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.

Hanson Construction Materials Pty Ltd
(ACN 009 679 734)
Level 10, 35 Clarence St
SYDNEY NSW 2000

cc: PO Box 116
TOOWONG QLD 4066

phil.cole@hanson.com.au

Our reference: STAT1288 / EPPR01766213

18 June 2018

Dear Sir/Madam

Take notice: that under the *Environmental Protection Act 1994* (the Act) this environmental protection order (EPO) (reference: STAT1288) is issued to Hanson Construction Materials Pty Ltd (Hanson) 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 Hanson at Harts Road, Luscombe on land described as the following lot on plans: 1/CP893559, 80/CP893560, 117/CP893560, 1/CP893562, 2/RP813599, 2/RP167150, 7/CP893561, 2/RP15903, 5/CP893561, 67/WD1009 and 101/CP893561 (the premises).

A. Grounds

This EPO is issued on the following grounds:

- Alleged breaches of a condition of an environmental authority (EA); and
- Alleged breach of general environmental duty.

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

1. The department seeks to secure compliance with condition WT1 of environmental approval (EA) EPPR01766213.

   EA condition WT1 states: *The only contaminants to be released to surface waters are at Release Point W1 as identified in Attachment 1 Plan 1011.278 Revision 1 dated 08 October 2015 – in accordance with Table 1 – surface water release limits and the associated monitoring requirements. Suspended solids 50mg/L.*

ABN 46 640 294 485

a. On 6 March 2018, Hanson notified the department about a breach of sediment basin SB1 dam wall due to heavy rainfall on 23 February 2018 with the potential for release of contaminants to waters outside the conditions of the EA.

Monitoring results were provided to the department on 16 March 2018 and confirmed that the concentration of total suspended solids (TSS) in the releases were:

- 23 February 2018 - 320mg/L,
- 26 February - 80mg/L,
- 27 February 2018 - 110mg/L and
- 28 February 2018 - 74mg/L.

On each of these occasions, the releases to waters exceeded the EA limit of 50mg/L.

b. During an inspection conducted 21 March 2018, authorised persons noted a flow of turbid water through the culvert under Quarry Road (being EA release point W1) and established that Hanson had undertaken monitoring of this release.

Results of this monitoring provided to the department on 6 April 2018 confirmed the TSS concentration at release point W1 observed by authorised officers on 21 March 2018 was 63mg/L which exceeded the EA limit of 50mg/L.

Rainfall on the seven days prior to and including the 21 March 2018 was approximately 13mm which is well within the requirement in EA condition WT3 to capture or manage runoff from disturbed areas generated by a 24 hour storm event with an average recurrence interval of 1 in 5 years. As such, the department considers Hanson has breached condition WT1.

2. The department seeks to secure compliance with condition WT3 of environmental approval (EA) EPPR01766213.

EA condition WT3 states: *The stormwater runoff from disturbed areas, generated by (up to and including) a 24 hour storm event with an average recurrence interval of 1 in 5 years must be retained onsite or managed to remove contaminants before release.*

A 24 hour storm event with an average recurrent interval of 1 in 5 years is approximately 195mm at the Hanson quarry location.

Rainfall during the seven days prior to and including 23 February 2018 was 100mm therefore the release of contaminants at W1 on 23 February 2018 did not meet the capture or management requirements of EA condition WT3.

Rainfall on the seven days prior to and including the 21 March 2018 was approximately 13mm therefore the release of contaminants at W1 on 21 March 2018 did not meet the capture or management requirements of EA condition WT3.

3. The department seeks to secure compliance with the General Environmental Duty under s319 of the Act which states: *a person must not carry out any activity that causes, or is likely to cause, environmental harm unless the person takes all reasonable and practicable measures to prevent or minimise the harm (the **general environmental duty**).*

On 24 August 2016, the department identified non-compliant stormwater release (TSS 420mg/L) from Hanson during a site visit and issued a penalty infringement notice for breach of EA condition WT1.

