

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

Mr Khaled Hammoud
Helidon Spa Caravan Park
7828 Warrego Highway
HELIDON QLD 4344

Our reference: SOR/114228 Part 1 / EPPR00489913

10 October 2013

Dear Mr Hammoud

Take notice: that under the provisions of the *Environmental Protection Act 1994* (the Act) this environmental protection order (EPO) is issued to you by the administering authority. The administering authority is the Chief Executive of the Department of Environment and Heritage Protection (the department).

The EPO is issued in respect to the activities of the Helidon Spa Caravan Park at premises on land described as Lot 23 on RP901411 situated at 7828 Warrego Highway, HELIDON QLD 4344 (the said premises).

A. Grounds

This EPO is issued on the following grounds:

- to secure compliance with a condition of an environmental authority; and
- to secure compliance with the general environmental duty under the *Environmental Protection Act 1994*.

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

- On 21 March 2005, the department received an application for a registration certificate under s. 73D of the *Environmental Protection Act 1994* (EP Act) in the name of Mr Khaled Hammoud, and on 22 March 2005 the department issued a registration certificate (Ref: ENRE00153205) for ERA 15(b) to Mr Hammoud.
- On 27 June 2007, the department issued a development approval under the *Integrated Planning Act 1997* for a material change of use involving an environmentally relevant activity as defined under the *Environmental Protection Regulation 1998* at the said premises, namely ERA 15(b) Sewage treatment –

operating a standard sewage treatment works having a peak design capacity to treat sewage of 100 or more equivalent persons but less than 1500 equivalent persons.

- On 1 January 2009, the *Environmental Protection Regulation 2009* commenced and *Environmental Protection Regulation 1998* was repealed, resulting in ERA of sewage treatment being re-described as ERA 63 (s. 147 of the *Environmental Protection Regulation 2008*). The department re-issued the registration certificate, by administrative amendment, on several occasions to reflect the amendments to the *Environmental Protection Regulation 2008*. The registration certificate was in force at the commencement of the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012*.
- On 31 March 2013, the *Environmental Protection Act 1994* was amended upon the commencement of the *Environmental Protection (Greentape Reduction) and Other Legislation Amendment Act 2012* as a result of this change —
 - the conditions of the development approval became the conditions of an environmental authority; and
 - the holder of the registration certificate became the holder of the environmental authority.
- The environmental authority was administratively created and assigned the reference EPPR00489913, although no physical document was issued to Mr Hammoud.
- Mr Khaled Hammoud is the holder of an environmental authority for ERA 63(1)(b)(i) being undertaken at the said premises.
- On 23 April 2013, officers Eleanor READ and Sally GREENUP of the department undertook a compliance inspection of the sewage treatment plant (STP) at the said premises.
- On 14 August 2013, the department issued a letter to "Khaled Hammoud, Woronora Caravan Park, 1 Menai Road Woronora NSW 2232" summarising the findings of the 23 April 2013 inspection identifying 23 non-compliances with the conditions of environmental authority EPPR00489913. The letter was 'Returned to Sender', and the department re-issued the letter (with modified compliance dates) on 11 September 2013. A copy of the letter dated 11 September 2013 is attached.
- On 9 October 2013, department officer Eleanor READ and Malgorzata SAJDEK attended the said premises to undertake a further inspection to ascertain whether steps had been taken to secure compliance with the conditions of environmental authority EPPR00489913.
- READ and SAJDEK observed large quantities of wastewater being released from the STP from the trommel and secondary tank to land surrounding the STP. These releases were outside the designated irrigation area as stated in condition Land 1 of environmental authority EPPR00489913. Samples of the wastewater were collected and a video was made showing the source of the release and the flow path of the wastewater release to land.
- Condition Land 1 of environmental authority EPPR00489913 states —

"Land 1: Land Disposal

The only contaminants permitted to be released to land are treated sewage effluent to the areas show (sic.) Appendix 1 – Site Layout in "Site Based Management Plans" dated 24 October 2008 with a maximum application area of 10,200m². Any contaminants released must be in compliance with the limits levels stated in Attachment 2 – Treated Effluent Release Limits and the conditions of this approval".

