Notice

Environmental Protection Act 1994

Environmental Evaluation

Notice to conduct or commission another environmental evaluation

This notice to conduct or commission another environmental evaluation is issued by the administering authority pursuant to section 326I(2) of the Environmental Protection Act 1994.

Whitsunday Regional Council
83-85 Main Street
PROSERPINE QLD 4800

Your reference: EPPR00190813

Our Reference: CA38878 / STAT1235

2 November 2017

Take notice: that under the *Environmental Protection Act 1994* (the Act), a notice requiring you conduct or commission another environmental investigation and submit a report on the investigation is issued to Whitsunday Regional Council (you) by the administering authority. The administering authority is the Chief Executive of Department of Environment and Heritage Protection (the department).

This notice to conduct or commission another environmental evaluation is issued in respect to the activities by Whitsunday Regional Council at the Kelsey Creek Landfill on land described as Lot 160 on SP171910, Lot 277 on SP113325, and Lot 299 on SP113325 situated at Kelsey Creek Road, Proserpine QLD (the site).

A. Grounds

The notice to conduct or commission another environmental investigation is issued on the following grounds:

- Whitsunday Regional Council (WRC) hold environmental authority EPPR00190813 (EA) (previously registration certificate ENRE00693807 and conditions for which are included in developmental approval IPDE00656507), approving environmentally relevant activity (ERA) 60 – waste disposal, less than 50,000t of waste in a year [subsection 1(a)] and more than 20,000t, but less than 50,000t of waste in a year [subsection 2(e)].
- On 17 February 2016, a site inspection was conducted by departmental officers, which identified contraventions of conditions of the EA and concerns in relation to potential leachate management controls and subsequent potential exposure to groundwater and surface water.
- WRC provided the department a report titled '*December 2015 Leachate, Environmental Monitoring: Bowen and Kelsey Creek Landfills'* which contained the results of surface and groundwater monitoring conducted by Golder Associates on 17 and 18 December 2015. The department's Technical Support Unit assessed the report and advised that chemicals of concern (characteristic of leachate) were identified in both groundwater and surface water at the site and recommended further investigation.

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- WRC provided the department a report titled *'May 2016 Leachate, Environmental Monitoring: Kelsey Creek Road Landfill'* which contained the results of surface and groundwater monitoring conducted by Golder Associates on 11 and 18 May 2016. The results show that numerous samples exceed the National Environment Protection Measure (NEPM) published guidelines.
- On 8 February 2017 the department issued a notice to conduct or commission an environmental investigation to you (the 8 February 2017 notice).
- On 31 July 2017 you submitted an environmental report (the report) to the department.
- On 14 August 2017 the department issued a notice requesting further information to you.
- On 11 September 2017 you submitted further information to the department.
- On 9 October 2017, the department issued a notice refusing to accept the environmental report for the environmental investigation on the grounds that the report and the further information submitted by you does not adequately address requirements 1, 2(a)(i), 2(a)(ii), 2(a)(iii), 2(b)(iv), 2(b)(v), 2(b)(vii), 2(c), 2(d), 2(e), 2(f), 2(g), 2(h), 2(i) and 2(j) of the 8 February 2017 notice.
- In accordance with s326B(l)(2) of the Act, the department is satisfied on reasonable grounds that the above reports and non-compliances at the Kelsey Creek Landfill are causing, or are likely to cause environmental harm on the following environmental values: surface water and groundwater and requires that you conduct or commission another environmental investigation.

B. Requirements

The report on the environmental investigation must address the following matters:

Terms of reference

1. Develop and submit to a terms of reference document, outlining the methodology to be used to ensure that each 'assessment' and 'remediation' requirement listed below will be achieved.
2. A **suitably qualified person** must conduct the assessment as per requirements 6 to 18. Provide details of the **suitably qualified person** who has been commissioned by Whitsunday Regional Council to undertake the assessment, including:
    a. Qualifications; and
    b. Relevant experience.