Hanson proceeded to submit a Transitional Environmental Program (TEP) to the department on 28 February 2017, outlining actions to be taken to bring the activity into compliance by 31 August 2017. One of the commitments made in the TEP was to implement sediment and erosion control whilst undertaking works to increase the stormwater capture capacity of the site. The TEP was refused by the

department on the basis that the non-compliances were not unforeseeable, and that impacts could be managed in this manner ensuring the activity was compliant with EA limits.

On 18 October 2017 the department undertook another site inspection, after the dates committed to by Hanson in the program of works which accompanied the TEP application. During this site inspection, officers identified another non-compliant stormwater release from Hanson (TSS 220mg/L). The department issued Hanson two penalty infringement notices for a further breach of EA condition WT1 and breach of WT3.

During the site visit authorised officers noted the primary source of the release was from a newly constructed channel around the sediment basin SB1 and that this catchment contained an exposed overburden slope with evidence of rilling erosion and an exposed stockpile of soil, both stockpiles did not have erosion controls. These shortcomings in erosion and sediment control measures were brought to the attention of Hanson at the time of the site inspection, and in post-inspection correspondence.

At another planned inspection on 21 March 2018, during which a further non-compliant release of stormwater was observed, authorised persons noted the source of turbid flow was once again from the diversion drain around SB1, that the soil stockpile was only partially grassed and that there were no erosion control measures in place.

Sediment and erosion control measures are considered a reasonable and practicable measure to prevent or minimise the release of sediment to surface waters and therefore to minimise the risk of environmental harm. The department considers that Hanson have failed to meet the general environmental duty in carrying out the activity at this location.

B. Requirements

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

1. By 29 June 2018, Hanson must engage a Registered Professional Engineer QLD (RPEQ) with at least 5 years' experience in stormwater management to develop a plan of proposed stormwater infrastructure upgrades to ensure compliance with conditions WT1 and WT3 of the EA.
2. By 21 December 2018, Hanson must implement the upgrades developed under requirement 1.
3. At least once each calendar month from the date of this notice, until such time as the department considers this EPO finalised, Hanson must engage a RPEQ or Certified Professional in Erosion and Sediment Control (CPESC) to review disturbed or exposed areas that are not within the catchment of a completed sediment basin and recommend appropriate sediment and erosion controls to ensure compliance with condition WT1 and WT3 of the EA.

   Hanson must also install all sediment and erosion controls recommended by each monthly RPEQ and CPESC review.
4. At least once each calendar month from the date of this notice, until such time as the department considers this EPO finalised, Hanson must provide a report to the department demonstrating the progression of works undertaken to meet compliance with requirements 1, 2 and 3.
5. At least once each calendar month from the date of this notice, until such time as the department considers this EPO finalised, Hanson must advise the department of all water quality monitoring results required under EA condition WT1.
6. By 21 December 2018, Hanson must engage a RPEQ to review and certify the suitability of any dam structures constructed or stabilised under requirement 2.

7. By 15 January 2019, Hanson must submit a report detailing the engineer review from requirement 6 to the department for review.
8. By 31 January 2019, a suitably qualified person must develop an updated stormwater management plan commensurate with the current quarry design and Hanson must submit this to the department for review.

C. Obligations

If Hanson propose to dispose of the place or business to which the EPO relates, Hanson **must** advise the buyer of the existence of this EPO.

If Hanson cease to carry out the activity to which this EPO relates, Hanson **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 a corporation for wilfully contravening an EPO is 31,250 penalty units, totalling $3,809,375.
- 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 $6,095.
- The maximum penalty for a corporation is 250 penalty units, totalling $30,475.

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 $6,095.
- The maximum penalty for a corporation is 250 penalty units, totalling $30,475.

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). Hanson may have other legal rights or obligations and should seek your own legal advice.

Should Hanson have any queries in relation to the notice, please contact Rhoda Johanni on telephone number 07 5626 6893.

E Clarke

Signature

18 June 2018

Date

Liz Clarke
Manager (Compliance)
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.ehp.qld.gov.au>.