- The department has sought records required to be kept under the conditions of the environmental authority, but no records have been supplied.
- I am satisfied that the release of effluent from the STP is occurring contrary to condition Land 1 of environmental authority EPPR00489913.
- Photographic and video evidence provided by READ and SAJDEK reveal effluent being discharged, in part, as a result of inadequate maintenance of the sewage treatment plant.
- I am satisfied that the failure to appropriately maintain the STP is a contravention of the general environmental duty under s. 319 of the *Environmental Protection Act 1994*.
- READ and SAJDEK noted during the compliance inspection conducted 9 October 2013, that several non-compliances which had been identified in the letter of 11 September 2013 had not been rectified, specifically the following contraventions —
 - Condition Land 8 – Notices had not been prominently displayed on areas undergoing effluent irrigation, warning the public that the area is irrigated with effluent and not to use or drink the effluent;
 - Condition Land 9 – Measures have not been taken to prevent unauthorised access to the sewage treatment plant;
 - Condition Land 10 – Pipelines and fittings associated with the effluent irrigation area that were in publicly accessible areas were not fitted with lockable valves or removable handles; and'
 - Condition General 11 – The daily operation of the waste water treatment system and pollution control equipment was not observed to be carried out by a person with the appropriate experience.

B. Requirements

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

Requirement No.	Requirement	Action to be commenced by	Requirement to be completed by
1	Undertake works, repairs and maintenance of the STP and immediate surrounding area, necessary to cease any release of contaminants from the STP other than release at the irrigation area as stated in the environmental authority EPPR00489913 Condition Land 1, Appendix 1 – Site Layout in "Site Based Management Plan " dated 24 October 2008 with a maximum application area of 10, 200 m ² .	12 October 2013	21 October 2013
2	Undertake, or commission the undertaking of, sampling of the wastewater in accordance with Condition Land 1 of environmental authority EPPR00489913 being released from the STP and submit the results of the analyses to the department.		21 October 2013

3	Undertake, or commission the undertaking of, monitoring of the Contaminant Release Area in accordance with condition Land 19 of environmental authority EPPR00489913 and submit results of the monitoring to the department.		7 November 2013
4	Commission a review, by a suitably qualified person, of the hydraulic loading to the STP and provide a report to the department demonstrating that the total daily treatment design capacity of the STP is of a type and design that is satisfactory to treat sewage to the standards required under condition Land 1 of environmental authority EPPR00489913.		27 November 2013
5	Take all steps necessary to rectify the non-compliances identified by READ and SAJDEK during the inspection conducted on 9 October 2013.		21 October 2013

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 is 2,000 penalty units, totalling \$220,000 or 2 years imprisonment.
- The maximum penalty for a corporation is 10,000 penalty units, totalling \$1,100,000.

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

- The maximum penalty for an individual is 50 penalty units, totalling \$5,500.
- The maximum penalty for a corporation is 250 penalty units, totalling \$27,500.

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 \$5,500.

- The maximum penalty for a corporation is 250 penalty units, totalling \$27,500.

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 (EM709).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 (EM1866). 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 Eleanor Read on telephone number (07) 3381 7550.



Signature

Scott Blanchard
Manager, Southern Region West - Ipswich
Delegate of the Chief Executive
Department of Environment and Heritage Protection
Environmental Protection Act 1994

10 October 2013

Date

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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.

Information sheet

Environmental Protection Act 1994

Internal review and appeal to Planning and Environment Court

This information sheet forms part of an information notice under the Environmental Protection Act 1994. It gives a summary of the process for review and appeal to the Planning and Environment Court under the Environmental Protection Act and subordinate legislation. Refer to ss. 519 - 539 and schedule 2 of the Environmental Protection Act for complete information about the process for internal review and appeal to the Planning and Environment Court.

Introduction

The *Environmental Protection Act 1994* (EP Act) provides for a right of internal review and appeal against certain decisions made under the EP Act. Decisions that can be reviewed or appealed are listed in schedule 2 of the EP Act and within certain sections of the regulations and subordinate legislation¹ made under the EP Act. The EP Act also provides that a dissatisfied person for a review decision, other than those listed in part 1 of schedule 2 of the EP Act², may appeal the decision to the Planning and Environment Court (the Court).

