Notice

Environmental Protection Act 1994

Environmental Protection Order (Varied)

This environmental protection order is issued by the administering authority pursuant to section 358 of the Environmental Protection Act 1994.

Ostojic Group Pty Ltd
Suite 1, 84 Woods Street
DARWIN NT 0800

Your reference: EPPR01755413

Our reference: STAT880 (Varied)

Date of issue: 28 November 2014

Dear Sir

Take notice: that under the provisions of the *Environmental Protection Act 1994* (the Act) this environmental protection order (EPO) is issued to Ostojic Group 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 Ostojic Group Pty Ltd at Ostojic bulk loading facility situated at Sir Hudson Fysh Drive, Cloncurry QLD 4824 (the premises).

A. Grounds

This EPO is issued on the following grounds:

- To secure compliance with conditions of environmental authority EPPR01755413; and
- To secure compliance with the general environmental duty pursuant to section 319 of the Act, which states:

  *"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**)".*

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

Contravention of condition of an environmental authority

1. Ostojic Group Pty Ltd ('Ostojic Group') is the holder of environmental authority EPPR01755413 (the 'EA'), which authorises Ostojic Group to carry out environmentally relevant activity 50(1)(b) (bulk mineral handling) on land described as Lot 138 on RP905659 (the 'licensed premises').
2. The EA contains conditions limiting the actual and potential environmental harm that can lawfully be caused in carrying out activities at the licensed premises.
3. On 4 September 2014, the department conducted an inspection of the licensed premises (the 'site inspection').
4. EA condition A8 requires Ostojic Group to provide monitoring records to the department within 14 days of a request. EA condition D1 states that Ostojic Group may only release contaminants to land or waters in accordance with the conditions of the EA. EA condition D3 requires Ostojic Group to conduct monitoring of releases from the licensed premises.
5. During the inspection, Ostojic Group representatives advised department officers that a release had occurred from the licensed premises on 28 February 2014 and that sampling of this event may not have been conducted.
6. Ostojic Group confirmed via email on 16 September 2014 that no monitoring results of the release event that occurred on 28 February 2014 were recorded and able to be provided to the department. This is a contravention of EA condition A8; furthermore, the department considers it likely that Ostojic Group has also contravened EA conditions D1 and D3, as there is no evidence of any monitoring being undertaken.
7. EA condition D6 requires a Stormwater Management Plan to be developed and implemented for the activities conducted at the licensed premises, stipulating minimum acceptable criteria for the plan.
8. On 12 April 2013, Ostojic Group submitted a document to the department titled "*Ostojic Group Pty Ltd Bulk Handling Facility Sir Hudson Fysh Drive Cloncurry Stormwater Quality Management Plan*, January 2013, prepared by GHD Pty Ltd (the 'Stormwater Report'). The department understands that this document has been developed to achieve compliance with EA condition D6.
9. The department considers that the Stormwater Report is yet to be implemented in a manner sufficient to achieve compliance with EA condition D6. This matter has been discussed on multiple occasions with representatives of Ostojic Group, including most recently during the site inspection.
10. EA condition D7 requires Ostojic Group to implement and maintain erosion and sediment control measures to minimise erosion and the release of sediment.
11. During the site inspection, department officers identified that insufficient measures were in-place at the sediment basin located on the northern perimeter of the licensed premises to achieve compliance with EA condition D7.
12. EA condition E1 states that contaminants must not be released to land.
13. During the site inspection, department officers observed material that was identified as mineral concentrate in areas adjacent to the storage shed; Ostojic Group representatives agreed that this material was mineral concentrate. This demonstrates that there has been a release of contaminants to land, which constitutes a contravention of EA condition E1.
14. Therefore, Ostojic Group is required to take action to ensure compliance with all conditions of the EA and prevent unlawful environmental harm from occurring.

Failure to comply with the general environmental duty

15. Ostojic Group has not taken all reasonable and practicable measures to minimise soil contamination within the licensed premises in order to reduce the potential for contaminant releases to air, land and waters, based on the facts and circumstances outlined below under points 16 to 20.

16. On 7 December 2011, the department issued Ostojic Group with a notice requiring a draft TEP to address dust nuisance and mineral concentrate management at the licensed premises.

17. On 18 May 2012, the department approved TEP MAN14060. Under TEP MAN14060, Ostojic Group were required to submit a Land Remediation Plan.

18. On 31 October 2012, Ostojic Group submitted a document to the department titled "*Ostojic Group Bulk Handling Facility Remediation Action Plan*, October 2012, prepared by GHD Pty Ltd (the 'Land Report'), as a requirement of TEP MAN14060.

19. During the site inspection, the department confirmed that Ostojic Group has failed to implement contaminated land remediation options detailed in the Land Report.

20. The department considers that to ensure compliance with the general environmental duty, Ostojic Group must implement measures to remediate contaminated land on the licensed premises prior to the upcoming 2014/2015 wet season, which could include certain remedial measures specified in the Land Report.

21. Ostojic Group has not taken all reasonable and practicable measures to reduce the potential for release of contaminated stormwater runoff beyond the boundary of the licensed premises, based on the facts and circumstances outlined below under points 22 to 26.

22. On 14 March 2013, EHP observed an unauthorised release point at the licensed place that discharged into an open grassed channel.

