

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.

Capricorn Copper Pty Ltd
Level 3, 232 Adelaide Street
Brisbane, QLD, 4000

Our reference: 101/0008746

2 December 2019

Dear Sir/Madam

Take notice: that under the *Environmental Protection Act 1994* (the Act) this environmental protection order (EPO) is issued to Capricorn Copper Pty Ltd, ACN 106 396 801 (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 Capricorn Copper Pty Ltd at the Capricorn Copper Mine, undertaken on the mining leases specified on environmental authority EPML00911413 and located on land described as Lot 5 on Plan CP865892 (the site).

A. Grounds

This EPO is issued on the following grounds:

1. Section 358 (d) (i) and (iii) of the Act: *To secure compliance by the person with — the general environmental duty and a condition of an environmental authority.*

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

1. You are the holder of environmental authority EPML00911413 (EA) which authorises mining activities at the site.
2. Regulated dams present on the site including Esperanza TSF, Esperanza Pit and Mill Creek Dam are listed in Schedule G – Table 1 (Regulated Dams) of the EA.
3. These dams contain large volumes of poor quality water.
4. Condition G5-2 of the EA details: *By 1 November of each year, storage capacity must be available in each regulated dam, to meet the Design Storage Allowance (DSA) volume for the dam.*

5. Failure to achieve DSA by 1 November of any year presents an unacceptable risk of an unauthorised contaminant release.
6. On 1 November 2019, you advised the department that the DSA for the Esperanza Pit and Mill Creek Dam was not achieved by 1 November 2019, as required under EA condition G5-2.
7. On 1 November 2019, department officers conducted an inspection at the site. The officers were accompanied by a surveyor, who was present to confirm the water storage heights of Esperanza Pit, Esperanza TSF and Mill Creek Dam. The results of the inspection confirmed that the DSA volume required for the Esperanza Pit and Mill Creek Dam was not available.
8. Condition G5-4 of the EA details: *The holder must, immediately on becoming aware that a regulated dam will not have the available storage to meet the DSA volume on 1 November of any year, act to prevent the occurrence of an unauthorised discharge from the regulated dam.*
9. You provided the department with water balance assessments in August 2019 and November 2019. Those assessments indicate that the site is accumulating water and carries an unacceptable spill risk.
10. Section 319 of the *Environmental Protection Act 1994* details: *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).*
11. Imported water from Lake Waggaboonya is a notable contributor to the sites net positive water balance. You currently do not have water treatment or management infrastructure onsite sufficient to offset this water use.
12. Court Order 3163 of 2015 is current for the site. Based on the water balance assessments you have provided the department, you will be challenged to achieve the water reduction on site required by the Court Order.
13. You are authorised to release discharge quality water to the receiving environment through W1 Release Point under the EA and Court Order 3163 of 2015. You currently do not have appropriate discharge infrastructure in place at the site that would provide for such a release.
14. Further action is required to manage the risk of an unauthorised discharge from the site.
15. In the circumstances where DSA has not been achieved, and with specific reference to the site, the department considers the matters listed in the requirements of this EPO, are reasonable and practicable measures necessary to minimise the potential for environmental harm.

B. Requirements

In accordance with this EPO, Capricorn Copper Pty Ltd (CCPL) are required to do the following:

- 1) From receipt of this EPO, you must take all reasonable and lawful measures to ensure that site **water inventory** is reduced to maximise the storage capacity available.
- 2) From receipt of this EPO to **1 April 2020**, you must provide written advice to the department at minimum once every 2 weeks detailing:
 - a) A summary of actions taken to comply with this EPO, including an update on the procurement, installation and commissioning of water reduction infrastructure;
 - b) The **water quality**, reduced level (RL) of stored water and available storage volume (ML) in each regulated dam;

- c) The **physical water quality parameters** in each regulated dam (analysed weekly);
 - d) A record of **water inventory** movement at the site, including volumes of imported water from Lake Waggaboonya, estimated water losses through management measures, and water transfer between regulated dams at the site; and
 - e) On a case-by-case basis, when requested by the department, an updated spill risk assessment.
- 3) By **30 November 2019**, you must install the necessary infrastructure onsite to enable the transfer of water from the **Esperanza TSF** and **Mill Creek Dam**, to the **Esperanza Pit**, sufficient to ensure that the integrity of the dams are maintained, and that the spill risk at **Mill Creek Dam** is managed to prevent an unauthorised release.
- 4) By **17 December 2019**, you must develop and provide the department with a copy of a Release Plan that addresses the following:
- a) The design of a variable flow, controlled release system, for discharging water from the **Esperanza Pit** through authorised release point W1 to **receiving waters**, and details as to why the design is fit for purpose;
 - b) The management arrangements in place, including available resources and equipment, to facilitate a lawful discharge from **Esperanza Pit**;
 - c) Contingency arrangements for reasonably foreseeable events including loss of power, restricted site access, rainfall events and changes in **Esperanza Pit** water quality; and,
 - d) Contact details of relevant stakeholders, and details of engagement arrangements with those stakeholders both prior to and following any release to **receiving waters**.
- 5) By **24 December 2019**, you must inspect and correct as necessary, catchment diversion structures and associated pumping infrastructure, using best endeavours to ensure clean water runoff does not contribute to the site **water inventory**. This must as a minimum include, but not be limited to, review of the Upper Esperanza Diversion Drain (UEDD) and Lower Esperanza diversion.
- 6) As soon as is reasonably achievable, and by **15 January 2020**, you must install **discharge infrastructure** onsite to enable the release of **discharge quality water** from site through authorised release point W1 to **receiving waters**.
- 7) The **discharge infrastructure** must be able to release a minimum of 500 litres per second and maximise the volume of **discharge quality water** able to be released to the **receiving environment** in varying flow conditions.

