

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.

Amaca Pty Limited
ACN 000 035 512
Level 6, 56 Clarence Street
SYDNEY NSW 2000

CC. James Hardie Australia Pty Ltd
PO Box 3935
Sydney NSW 2001
Alex.Petrie@jameshardie.com.au

Your reference: **STAT1285**

Our reference: EPSL00063913; 101/0005374

31 May 2018

Dear Sir/Madam

Take notice: that under the *Environmental Protection Act 1994* (the Act) this environmental protection order (EPO) is issued to Amaca Pty Limited (you) by the administering authority. The administering authority is the Chief Executive of the Department of Environment and Science (the department).

The EPO is issued in respect to the activities of Mining Activities at Mining Lease ML1107 (the site).

A. Grounds

This EPO is issued on the following grounds:

- Under s.358(d)(iii) to secure compliance by Amaca with a condition of an Environmental Authority (EA).

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

1. You are the holder of EA EPSL00063913 (the EA).
2. Condition G4 of the EA states "*The environmental authority holder must comply with each of the standard conditions contained in the Code of Environmental Compliance for Mining Lease Projects.*" (the Code).

3. Condition 38 of the Code in operation at the time (January 2001, Version 0) states – *“The holder of the EA must complete the rehabilitation of areas disturbed by mining activities to the satisfaction of the administering authority...”*
4. During an inspection of the site on 8 December 2016, by authorised persons of the administering authority, evidence was gathered which identified that a retaining wall (the wall) and exposed waste material were present at the site.
5. The exposed waste included, but was not limited to, parts of the wall in a state of disrepair, piping, metal wire and grates, sediment fencing and star pickets in a state of disrepair.
6. The retaining wall and exposed waste were located in an area of the site disturbed by mining activities.
7. The wall and exposed waste were also observed during a prior inspection of the site in 2015, by authorised persons of the administering authority.
8. During the 2016 inspection, it was observed that no material rehabilitation efforts had been made since the 2015 inspection. The wall and exposed waste were identified as being in a position which was not considered safe, stable or self-sustaining.
9. You made an application in March 2015 for the surrender of the EA (the surrender application).
10. On 18 June 2015 the administering authority issued a notice refusing your surrender application (the refusal notice) on the grounds that; a retaining wall remains on ML1107 requiring rehabilitation; and waste material remains on ML1107 requiring removal.
11. In correspondence dated 9 February 2018, you confirmed that waste including asbestos containing material remains on site as well as the wall.
12. Based on the site inspections by authorised persons, the information contained within the surrender application, and the refusal notice, the administering authority is not satisfied that areas disturbed by mining activities at the site have been satisfactorily rehabilitated.

B. Requirements

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

1. Engage a suitably qualified person (SQP) in respect to removal of waste.
2. Engage a SQP in respect to:
 - a. rehabilitation of land (coastal areas and areas disturbed by mining); and
 - b. engineering with registration as a Professional Engineer of Queensland or equal qualifications.

It is noted that the SQP for requirement 1 may be a separate SQP to that for requirement 2.
3. The SQP(s) must be engaged no later than 1 month from date of issue of this notice.
4. No later than 1 month from date of issue of this notice, provide the administering authority:
 - a. written notification of the appointment of SQP(s); and
 - b. a written demonstration that the SQP(s) meets requirements relevant to the work to be undertaken.
5. Construct a rehabilitation plan (“the rehabilitation plan”) with the SQP(s) which outlines a set of actions required to:
 - a. remove the wall; and
 - b. remove all waste and infrastructure from the site which does not meet c.- i) to iv) below; and
 - c. rehabilitate the site in a manner which is:

- i) safe to humans and wildlife; and
 - ii) stable; and
 - iii) able to maintain natural coastal processes;
 - iv) or an alternative post mining land use as agreed in writing by the landowner.
- 6. The rehabilitation plan must include completion criteria and a set of timeframes, for commencement and completion of the actions to meet the completion criteria. The completion date of the actions required by the plan must be not later than 9 months from the date of issue of this Notice.
- 7. The rehabilitation plan must:
 - a. be submitted to the administering authority prior to implementation and within 4 months from date of issue of this notice; or
 - b. be submitted within timeframes as otherwise approved in writing by the administering authority.
- 8. Prior to commencement of any actions under the rehabilitation plan:
 - a. consultation must be undertaken with landowner(s); and
 - b. a written record must be kept and maintained of consultation actions undertaken by you (including but not limited to consultation time/date, method of consultation, details of all parties involved in consultation); and
 - c. a written record of this consultation must be provided to the administering authority.
- 9. In the event that works are to be undertaken by a party other than the landowner(s):
 - a. determine the form of consent for entry required by landowner(s), for the purpose of undertaking rehabilitation works; and
 - b. ensure that reasonable steps are taken to gain consent for entry; and
 - c. provide written notification to the department of steps undertaken to gain consent.
- 10. In the event that reasonable steps are taken to gain consent and consent is not acquired, written notification must be provided to the department which documents the reasonable steps taken. Upon receipt of such notification by the department requirements 11, 12 and 13 do not apply.
- 11. The rehabilitation plan must be implemented and the timeframes set in accordance with requirement 6 must be adhered to, or completed within timeframes as otherwise approved in writing by the administering authority.
- 12. If amendments to the actions in the rehabilitation plan are necessary, these actions must only commence if first notified in writing by the administering authority.
- 13. Within 3 months of the completion of the actions within the rehabilitation plan, submit a completion report which:
 - a. documents the rehabilitation works undertaken, including photos, and the confirms actions and completion criteria listed in the rehabilitation plan have been adhered to; and
 - b. demonstrates compliance with the EPO requirements; and
 - c. documents timeframes when actions were commenced and completed, and when completion criteria has been met; and
 - d. details any alternative or additional action that was undertaken once actions commenced.

14. Definitions

Administering authority means The Department of Environment and Science or its successor.

Consultation means the act of providing information or advice for, and seeking responses to, an actual or proposed event, activity or process.



The wall means the material along the fore dune area of the site including material marked as “fibrolite” that appears like a retaining wall.

Rehabilitation means the process of making a former mine site safe, stable and self-sustaining, and safe to humans and wildlife.

Site means the area where Mining Lease ML1107 is located.

Suitably qualified person is defined as holding i) current membership in a professional organisation prescribed under the *Environmental Protection Regulation, 2008 – Schedule 8* and ii) qualifications and experience relevant to the regulatory function undertaken at the site and in regards to this notice.

Stable means resistant to change in landform, pollution generation or land use potential to an extent that is similar to unmined land in the locality. The acceptable rates of change of specified parameters or the maximum risk of specified environmental harm may be set in an environmental authority.

Waste and infrastructure for the purposes of this notice includes but is not limited to metal wire and grates, metal pickets, mesh (including that previously used for sediment fencing) any piping material (whether asbestos/cement or otherwise).

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 or five years imprisonment.
- The maximum penalty for a corporation for wilfully contravening an EPO is 31,250 penalty units, totalling \$3,942,187 [Click here to enter text.](#)
- 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.
- The maximum penalty for a corporation is 250 penalty units, totalling \$ 31,537.

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.



- The maximum penalty for a corporation is 250 penalty units, totalling \$ 31,537.

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 Yvette Morgan on telephone number 5626 6865.



Signature



Date

Gus Gonzo
Delegate of the Chief Executive
Department of Environment and Science
Environmental Protection Act 1994

Enquiries:

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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.des.qld.gov.au.