    The definition of a **suitably qualified person** is provided at the bottom of this notice.
3. Provide a communication strategy for neighbouring property owners to assist in determining the extent, if any, of the groundwater and surface water contamination plumes. The strategy must also include how you will communicate any recommended actions as an outcome of the investigation to neighbouring property owners.
4. The terms of reference document must be provided to the department on or before **20 November 2017**.
5. Any comments made by the department on the terms of reference document must be considered and, where determined in consultation with department, included or implemented to ensure that each assessment requirement listed below is adequately undertaken and achieved.

Assessment

6. Conduct an assessment of the nature and extent of groundwater and surface water contamination from the landfill, and the effects on surrounding environmental values.

7. Provide a description of all surface and subsurface infrastructure (e.g. pipes, tanks, sumps, dams, bores) that could:
   i. Have been a source of contaminants;
   ii. Be affected by contaminants; and
   iii. Either be a barrier to or facilitate the migration of contaminants.

8. Provide a description of the surrounding land, including:
   i. All environmentally sensitive areas;
   ii. The quality of existing environmental values, in the context of the *Environmental Protection (Water) Policy 2009;*
   iii. Surface water, groundwater, wetlands and surface drainage that could be affected by or disperse contaminants; and
   iv. Any potentially impacted groundwater and/or surface water users.

9. Provide a conceptual site model which details potential contaminant sources and migratory pathways through the environment which in turn may impact sensitive receptors.

10. Provide information on the leachate analysis of any contaminants identified in the surface and subsurface soil directly beneath the site; under the areas (cells) where waste is buried and actively deposited.

11. Identify the type(s), depth(s), location(s) and hydrogeology of groundwater aquifer(s) in the area.

12. Determine ground water movement (transmissivity) based on the local hydrogeology.

13. Investigate and report on whether any leachate from under the areas (cells) where waste is buried and actively deposited, is causing groundwater contamination.

14. Determine the extent of contamination of groundwater by conducting a contamination plume assessment.

15. Establish an appropriate background control(s) groundwater monitoring well location to establish background quality data of each aquifer identified.

16. Compare the results from the background wells to the results within the plume and consider the impact of the areas (cells) where waste is buried and is actively deposited, measured against relevant water quality guidelines (ANZECC 2000).

17. Investigate and report on whether any leachate from under the areas (cells) where waste is buried and actively deposited, is causing surface water contamination.

18. The environmental report must be submitted to the department on or before **21 May 2018**.

Remediation

19. Based on the results of the assessment and the extent of released contaminants (leachate), a remediation action plan must be developed by a suitably qualified person and must ensure and provide for the ongoing protection of the environmental values of the receiving environment.

20. The remediation action plan must be submitted to the department on or before **20 August 2018**.

The environmental investigation must be carried out, and the environmental report prepared, by a **suitably qualified person** with relevant qualifications and experience.

A **suitably qualified person** is defined as a person or persons who has professional qualifications, training, skills or experience relevant to the nominated subject matter and can give authoritative assessment, advice and analysis of performance relative to the subject matter using the relevant protocols, standards, methods or literature.

As the recipient of this notice, you are also required to provide a statutory declaration in the form attached to accompany the environmental report submitted to the department. The suitably qualified person who prepares the environmental report must also provide a statutory declaration in the form attached to accompany the environmental report submitted to the department.

You can view an electronic version of the statutory declaration for a recipient using the search term (ESR/2016/1997).[1]

Take notice:

- the requirements of the notice to conduct or commission an environmental investigation take effect immediately upon service of this notice;
- this notice remains in force until further notice from the department; and
- you are responsible for meeting the costs of conducting or commissioning the environmental investigation, preparing the environmental report and providing any further information as requested by the department.

C. Reviews and appeals

The provisions regarding reviews of decisions and appeals are 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).

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.

[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>.

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 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.

D. Penalty

Failure to comply with a notice to conduct or commission another environmental investigation is an offence.

- The maximum penalty for an individual is 300 penalty units, totalling $37,845.00.
- The maximum penalty for a corporation is 1500 penalty units, totalling $189,225.00

Signature

2 November 2017

Date

Kate Harbert

Manager (Compliance)

Delegate of the Chief Executive

Department of Environment and Heritage Protection

Environmental Protection Act 1994

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