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.

M & G Crushing and Materials Pty Ltd
LEVEL 10, 12 Creek Street
BRISBANE, QLD 4000

Your reference: EPPR01646013

Our reference: CA33728

12 November 2015

Dear Sir/Madam

Take notice: that under the provisions of the *Environmental Protection Act 1994* (the Act) this environmental protection order (EPO) is issued to M & G Crushing & Materials Pty Ltd (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 ERA 16(2b) Extracting rock or other material >5,000t but <100,000t per year and ERA 16(3a) Screening rock or other material >5,000t but <100,000t per year on land described as Lot 1 on Plan LD117 situated at Gingerella – Fossilbrook Road, BARWIDGI QLD 4872 (the premises).

A. Grounds

This EPO is issued on the following grounds:

- To secure compliance with conditions P3-WT1 of environmental authority EPPR01646013 ('the EA')
- To secure compliance with the General Environmental Duty under section 319 of the *Environmental Protection Act 1994*

Contravention of condition(s) of an environmental authority

1. You are the holder of the EA (see Attachment 1). The EA authorises you to carry out the following environmentally relevant activities (ERA) at the premises:
    a. ERA 16(2a) Extracting rock or other material >5,000t but <100,000t per year; and
    b. ERA 16(3a) Screening rock or other material >5,000t but <100,000t per year.
2. You have been undertaking extraction and screening at the premises since July 2009.

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3. The EA contains conditions which limit the actual and potential environmental harm that can lawfully be caused in carrying out the extractive and screening activities.
4. Departmental officers inspected the premises ('the site inspection') on 6 January 2015.
5. It was determined during the site inspection that an area of approximately 35.58 hectares had been disturbed by the extractive activity. Land disturbance is authorised under the EA subject to conditions which include the implementation of erosion and sediment control (ESC) measures.
6. EA condition P3-WT1 prescribes that an ESC plan must be prepared in accordance with the IE Aust QLD ESC guidelines, with particular attention given to FNQ rainfall events and associated calculations for sizing of sediment dams and the plans are to be endorsed by a Certified Practitioner. ESC measures must be implemented and maintained to prevent erosion and the release of sediment. The size of any sedimentation dam must be sufficient to contain the run-off expected from a 1 in 5 yr ARI 24 hour storm.
7. Departmental officers requested a copy of the ESC plan during the site inspection. The client provided a copy of a "Quarry Management Plan" which did not comply with condition P3-WT1 because it provided no requirements for:
    a. consideration of Far North Queensland rainfall events and associated dam sizing, or
    b. development of ESC measures by a Certified Practitioner.
8. Following the site inspection and subsequent discussions with the department, you commissioned a consultant to prepare an ESC plan and a Certified Practitioner in Erosion and Sediment Control (CPESC) was engaged to review the plan.
9. You submitted an ESC plan titled "Erosion and Sediment Control Plan incorporating Site Rehabilitation Plan – Gingerella Quarry, Lot 1 on LD117 (Version 8)" ('the ESC plan') to the department on 28 August 2015.
10. The CPESC found that the ESC plan "*generally complies with the intent of the IECA best practice guidelines for erosion and sediment control*" but did not certify the plan as compliant with CPESC requirements.

<u>Failure to comply with the General Environmental Duty</u>

11. The *Soil Erosion and Sediment Control: Engineering Guidelines for Queensland Construction Sites 1996* (IE Aust QLD ESC guidelines) establishes drainage and erosion controls as key principles. The Guidelines advise that erosion controls are favoured over sediment controls and that drainage control is the most effective method of erosion control.
12. The ESC plan gives limited consideration to drainage and erosion controls.
13. The extractive and screening activity has disturbed a large area which is characterised by highly erodible soils. The area more broadly experiences a yearly wet season during which intense rainfall events are common.
14. The Rocky Tate River is a Matter of State Environmental Significance listed feature which is located 100m to the north of the premises.
15. It is considered likely that, in the absence of best practice ESC measures, the premises will be susceptible to erosion causing mobilisation and release of sediment to the Rocky Tate River. Sedimentation of the river will have adverse effects on benthic communities by smothering and changes to stream bed morphology and on aquatic fauna by degradation of water quality characteristics including increased suspended solids and turbidity.

16. The activity is therefore considered likely to cause environmental harm and adversely impact the environmental values of the Rocky Tate River.
17. It is concluded that you have not undertaken all reasonable and practical measures to prevent environmental harm, due to the limited extent to which you have developed drainage and erosion controls.

B. Requirements

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

1. As soon as practicable, but not later than 12:00pm on 11 January 2016, you must undertake ESC works as detailed in the ESC plan to ensure that erosion and/or sediment release is prevented or minimised for the area of the premises affected by extractive activities at the time of this Notice. ESC measures to be implemented should include, but not be limited to:
    a. sediment dam/s designed and constructed to retain the runoff generated from all disturbed areas at the premises for rainfall events up to and including a 24 hour storm event with an Annual Recurrence Interval of 1 in 5 years[1]; and
    b. clean water diversion, erosion control measures, stockpile stabilisation, stabilised concentrated flow paths, and sediment control devices.
2. You must implement the other aspects of the ESC plan that are not dealt with by requirement 1 within 6 months of the date of this Notice. The plan must be implemented in a staged and reasonable and practicable manner ensuring any disturbance onsite is managed to minimise the release of sediment from the premises.

C. Definitions

No definitions.

D. 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 EPO take effect immediately upon service of the EPO;
- failure to comply with this EPO is an offence under the Act;
- this EPO remains in force until further notice from the administering authority.

E. Penalty

The recipient must not contravene an EPO:

[1] **24 hour storm event with an ARI of 1 in 5 years** means the maximum rainfall depth from a 24 hour duration precipitation event with an average recurrence interval of once in 5 years. *For example, at location XX an Intensity-Frequency-Duration table for a 24 hour duration event with an average recurrence interval of 1 in 5 years identifies a rainfall intensity of 7.09mm/hour. The rainfall depth for this event is therefore 24 hour x 7.09mm/hour = 170.16mm.*

- The maximum penalty is 4500 penalty units, totalling $530,100.

Section 2B of the *Penalties and Sentences Regulation 2005* prescribes the monetary value of a penalty unit.

F. 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).[2]

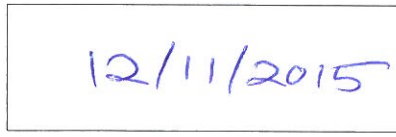
Where an application has been made for a decision to be reviewed, the applicant may also apply to the relevant court for a stay of the decision to secure the effectiveness of the review.

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 Senior Environmental Officer, Calvin Quick on telephone (07) 4222 5161.

	
Signature	Date

Scott Blanchard

A/Manager (Compliance)

Delegate of the Chief Executive

Department of Environment and Heritage Protection

Environmental Protection Act 1994

Enquiries:

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[2] 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>.