

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 and amended pursuant to section 24AA of the Acts Interpretation Act 1954

Amaca Pty Limited
ACN 000 035 512
Suite 2, Level 2, 56 Clarence Street
SYDNEY NSW 2000

CC. James Hardie Australia Pty Ltd
PO Box 3935
Sydney NSW 2001

Sachitha.Kaluarachchi@jameshardie.com.au

Your reference: **STAT1361**

Our reference: EPSL00063913; 101/0005374

1 March 2019 (and varied on 26 August 2020)

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 EPO is issued in respect to non-current Mining Lease ML1107 (the site).

This EPO was originally issued 1 March 2019 and was varied on 26 August 2020. New text in the varied notice is shown as underlined and deleted text is shown as strikethrough. The original notice remained in force until it was replaced by this notice on 26 August 2020.

A. Grounds

This EPO is issued and amended on the following grounds:

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

- Under s24AA of the *Acts Interpretation Act 1954* the power to make an instrument under an Act includes the power to amend the instrument.

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.
13. On 31 May 2018, an Environmental Protection Order (EPO) STAT1285 was issued to Amaca Pty Ltd with conditions, which effectively required the remediation of the site within 9 months from the date of the issue of the EPO.
14. On 20 February 2019 and 21 February 2019, Amaca made written submissions to the administering authority to amend or re-issue EPO STAT1285 on the ground that additional time was needed to secure relevant approvals, including authority to access the land under section 42AN of *Nature Conservation Act 1992*.
15. The administering authority has considered the written submissions from Amaca and a decision was made on 1 March 2019 to:
 - o Finalise STAT1285; and

- issue EPO, STAT1361.
- 16. On 1 March 2019, the department issued EPO (STAT1361) to Amaca Pty Ltd under s358 of the Act.
- 17. On 29 May 2020, James Hardie Australia Pty Ltd, on behalf of Amaca, made a written submission to the administering authority to amend EPO STAT1361 on the grounds that additional time was needed to complete the works due to the impacts of COVID-19.
- 18. In a meeting held on 12 June 2020, between the administering authority, James Hardie Australia Pty Ltd (James Hardie on behalf of Amaca Pty Ltd), and Quandamooka Yoolooburrabee Aboriginal Corporation (QYAC), advice was provided by QYAC that rehabilitation planting should occur between March and May 2021 to benefit from winter rains. Representatives of James Hardie were supportive of this approach.
- 19. The department has considered the representations of 29 May and 12 June 2020 and decided to amend EPO (STAT1361) to provide for additional time to complete the rehabilitation works.

B. Requirements

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

1. For any rehabilitation works required under this EPO:
 - a. Identify the approvals required to complete the works; and
 - b. Using best endeavours, promptly take all reasonable actions necessary to acquire the approvals; and
 - c. Keep a written record of all actions taken and the relevant times, to acquire the approvals; and
 - d. Provide such records to the administering authority upon request.
2. On or prior to close of business, on the last Friday of each month, submit a written report to the administering authority (monthly report), which
 - a. provides a progress update,
 - b. details the actions taken to comply with the notice over the reporting period (calendar month); and
 - c. details the actions expected to be taken over the coming month.
3. Retain the services of a Suitably Qualified Person/s (SQP/s) for the execution of the actions required under this notice.
4. The SPQ/s is to review and update the rehabilitation plan dated 25 September 2018.
5. The rehabilitation plan must outline a set of actions required to:
 - a. remove infrastructure known as a retaining wall for an abutment to a jetty; and
 - b. remove all waste and infrastructure upon the site which does not meet c.- i) to iv) below; and
 - c. rehabilitate the site in a manner that it 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 a set of timeframes, for commencement and completion of the actions and meeting of completion criteria listed in the rehabilitation plan.

The timeframes can be expressed in days/weeks/months from the time of obtaining any necessary approvals to lawfully complete the works.

7. An updated rehabilitation plan must be submitted to the administering authority within 1 month of the date of issue of this notice. This plan must also be updated and submitted the administering authority prior to undertaking any rehabilitation works. Due consideration must be given to any comments provided 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 including but not limited to consultation time/date, method of consultation, details of all parties involved in consultation; and
 - c. The written record of this consultation must be provided at the request of the administering authority.
9. In the event that reasonable actions are taken to gain approvals and/or landholder consent required to complete the works, and such approvals/ consent is not acquired, written notification must be provided to the administering authority which documents the reasonable steps taken. Upon receipt of such notice by the administering authority, requirements 10 and 11 do not apply to the extent that the required approval/ consent prevent compliance with this notice.
10. The rehabilitation plan must be implemented and all rehabilitation actions outlined in the plan completed:
 - a. ~~within 6 months of acquiring the necessary approvals and landholder consent to complete the work; and~~
 - b. ~~within 15 months from the date of issue of this notice.~~ by 30 June 2021.
11. 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.

12. Definitions

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

Approvals means a statutory approval required under Queensland Legislation.

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

Infrastructure known as a retaining wall for an abutment to a jetty 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 non-current 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 administering authority 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 \$815,937 or five years imprisonment.
- The maximum penalty for a corporation for wilfully contravening an EPO is 31,250 penalty units, totalling \$4,079,687.
- The maximum penalty for an individual for contravening an EPO is 4500 penalty units, totalling \$587,475.
- The maximum penalty for a corporation for contravening an EPO is 22,500 penalty units, totalling \$2,937,375.

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

- The maximum penalty for an individual is 50 penalty units, totalling \$ 6,527.
- The maximum penalty for a corporation is 250 penalty units, totalling \$ 32,637.

Failure to provide written notice within 10 business days of ceasing the activity to the administering authority is an offence.

- The maximum penalty for an individual is 50 penalty units, totalling \$ 6,527.
- The maximum penalty for a corporation is 250 penalty units, totalling \$ 32,637.

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 administering authority, may be able to apply to have the administering authority 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 administering authority 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 administering authority 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 appeals ([ESR/2015/1742](#)). 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 Rhoda Johanni Toshi Yoshino on telephone number (07) 5626 6893.



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>.