Operational Management
1) On or before the **29 of November 2017** the environmental authority holder of EPML00712313 must develop and implement a certified RPEQ approved Operational Plan for C Dam for its current condition, and provide the department with a copy via email sent to CWES_Mackay@ehp.qld.gov.au
2) The C Dam Operational Plan must include; a) Safe operational reporting and capacity levels that prevent failure of the C Dam wall. Safe operational reporting and capacity levels must include: i. Considerations for the safe operating levels during potential or forecast wet season and rain event scenarios; ii. For areas identified with poor integrity and seepage, a risk assessment of shrinkage or expansion of C Dam wall material during seasonal or dry season or wet season influence or sudden changes to capacity; and iii. Risk assessment of the influence of pressure to release point RP2 infrastructure and the surrounding C Dam wall integrity caused by changes to storage levels. b) An adequate inspection schedule to detect changes to C Dam integrity and monitor storage levels. c) A maintenance schedule to ensure operational performance of the current seepage pump back infrastructure located at release point RP2.
3) For any change in the integrity of C Dam that is not identified or managed by the C Dam Operational Plan and the TARP (Triger Action Response Plan), the C Dam Operational Plan must be reviewed and approved by a certified RPEQ within six (6) weeks, and, a copy must be provided to the department via email sent to CWES_Mackay@ehp.qld.gov.au
4) Adequate pump back infrastructure must be available onsite to transfer water to other available water storages to manage safe operating levels until remedial works of C Dam wall,

	the haul road heavy vehicle separation works and the spillway works have been completed.
5)	The department must be notified in accordance with incident reporting condition A8, A9, A10 and A11 of EPML00712313 of any decline in integrity of C Dam or any increased seepage from the C Dam release point or the wall of C Dam.
C Dam Remedial Works	
6)	Within twelve (12) weeks from the date that the EPO takes effect, a program of works to repair the integrity of C Dam wall and release point RP2 must be developed and submitted to the department. The submissions must made via email sent to CWES_Mackay@ehp.qld.gov.au
7)	Works identified in action item 6 must be commenced as soon as reasonably practicable, and completed by **31 December 2019**.
8)	The EA holder of EPML00712313 must within 14 days of completion of action item 7 notify the department of the completeion of the works to C Dam and release point RP2 detailed within the program of works required in action item 6.

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 $567,675.00
- The maximum penalty for a corporation for contravening an EPO is 22,500 penalty units, totalling $283,837.50.

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.

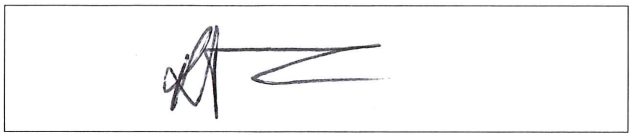
Once the original decision has been reviewed, a person who is dissatisfied with the review decision may be able appeal against that decision to the relevant court within 22 business days after receiving notice of the review decision.

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 Scott Netuschill on telephone number 4999 6888.

[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>.



Signature

18 October 2017

Date

Rebecca Munro

Manager (Compliance) Coal

Delegate of the Chief Executive

Department of Environment and Heritage Protection

Environmental Protection Act 1994

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