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.

Whitsunday Regional Council
83-85 Main Street
PROSERPINE QLD 4800

Your reference: EPPR00190813

Our reference: CA38878 / STAT1404

29 August 2019

Dear Directors

Take notice: that under the *Environmental Protection Act 1994* (the Act) this environmental protection order (EPO) is issued to Whitsunday Regional Council (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 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 4800 (the premises).

A. Grounds

This EPO is issued on the following grounds:

1. To require you to take reasonable measures to secure compliance with conditions WA1, WA7, WA8, L1, WA9 and WA13 of Environmental Authority EPPR00190813 (effective 12 March 2019) under section 358(d)(iii) of the Act. Those conditions are included in full in the facts and circumstances below.
2. To require you to take reasonable measures to secure compliance with the General Environmental Duty pursuant to section 358(d)(i) of the Act. The General Environmental Duty is detailed in s319 of the act which states the following:

   A person must not carry out any activity that causes, or is likely to cause, environmental harm unless the person takes all reasonable and practical actions to prevent or minimise the harm ***(the general environmental duty).***

ABN 46 640 294 485

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

1. You hold environmental authority (EA) EPPR00190813 (dated 12 March 2019) approving environmentally relevant activity (ERA) 60 – Waste disposal, less than 50,000t of waste in a year [subsection 1(a) of the *Environmental Protection Regulation 2008*] and more than 20,000t, but less than 50,000t of waste in a year [subsection 2(e) of the *Environmental Protection Regulation 2008*] at the Kelsey Creek Landfill.
2. A notice requiring you to conduct or commission an environmental evaluation was given to you on 2 November 2017.
3. A request to extend the timeframe for the submission of the environmental report and remediation action plan was submitted to the department on 20 December 2017.
4. A notice approving the extension request was given to you on 30 January 2018.
5. An environmental report was submitted to the department by you on 21 August 2018 titled *Golder Associates Pty Ltd (2018) Report – Environmental Evaluation – Kelsey Creek Landfill. Response to Notice STAT1235 – Kelsey Creek Landfill. 21 August 2018.*
6. As a result of the environmental report submitted, EA EPPR00190813 was amended on 14 March 2019 pursuant to section 326H of the *Environmental Protection Act 1994*. Specifically, condition WA9 and WA10 were replaced, to remove references to outdated monitoring plans, requiring a Stormwater and Leachate Monitoring Plan and Leachate Detection Monitoring Plan.
7. The environmental report identified and provided commentary on the non-compliances with EA EPPR00190813 listed and discussed below.
8. Condition WA1 states:

   'Monitoring must be undertaken and records kept of releases to waters from the discharge location for the parameters and not less frequently than specified in Schedule C Table 1. All determinations of the quality of contaminants released must be:
   (a) Made in accordance with the methods prescribed in the latest addition of the Environmental Protection Agency Water Quality Sampling Manual or demonstrated equivalent methods; and
   (b) Carried out on samples that are representative of the discharge'.

Table 1 (Release limits)

			Release limit		
Monitoring point	Discharge location	Quality characteristics	Minimum	Maximum	Monitoring frequency
Discharge from sediment dam	Sediment dam	Electrical Conductivity			Daily in the event of a release.
		Dissolved Oxygen	4 mg/L		Daily in the event of a release.
		pH	6.5	8.5	Daily in the event of a release.
		Turbidity		The greater of either background plus 10 NTU background plus 10%	Daily in the event of a release.
		Total Suspended Solids		30mg/L	Weekly in the event of a release.

9. Condition WA7 states:

   'Leachate must not be permitted to discharge beyond the boundary of the approved place, except where it is pumped to the Council sewage treatment facility'.

10. In relation to conditions WA1 and WA7, the environmental report states:

    i) *"Water Storages are not currently monitored during discharge and as such discharge quality to the receiving environment is not currently known."*

    ii) *"Stormwater controls on the site are currently inadequate to contain all potentially leachate affected stormwater onsite. (Maunsell Aecom, 2008) and (Golder Associates, August 2012) have recommended development of additional stormwater retention and controls onsite."*

    iii) "*Discharges are not monitored at the site boundary (southern swale, discharging to Lagoon Creek Tributaries East & West) so stormwater quality discharging into the receiving environment is not currently known"*

    iv) Condition WA1 does not require the licence holder to assess surface water discharge from the sediment pond for contaminants associated with leachate. Assessment of surface water discharges for the contaminants associated with leachate is required as the Golder report indicates:

        a. *"Leachate may potentially be impacting the water storage pond (SED1) in the east of the site".* This is supported by elevated concentrations of ammonia historically identified in SED1.

        b. "*Potential sources of leachate impact to the water storage ponds include leachate seepage into the ponds, or leachate –impacted surface water runoff from irrigation of leachate on interim or final capped surfaces of the waste mound, or leachate impacted stormwater runoff from operational areas*"

    v) Groundwater quality in monitoring bore MW5 is inconsistent with regional groundwater quality and may indicate impact associated with the landfill activities. Further investigation was recommended to identify the source of the impact.