23. On 12 April 2013, Ostojic Group submitted the Stormwater Report to address EHP concerns in relation to the unauthorised release point.

24. The department has made multiple requests for Ostojic Group to implement measures specified in the Stormwater Report, via letters dated 28 May 2013 and 26 August 2013 and most recently during the site inspection, to ensure compliance with the general environmental duty.

25. The department considers that to ensure compliance with the general environmental duty, Ostojic Group must implement stormwater control measures at the licensed premises prior to the upcoming 2014/2015 wet season, which could include certain measures specified in the Stormwater Report.

26. EA condition D2 authorises contaminant releases in accordance with certain requirements, including the need to settle stormwater runoff prior to discharge from licensed premises. During the site inspection, department officers observed that insufficient sediment and erosion control structures were installed at the authorised release point situated on the eastern boundary of the licensed premises; as such, any release from this point would not comply with EA condition D2 and there is potential for unlawful environmental harm to occur. This matter demonstrates a failure on behalf of Ostojic Group to comply with the general environmental duty.

27. Therefore, Ostojic Group is required to take actions to prevent the potential for environmental harm in accordance with the general environmental duty pursuant to section 319 the Act.

B. Requirements

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

1. Before 15 December 2014, Ostojic Group must complete and document the following actions:

    a) Identify all contaminated material at the licensed premises with the potential to be mobilised and released to the receiving environment via airborne dust or in stormwater runoff ('contaminated material');

    For the purposes of this EPO, 'contaminated material' means material for which any constituent 'substance' exceeds the 'health-based investigation levels (mg/kg)' specified in column 'F' of 'Table 9.1. Investigation thresholds for contaminants in soils' in Appendix 9, page 55, of the *Draft Guidelines for the Assessment & Management of Contaminated Land in Queensland*, May 1998, published by the Queensland Government Department of Environment (the relevant section of this document is attached to this EPO).

    b) For the area shown in Figure 1 (refer to Attachment 1):

        i. Lawfully remove all contaminated material and dispose of this material off-site; or

        ii. Seal the area with bitumen excluding existing buildings, railway line, any areas required for land scaping in accordance with an approved landscaping plan or currently under Cloncurry Shire Council enforcement action and the proposed stormwater detention pond and bund located on the eastern boundary of the licensed premises; or

        iii. a combination of 1(b)(i) and 1(b)(ii), where part of the area is sealed and part of the area is remediated.

    c) Develop a groundwater monitoring program capable of determining if the activities conducted at the licensed premises are causing any impacts to groundwater quality; and

    d) Provide a certified report to the administering authority detailing all measures undertaken to comply with requirements 1(a), 1(b) and 1(c) of this EPO.

2. Before 15 December 2014, Ostojic Group must complete and document the following actions:

    a) Prevent all stormwater runoff generated from catchment areas external to the licensed premises from entering potentially contaminated areas of the licensed premises;

    b) Direct all stormwater runoff from potentially contaminated areas of the licensed premises to a suitably engineered containment structure within the licensed boundaries of the licensed premises;

    c) Implement all measures necessary to prevent unlawful contaminant release from the licensed premises to the receiving environment; and

    d) Develop and implement a surface water monitoring program sufficient to identify any unlawful contaminant release from the licensed premises within 2 hours of any release event commencing.

3. From 15 December 2014, Ostojic Group must notify the administering authority within 24 hours of becoming aware of any unlawful contaminant release identified through implementation of the surface water monitoring program undertaken to comply with requirement 2(d) of this EPO.

4. Before 16 January 2015, Ostojic Group must complete and document the following actions:

a) Complete validation sampling at the licensed premises sufficient to determine the presence of contaminated material outside of any sealed areas; and

b) Provide a certified report to the administering authority detailing all measures undertaken to comply with requirements 4(a) of this EPO.

5. Before 20 February 2015, Ostojic Group must complete and document the following actions:

a) Either remove or seal all contaminated material identified by requirement 4(a) of this EPO; and

b) Provide a certified report to the administering authority detailing all measures undertaken to comply with requirements 5(a) of this EPO.

6. Before 31 July 2015, Ostojic Group must commence implementation of the groundwater monitoring program developed for requirement 1(c) of this EPO.

7. Before 31 July 2017, Ostojic Group must provide a report to the administering authority detailing the findings of the groundwater monitoring program undertaken to comply with requirements 1(c) and 6 of this EPO.

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 $227,700.00 or 2 years imprisonment.
- The maximum penalty for a corporation is 10,000 penalty units, totalling $1,138,500.00.

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

- The maximum penalty for an individual is 50 penalty units, totalling $5,692.50.
- The maximum penalty for a corporation is 250 penalty units, totalling $28,462.50.

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 $5,692.50.
- The maximum penalty for a corporation is 250 penalty units, totalling $28,462.50.

Section 2B of the Penalties and Sentences Regulation 2005 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 (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 Fred Fabris on telephone number (07) 4222 5335.

Signature

28 / 11 / 14

Date

Ingrid Fomiatti Minnesma
Delegate of the Chief Executive
Environmental Protection Act 1994

Enquiries:
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CAIRNS QLD 4870
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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.

Attachment 1

Figure 1 – Location of area to be sealed