Summary of the process for internal review and appeal to the Court

Chapter 11, Part 3 of the EP Act

Division 1 — Interpretation

Section 519 Original decisions

- 1) A decision mentioned in schedule 2 is an 'original decision'.
- 2) A decision under an environmental protection policy or regulation that the policy or regulation declares to be a decision to which this part applies is also an 'original decision'.

Section 520 Dissatisfied person

This section nominates the dissatisfied person for an original or review decision.

Division 2 — Internal review of decisions

Section 521 Procedure for review

- 1) A dissatisfied person may apply for a review of an original decision.
- 2) The application must—
 - a) be made in the approved form to the administering authority within—
 - i) 10 business days³ after the day on which the person receives notice of the original decision or the administering authority is taken to have made the decision (the 'review date'); or
 - ii) the longer period the authority in special circumstances allows ; and
 - b) be supported by enough information to enable the authority to decide the application.
- 3) On or before making the application, the applicant must send the following documents to the other persons who were given notice of the original decision—

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Internal review and appeal to Planning and Environment Court

- a) notice of the application (the 'review notice');
- b) a copy of the application and supporting documents.
- 4) The review notice must inform the recipient that submission on the application may be made to the administering authority within five business days after the application is made to the authority.
- 5) If the administering authority is satisfied the applicant has complied with subsection (2) and (3), the authority must, within 10 business days after receiving the application—
 - a) review the original decision;
 - b) consider any submissions properly made by a recipient of the review notice; and
 - c) make a decision (the 'review decision') to—
 - i) confirm or revoke the original decision; or
 - ii) vary the original decision in a way the administering authority considers appropriate.
- 6) The application does not stay the original decision.
- 7) The application must not be dealt with by—
 - a) the person who made the original decision; or
 - b) a person in a less senior office than the person who made the original decision.
- 8) Within 10 business days after making the review decision, the administering authority must give written notice of the decision to the applicant and persons who were given notice of the original decision.
- 9) The notice must—
 - a) include the reasons for the review decision; and
 - b) inform the person of their right of appeal against the decision.
- 10) If the administering authority does not comply with subsections (5) or (8), the authority is taken to have made a decision confirming the original decision.
- 11) Subsection (7) applies despite the *Acts Interpretation Act 1954*, section 27A.
- 12) This section does not apply to an original decision made by—
 - a) for a matter, the administration and enforcement of which has been devolved to a local government, the local government itself or the chief executive officer of the local government personally; or
 - b) for another matter — the chief executive personally.
- 13) Also, this section does not apply to an original decision to issue a clean-up notice.

Section 522 Stay of operation of original decisions

- 1) If an application is made for review of an original decision, the applicant may immediately apply for a stay of the decision to—
 - a) for an original decision mentioned in schedule 2, part 1—the Land Court; or
 - b) for an original decision mentioned in schedule 2, part 2—the Court.
- 2) The Land Court or the Court may stay the decision to secure the effectiveness of the review and any later appeal to the Land Court or the Court.

- 3) A stay may be given on conditions the Land Court or the Court considers appropriate and has effect for the period stated by the Land Court or the Court.
- 4) The period of a stay must not extend past the time when the administering authority reviews the decision and any later period the Land Court or the Court allows the applicant to enable the applicant to appeal against the review decision.

Division 4 — Appeals to Court

Section 531 Who may appeal

- 1) A dissatisfied person who is dissatisfied with a review decision, other than a review decision to which subdivision 1⁴ applies, may appeal against the decision to the Court.
- 2) The chief executive may appeal against another administering authority's decision (whether an original or review decision) to the Court.
- 3) A dissatisfied person who is dissatisfied with an original decision to which s. 521 does not apply may appeal against the decision to the Court.