11. Condition WA8 states:

    'With the exception of leachate that is pumped to the Council sewage treatment facility, leachate collected in the active landfill cell, and waters that have contacted waste, are to be reused only within the active landfill face'.

12. Condition L1 states:

    "Contaminants must not be released to land"

13. In relation to conditions WA8 and L1 the environmental report states:

    i) Leachate *disposal* occurs through irrigation across the top of the old waste mound which has been covered by final capping comprising a low permeability clay. Irrigation to non-active portions of the landfill are not permitted under condition WA8 of EA EPPR00190813.

    ii) Leachate irrigation on the interim and final capped slopes may be entering site stormwater systems during rainfall periods through runoff.

    iii) Whilst there is a leachate management procedure for the site, there is not a documented management strategy that identifies the volume of leachate requiring management and associated irrigation capacity. The leachate irrigation procedure and SBMP do not identify leachate irrigation management controls (including avoidance of over-irrigation, wind drift management and avoiding leachate runoff).

14. Condition WA9 states:

    A Stormwater and Leachate Management Plan (SLMP) must be developed by an appropriately qualified person and implemented for all stages of the landfill activities to minimise the contamination of stormwater and the release of contaminants to the receiving environment.

15. Condition WA9 was amended on 14 March 2019 following the submission of the environmental report to update references to outdated monitoring programs for groundwater and surface water.

16. Condition WA13 states:

> *A Leachate Detection Monitoring Program (LDMP) must be developed by an appropriately qualified person and implemented for all stages of the landfill activities to monitor for and identify leachate contamination in the receiving environment.*
>
> *The LDMP must include:*
>
> *a) Identification of environmental values and sensitive receptors;*
> *b) A Conceptual Site Model outlining potential source-pathway-receptor linkages;*
> *c) Identification of potential contaminants of concern to be sampled;*
> *d) Identification of sampling frequency;*
> *e) Identification of appropriate sampling locations to adequately assess any impacts to the environment. Sampling must include assessment of*
> *i. Groundwater*
> *ii. Surface water (including sampling at upstream, downstream and discharge points)*
> *iii. Stormwater discharge*
> *iv. Leachate sumps*
> *v. Water storage ponds*
> *f) Identification of appropriate sampling methodologies to be designed in accordance with Monitoring and Sampling Manual, Environmental Protection (Water) Policy 2009[1].*
> *g) Identification of relevant assessment criteria in accordance with the Environmental Protection Policy (Water) 2009.*
> *h) Details of quality control / quality assurance requirements*

17. Condition WA13 was amended on 14 March 2019 following the submission of the environmental report to update references to outdated monitoring programs for groundwater and surface water.

18. The environmental report states:

    i) The existing monitoring program/s do not reflect the current site operations and as such does not adequately ensure that all potential contaminant sources are appropriately monitored/managed. Key data gaps include:
        a. Leachate sumps are not included
        b. Surface water sampling points are not considered suitable to detect potential impacts to the receiving environment
        c. Water storage ponds are not included
        d. Frequency and contaminant analytical suites may be inadequate to characterise the risk to environmental receptors.

19. Leachate may currently be impacting the water storage pond and SED1 via seepage, with management of this infrastructure to be included within a whole of site leachate management strategy.

[1] Water Quality and Investigation, Department of Environment and Science (2018) Monitoring and Sampling Manual, Environmental Protection (Water) Policy 2009.

20. Current site stormwater systems are potentially an active exposure pathway for leachate contamination. This requires additional monitoring and management to characterise and mitigate the risks to the environmental values.
21. The General Environmental Duty (section 319 of the Act) requires all reasonable and practicable measures to be taken to prevent or minimise the likelihood of environmental harm occurring. The department considers that you have failed to take all reasonable and practicable measures to prevent or minimise environmental harm by failing to adequately manage and monitor impacts from the landfilling activities on groundwater and surface water (specifically leachate) as identified within the environmental report submitted to the department on 21 August 2018.
22. The department considers that you have contravened the conditions mentioned above and have failed to comply with the General Environmental Duty.

