

Notice

Environmental Protection Act 1994

Clean-up Notice

This clean-up notice is issued by the administering authority pursuant to section 363H of the Environmental Protection Act 1994 to advise you of a decision requiring you to take the stated action in regard to a contamination incident.

Ernest Henry Mining Pty Ltd
Level 38, 1 Macquarie Place
SYDNEY NSW 2000

Your reference: EPML00899713; STAT1416

Our reference: 101/0009449; CR92075

9 January 2020

Take notice: that under section 363H of the *Environmental Protection Act 1994* (the Act) a clean-up notice is issued to Ernest Henry Mining Pty Ltd (you) by the administering authority. The administering authority is the Chief Executive of the Department of Environment and Science (the department).

The clean-up notice is issued in respect to the activities of Ernest Henry Mining Pty Ltd at Ernest Henry Mine situated at Mining Leases ML2671, ML90041, ML90072, ML90075, ML90085, ML90100, ML90107 and ML90116 (the premises).

A. Grounds

The clean-up notice is issued on the following grounds:

- A contamination incident has occurred. Between 2 February 2019 and 12 February 2019, you released mine affected water (MAW) which is a contaminant into the receiving environment of Gipsy Creek.
- You are a prescribed person for a contamination incident pursuant to section 363G of the Act.

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

- You are the holder of Environmental Authority EPML00899713 (EA) which authorises a number of environmentally relevant activities at the premises.
- Between 2 February 2019 and 12 February 2019, you released approximately 784ML of MAW from authorised discharge point SW12 (Northern Release Point stipulated under condition C1-2 of the EA) at the premises, into the receiving environment of Gipsy Creek.
- Ernest Henry Mining Pty Ltd (ACN 008 495 574), is considered to be a prescribed person for a contamination incident pursuant to section 363G of the Act because you caused or permitted the incident to happen; you were the occupier of the place at which the incident happened; and, you were the person in control of the contaminants involved in the incident.
- Following the release of MAW from SW12 in February 2019, water and stream sediment sampling in the Gipsy Creek receiving environment has been undertaken by you, and by officers of the department on a

number of occasions. Elevated concentrations of sulfate have been identified in the sampling conducted.

- You have conducted investigations into the impact of the release on the Gipsy Creek receiving environment, with the findings documented in the Gipsy Creek Surface Water Investigation Report (9 May 2019) and the Gipsy Creek Stream Sediment Investigation Report (26 July 2019).
- In the Surface Water Investigation Report it was identified that concentrations of sulfate and electrical conductivity found in the waters of Gipsy Creek immediately following the release event were likely to be toxic to aquatic fauna.
- In the Stream Sediment Investigation Report it was identified that there is a residual risk to the environmental values of Gipsy Creek from the elevated sulfate concentrations in stream sediments. The Stream Sediment Investigation Report also recommended that further investigations are conducted to determine if remediation of Gipsy Creek is required.
- You have also conducted investigations to determine if remediation of Gipsy Creek is required, with the findings documented in the Gipsy Creek Remediation Assessment and Plan (12 December 2019). In the Gipsy Creek Remediation Assessment and Plan it was identified that there were five locations downstream of release point SW12 where remediation is considered necessary.
- The administering authority is satisfied that there is residual contamination in Gipsy Creek caused by your release of MAW that requires remedial action to prevent or limit environmental harm.

B. Requirements

You are required to do the following:

1. As soon as practicable and by no later than 9 February 2020 (subject to weather conditions), you must remove contaminated material from Gipsy Creek in accordance with the *Gipsy Creek Remediation Assessment and Plan Document dated 29 November 2019 (v01.0)*.
2. By 31 January 2020, you must develop and submit to the department an environmental monitoring program sufficient to determine the impact of any residual contaminants in the receiving environment. The environmental monitoring program must be prepared by an appropriately qualified person(s).
3. By 24 March 2020, you must commence the implementation of the environmental monitoring program.
4. By 30 June 2020, you must develop and submit to the department, a Post Remediation Report. The Post Remediation Report must detail the remediation works undertaken on Gipsy Creek and their effectiveness, and the results of the environmental monitoring program. The Post Remediation Report must include:
 - a) A validation sampling program to determine the effectiveness of remediation works;
 - b) Rationale and justification for the selected validation sampling program;
 - c) Assessment of impacts on environmental values;
 - d) A comparison and review of previous relevant studies undertaken;
 - e) A comparison of post-remediation sample results with relevant reference sites; and
 - f) An assessment of whether further remediation works are required.
5. All requirements of this notice must be conducted in accordance with methodology consistent with the *Environmental Protection Act 1994, Environmental Protection (Water and Wetland Biodiversity) Policy*

2019, the Australian and New Zealand Water Quality Guidelines and the department's Monitoring and Sampling Manual Version 2 June 2018.

6. Any written notification or submission to the administering authority, as required by this notice, must be provided via email to estownsville@des.qld.gov.au and/or post to PO Box 5391 TOWNSVILLE, QLD 4810.

Definition: For this notice an '**Appropriately Qualified Person**' means a person who has professional qualifications, training, skills and experience relevant to the nominated subject matter and can give authoritative assessment, advice and analysis on performance relating to the subject matter using the relevant protocols, standards methods or literature.

Note:

- The requirements of the clean-up notice take effect immediately upon service of the notice.
- This notice remains in force until further notice from the administering authority.

C. Appeal rights

The provisions regarding reviews of decisions and appeals are found in sections 519 to 539 of the Act. Internal review of the decision to issue a clean-up notice is not available. If you are dissatisfied with the decision to issue this clean-up notice, you may apply to the relevant court for a stay of the decision to issue the clean-up notice.

A person who is dissatisfied with the decision may be able to appeal against that decision to the relevant court within 22 business days after receiving notice of the 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](#)) available on the Queensland Government website at www.qld.gov.au, using the publication number (ESR/2015/1742) as a search term.

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

D. Penalties


Failing to comply with a clean-up notice is an offence unless you have a reasonable excuse.

- The maximum penalty for an individual for wilfully contravening a clean-up notice is 6,250 penalty units, totalling \$ 834,062.50 or five years imprisonment.
- The maximum penalty for a corporation for wilfully contravening a clean-up notice is 31,250 penalty units, totalling \$ 4,170,312.50.
- The maximum penalty for an individual contravening a clean-up notice is 4,500 penalty units, totalling \$ 600,525.00.
- The maximum penalty for a corporation contravening a clean-up notice is 22,500 penalty units, totalling \$ 3,002,625.00.


If you do not comply with the clean-up notice, an authorised person may also take any of the actions stated in the notice and the department may recover from you the costs incurred in taking the actions.

Should you have any queries in relation to the notice, please contact Angela Sinopoli on telephone number (07) 4722 5277.

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Signature



Date

Jacob Toe

Delegate of the Chief Executive

Department of Environment and Science

Environmental Protection Act 1994

Enquiries:

Department of Environment and Science

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Email: Angela.sinopoli@des.qld.gov.au