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.

Edmonbrook Pty Ltd
Alliance Business Partners
59 Roderick Street
IPSWICH QLD 4305

Your reference: CR62624

Our reference: 101/0007158; EPPR00422813

15 April 2014

Dear Mr Russell

Take notice: that under the provisions of the *Environmental Protection Act 1994* (the Act) this environmental protection order (EPO) is issued to Edmonbrook Pty Ltd 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 Edmonbrook Pty Ltd at Pine Mountain Quarry on land described as Lot 385 on CH31214 situated 203 – 237 Russells Road, Pine Mountain Qld 4306 (the said premises).

A. Grounds

This EPO is issued on the following grounds:

- To secure compliance with a condition of an environmental authority, namely conditions C1 and D10 of environmental authority EPPR00422813; and
- To secure compliance with the general environmental duty under s. 319 of the *Environmental Protection Act 1994*.

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

- On 28 March 2014, the administering authority received a complaint about contaminated stormwater being released from the said premises, the complainant alleging that the flow of water was contaminating various dams on the complainant's property. Adam BURT and John RICE, both authorised persons under the *Environmental Protection Act 1994*, made a visual examination of the dams on the complaint's property, and followed the drainage lines through the complainant's property to

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the boundary of the said premises, noting that most lines (other than the drainage line flowing from the said premises) were dry or had minimal flow.

- BURT and RICE inspected the drainage line flowing from the area recognised as the drainage line from the said premises, noting that it appeared to be highly turbid. BURT took a sample of water from the drainage line, and numerous photographs were taken.
- At approximately 10:10am on 28 March 2014 BURT and RICE entered the said premises to inspect stormwater management structures that are operated and maintained in connection with an environmentally relevant activity (ERA) under the *Environmental Protection Act 1994*. Two persons, Kale RUSSELL and "Rob" were present at the time of the inspection, and accompanied BURT and RICE during the inspection.
- RICE and BURT inspected the stormwater management and treatment pods on the site identified as "Pond 1", "Pond 2", "Pond 3" and "Pond 4" and made numerous incidental observations of the working areas and pads about the site. Numerous photographs were taken about the site, and a surface sample of what appeared to be water exhibiting high turbidity levels was collected from near the discharge point from "Pond 3".
- RICE asked RUSSELL if the location from which the sample was collected was the only path through which water flowed from "Pond 3", which RUSSELL confirmed to be the case.
- The flow of water from the discharge point from Pond 3 followed a clear flow path, which took the water beneath the boundary fence between the said premises and the adjoining premises (Lot 87 on Plan SP164649) situated at 283 – 297 Russells Road, Pine Mountain QLD 4306.
- BURT and RICE submitted the sample collected from the said premises with a laboratory that holds National Association of Testing Associated (NATA) certification for the method to undertake analysis of suspended solids. The administering authority received the results of the analyses on 8 April 2014. The results of analysis stated that the concentration of suspended solids in the water sample was found to be 980 milligrams per litre (mg/L).
- BURT and RICE also noted that significant rill erosion was evident on roads throughout the said premises, and that some earth slumping was evident on steep areas of exposed earth.
- Condition C1 of environmental authority EPPR00422813 states —

  "(C1) The environmentally relevant activities must be carried out by such practicable means necessary to prevent or minimise the release or likelihood of release of contaminants to waters.

- Condition D10 of environmental authority EPPR00422813 states —

  "(D10) Erosion control measures are to be undertaken in all stormwater diversion drains and on exposed areas which are not being worked by the quarry."

- I am satisfied, on the basis of the information available to me, that erosion control measures in place on the site were insufficient on exposed areas not being actively worked by the quarry, and that, as a consequence of failure to install and maintain adequate erosion controls measures, releases of sediment-laden water has occurred to sediment control structures on the site.
- I am satisfied that either or both of the following apply —
  - the sizing of the stormwater treatment infrastructure on the site is insufficient to properly treat contaminated stormwater; or

- the operation and maintenance of the stormwater treatment infrastructure on the site is inadequate or ineffective taking account of the levels of sediment being released from the quarry working area and exposed surface.

- I am satisfied that all reasonable or practicable measures have not been taken to prevent or minimise the likelihood of environmental harm occurring, and consequently, you have failed to comply with the general environmental duty under section 319 of the *Environmental Protection Act 1994*.

B. Requirements

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

Requirement No.	Requirement	Action commenced by	Action completed by
1	Submit revised stormwater management plan, with associated requirements, including calculations for the dimensions and maintenance of stormwater management infrastructure.		11 May 2014
2	Armour or consolidate exposed areas (other than those comprising the working face) to prevent or minimise mobility of sediment.	17 April 2014	20 June 2014
3	Implement measures stated in the revised stormwater management plan.	Within 1 week of submission of the revised stormwater management plan under requirement 1	The first of the following events: • 2 months after the submission of the revised stormwater management plan under requirement 1; or • by 11 July 2014.
4	Maintain stormwater and sediment and erosion measures and infrastructure.		Ongoing

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 John Rice, Principal Environmental Officer of the Department on telephone number (07) 3894 8159.

[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>.

	15 April 2014
Signature	Date

Chris Hill

Regional Manager, Environmental Services and Regulation

Southern Region West

Delegate of the Chief Executive

Department of Environment and Heritage Protection

Environmental Protection Act 1994

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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 legislation[1] 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 Act[2], 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 days[3] 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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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 1[4] 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.

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.

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[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.