- 8) From receipt of this EPO until **1 May 2020**, you must release **discharge quality water**, when flow volumes in **receiving waters** exceed 2.0 cubic metres per second upstream of **W1 Release Point**. The release volume must be maximised within the constraints authorised by the EA and Court Order 3163 of 2015. A record of pump hours and the associated flow rates and times must be recorded. This release requirement does not limit any otherwise lawful release.
- 9) From receipt of this EPO until **1 May 2020**, on a fortnightly basis, you must monitor and record the water quality in regulated dams for all **contaminants of concern**.
- 10) From receipt of this EPO, you must use your best endeavours to maintain water stored in the **Esperanza Pit at discharge quality water**.
- 11) By **31 January 2020**, you must establish and operate a reverse osmosis treatment plant on site to treat a minimum 2 megalitres of site **water inventory** water per day, for the purpose of reducing raw water imported from Lake Waggaboonya.
- 12) By **1 April 2020**, you must undertake water balance investigations to evaluate:
 - a) Feasible strategies to eliminate the existing mine affected water surplus; and
 - b) Strategies to reduce to the maximum practicable level the import of water from Lake Waggaboonya.
- 13) By **1 May 2020**, you must prepare an Action Plan that details:
 - a) How the site will lawfully transition to achieve the required **design storage allowance (DSA)** of the **Esperanza TSF, Esperanza Pit and Mill Creek Dam**. The Action plan must set timeframes and deliverables for achieving the actions and justify the suitability of the actions and timeframes as consistent with the *Environmental Protection Act 1994*.
- 14) The requirements of this EPO remain in force until **1 June 2020**.

Definitions

“contaminants of concern” means all of the parameters detailed in Schedule C – Table 4 (Receiving Waters Contaminant Trigger Levels and Contaminant Limits) of Environmental Authority EPML00911413.

“design storage allowance” or **“DSA”** means an available volume, estimated in accordance with the *Manual for Assessing Consequence Categories and Hydraulic Performance of Structures (EM635)* published by the administering authority, that must be provided in a regulated dam as at 1 November each year in order to prevent a discharge from that dam to an “annual exceedance probability” (AEP) specified in that Manual.

“Discharge infrastructure” means infrastructure that is required to transfer discharge quality water from the Esperanza Pit to receiving waters through W1 release point.

“Discharge Quality Water” means water on the site that meets the discharge criteria set out in Court Order No. 3163 of 2015.

“Esperanza TSF” means the infrastructure titled Esperanza TSF detailed in Schedule A – Table 1 (Authorised Disturbance) of Environmental Authority EPML00911413.

“Esperanza Pit” means the infrastructure titled Esperanza Pit detailed in Schedule A – Table 1 (Authorised Disturbance) of Environmental Authority EPML00911413.

“Mill Creek Dam” means the infrastructure titled Mill Creek Dam detailed in Schedule A – Table 1 (Authorised Disturbance) of Environmental Authority EPML00911413.

“physical water quality parameters” means: Temperature, Electrical Conductivity, pH, Turbidity, and Dissolved Oxygen.

“receiving environment” in relation to an activity that causes or may cause environmental harm, means the part of the environment to which the harm is, or may be, caused.

“receiving waters” means waters including Gunpowder Creek, its tributaries and any underlying or hydraulically connected groundwater that is impacted, or may be impacted, by the mining activities.

“Upper Esperanza Diversion Drain” and **“UEDD”** means the infrastructure titled Upper Esperanza Diversion Drain detailed in Schedule A – Table 1 (Authorised Disturbance) of Environmental Authority EPML00911413.

“W1 Release Point” means the W1 Release Points detailed in Condition C2-1 and Schedule C – Table 1 of Environmental Authority EPML00911413.

“water inventory” means the water stored in regulated structures on site.

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 \$834,062.50 or five years imprisonment.
- The maximum penalty for a corporation for wilfully contravening an EPO is 31,250 penalty units,

totalling \$4,170,312.50

- The maximum penalty for an individual for contravening an EPO is 4500 penalty units, totalling \$600,525
- The maximum penalty for a corporation for contravening an EPO is 22,500 penalty units, totalling \$3,002,625

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

- The maximum penalty for an individual is 50 penalty units, totalling \$6,672.50
- The maximum penalty for a corporation is 250 penalty units, totalling \$33,362.50

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 \$6,672.50
- The maximum penalty for a corporation is 250 penalty units, totalling \$33,362.50

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](#)).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 appeals ([ESR/2015/1742](#)). You may have other legal rights or obligations and should seek your own legal advice.

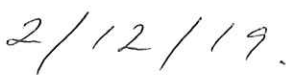
Should you have any queries in relation to this notice, please contact Calvin Quick of the department on telephone number (07) 4222 5161.

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>.

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Signature



Date

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

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Attachments

Information sheet - Internal review and appeals ([ESR/2015/1742](#))