B. Requirements

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

1. You must commission an **appropriately qualified person** (AQP) to complete the requirements 3, 4, 5, 6, 7, 8 and 9 of this EPO. The definition of an appropriately qualified person is provided at the bottom of this notice.
2. By **29 September 2019**, you must provide the details of the appropriately qualified person who has been commissioned by Whitsunday Regional Council to undertake the assessment to the administering authority, including:
    a) Qualifications; and
    b) Relevant experience.

Assessment

3. You must undertake an assessment of the current stormwater and leachate management measures onsite to determine their effectiveness in minimising the contamination of stormwater and the release of contaminants offsite, and their effectiveness in ensuring compliance with the EA EPPR00190813.
4. Based on the assessment required under requirement (3), you must determine any additional management measures (including infrastructure) or changes to the current management measures for stormwater and leachate required to ensure compliance with EA EPPR00190813.
5. Based on the outcome of requirements (3) and (4), you must update the Stormwater and Leachate Management Plan (SLMP) required by condition WA9 of EA EPPR00190813 and submit to the department by **29 November 2019.**

    Any comments made by the department must be considered and where determined appropriate in consultation with the department, must be included or implemented into the SLMP.
6. If required, you must install all relevant measures identified as a result of the outcome of requirements (3) and (4) and as detailed in the SLMP required under requirement (5) to ensure compliance with condition WA9 of EA EPPR00190813 by **29 November 2020.**
7. You must develop and submit a copy of the Leachate Detection and Monitoring Program (LDMP) required by condition WA13 of EA EPPR00190813 to the department by **29 November 2019.**

    Any comments made by the department must be considered and where determined appropriate in consultation with the department, must be included or implemented into the LDMP.

8. The requirements of the LDMP must be implemented and sampling must occur on a quarterly basis for a period of 12 months. Sampling must be undertaken by an appropriately qualified person as per the definition, with the appropriate experience and qualifications to complete the groundwater and surface water sampling.

   The LDMP must be implemented from **29 November 2019 to 29 November 2020.**

9. Following completion of requirement (8), you must review all data associated with the groundwater monitoring bores at Kelsey Creek Landfill that is available to date, and make determinations as to whether MW5 is being impacted by landfilling activities. The findings identified in the Environmental Report submitted on 21 August 2018 titled 'Environmental Evaluation – Kelsey Creek Landfill' Table 26, pages 55-58, and detailed in section 11.4 must be considered in this review.

10. You must prepare and submit a report which documents the findings of the requirements listed under this EPO, including how compliance has been achieved with each requirement by **29 January 2021.**

All submissions must be sent to:

- 22-30 Wood Street, MACKAY QLD 4740; or
- Via email to CWES_Mackay@des.qld.gov.au

Definitions:

'Appropriately 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.

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 a corporation for wilfully contravening an EPO is 31,250 penalty units, totalling $4,079,687.50.
- The maximum penalty for a corporation for contravening an EPO is 22,500 penalty units, totalling $2,937,375.00.

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

- The maximum penalty for a corporation is 250 penalty units, totalling $32,637.50.

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

- The maximum penalty for a corporation is 250 penalty units, totalling $32,637.50.

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).[2]

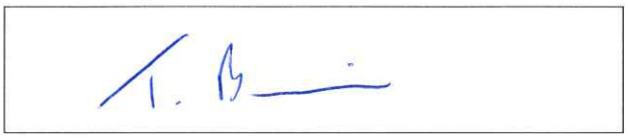
Where an application has been made for a decision to be reviewed, the applicant may also apply to the relevant court for a stay of the decision to secure the effectiveness of the review.

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 Naomi Camilleri on telephone number (07) 4999 6884



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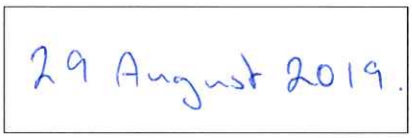

Date

Tim Brain

Manager Compliance

Delegate of the Chief Executive

Department of Environment and Science

Environmental Protection Act 1994

Enquiries:

Mackay Compliance Centre

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Email: CWES_Mackay@des.qld.gov.au

[2] 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>.