Section 532 How to start appeal

- 1) An appeal is started by—
 - a) filing written notice of appeal with the registrar of the Court; and
 - b) complying with rules of court applicable to the appeal.
- 2) The notice of appeal must be filed—
 - a) if the appellant is the chief executive—within 33 business days after the decision is made or taken to have been made; or
 - b) if the appellant is not the chief executive—within 22 business days after the day the appellant receives notice of the decision or the decision is taken to have been made.
- 3) The Court may at any time extend the period for filing the notice of appeal.
- 4) The notice of appeal must state fully the grounds of the appeal and the facts relied on.

Section 533 Appellant to give notice of appeal to other parties

- 1) Within 8 business days after filing the notice of appeal, the appellant must serve notice of the appeal on—
 - a) if the appellant is the chief executive—all persons who were given notice of the original decision; or
 - b) if the appellant is not the chief executive—the other persons who were given notice of the original decision.
- 2) The notice must inform the persons that, within 10 business days after service of the notice of appeal, they may elect to become a respondent to the appeal by filing in the Court a notice of election under rules of court.

Section 534 Persons may elect to become respondents to appeal

A person who properly files in the Court a notice of election becomes a respondent to the appeal.

Section 535 Stay of operation of decisions

- 1) The Court may grant a stay of a decision appealed against to secure the effectiveness of the appeal.

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- 2) A stay may be granted on conditions the Court considers appropriate and has effect for the period stated by the Court.
- 3) The period of a stay must not extend past the time when the Court decides the appeal.
- 4) An appeal against a decision does not affect the operation or carrying out of the decision unless the decision is stayed.

Section 535A Stay of decision to issue a clean-up notice

- 5) This section applies to an application under section 535 for a stay of a decision to issue a clean-up notice.
- 6) In deciding the application, the Court must have regard to—
 - a) the quantity and quality of contamination of the environment that is likely to be caused if the stay is granted; and
 - b) the proximity of the place at or from which the contamination incident is happening or happened to a place with environmental values that may be adversely affected by the contamination.

Section 536 Hearing procedures

- 1) The procedure for an appeal is to be in accordance with the rules of court applicable to the appeal or, if the rules make no provision or insufficient provision, in accordance with directions of the judge.
- 2) An appeal is by way of rehearing, unaffected by the administering authority's decision.

Section 537 Assessors

If the judge hearing an appeal is satisfied the appeal involves a question of special knowledge and skill, the judge may appoint one or more assessors to help the judge in deciding the appeal.

Section 538 Appeals may be heard with planning appeals

- 1) This section applies if—
 - a) a person appeals against an administering authority's decision (whether an original or review decision) to refuse to grant a registration certificate or to accredit an environmental risk management plan (ERMP); and
 - b) a person appeals against the assessment manager's decision under the *Sustainable Planning Act 2009* about a planning or development matter for the premises to which the certificate or the ERMP or the application for the certificate relates.
- 2) On the application of a party to either of the appeals, the Court may order—
 - a) the appeals to be heard together or one immediately after the other; or
 - b) one appeal to be stayed until the other has been decided.
- 3) The application may be made—
 - a) by an appellant when starting an appeal or at any time before the appeals are decided; or
 - b) by another party at any time before the appeals are decided.
- 4) This section applies even though the parties, or all of the parties, to the appeals are not the same.

Section 539 Powers of Court on appeal

- 1) In deciding an appeal, the Court may—

- a) confirm the decision appealed against; or
 - b) vary the decision appealed against; or
 - c) set aside the decision appealed against and make a decision in substitution for the decision set aside.
- 2) If on appeal the Court acts under subsection (1)(b) or (c), the decision is taken, for this Act (other than this part), to be that of the administering authority.

Further information

The latest version of this publication can be found at <www.ehp.qld.gov.au>. Note: where available, the publication number (e.g. EM1866 for this document) can be used as a search term.

¹ The original decisions under the subordinate legislation are subject to change. As at 11 May 2010 they are listed in:

- Regulation 110 of the Environmental Protection Regulation 2008; and
- Regulation 68C of the Environmental Protection (Waste Management) Regulation 2000.

² An appeal may be made to the Land Court for original decisions in part 1 of schedule 2.

³ Under the *Environmental Protection Act 1994* "business days does not include a business day between 26 December and 1 January in the following year".

⁴ Subdivision 1 is about appeals to the Land Court and information about this is contained in ss. 519 - 539.