

Guideline

Environmental Protection Act 1994

Transitional environmental programs (TEPs)

This guideline has been prepared by the administering authority to provide information about TEPs issued under the Environmental Protection Act 1994 (the Act). The administering authority is the Department of Environment and Heritage Protection (the department). This guideline is designed to assist in preparing TEPs and to outline how the department will assess a program notice and decide whether or not to approve a draft TEP.

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Published on EHP Disclosure Log
RTI Act 2009

What is a TEP?

Section 330 of the Act provides that a TEP is a specific program which, when complied with, achieves compliance with the Act for the activity to which the TEP relates, by doing one or more of the following:

- reducing environmental harm caused by the activity;
- detailing the transition of the activity to an environmental standard;
- detailing the transition of the activity to comply with:
 - a condition (including a standard environmental condition) of an environmental authority (EA);
 - a development condition; or
 - a prescribed condition for carrying out a small scale mining activity.

TEPs are a useful tool to use when it is known what needs to be done to achieve a solution to an environmental problem, and the solution is likely to take a long period of time. As such, a TEP is not considered appropriate where an emergency situation exists.

A TEP must not be used to achieve compliance with an enforceable undertaking (EU). For more information in relation to EUs, refer to the Enforceable Undertakings Statutory Guideline ([ESR/2016/2272](#))¹.

The legislative provisions in respect to TEPs can be found in Chapter 7, Parts 3 and 4 (sections 330–357) of the Act.

What is environmental harm?

‘Environmental harm’ is any adverse effect, or potential adverse effect (whether temporary or permanent and of whatever magnitude, duration or frequency) on an environmental value, and includes environmental nuisance.

It may be caused by an activity whether the harm is a direct or an indirect result of the activity or whether the harm results from the activity alone or from the combined effects of the activity and other activities or factors.

An ‘environmental value’ is defined in section 9 of the Act as:

- a quality or physical characteristic of the environment that is conducive to ecological health or public amenity or safety; or
- another quality of the environment identified and declared to be an environmental value under an environmental protection policy or regulation.

Who can enter into a TEP?

A person (you) or public authority may enter into a TEP voluntarily, give the department a program notice under section 350 of the Act, or be required to submit a draft TEP by the department.

The term ‘person’ includes an individual or corporation.² A public authority includes the following;

- an entity established under an Act;
- a government owned corporation; and

¹ This is the publication number. The publication number can be used as a search term to find the latest version of a publication on the department’s website at www.ehp.qld.gov.au.

² Section 32D of the *Acts Interpretation Act 1954*.

- Queensland Rail Limited ACN 132 181 090.

When can the department require a TEP?

TEPs are specific programs that achieve compliance by reducing environmental harm or detailing the transition to an environmental standard. The department may require you or a public authority to prepare and submit for approval a draft TEP in the following circumstances:

- as a condition of an EA; or
- as a development condition of a development approval (DA); or
- if the department is satisfied that:
 - an activity carried out, or proposed to be carried out, is causing, or may cause, unlawful environmental harm;
 - it is not practicable for you or a public authority to comply with an environmental protection policy (EPP) or regulation on its commencement;
 - a condition of an EA or DA has been contravened;
 - a prescribed condition for carrying out a small scale mining activity is, or has been, contravened; or
 - an environmental protection order has been amended or withdrawn.³

When can a TEP be used?

TEPs may be used to progressively achieve compliance.

For example: a TEP could be used where an operator of an activity (you) is unable to meet effluent discharge limits because of a number of mitigating circumstances. You may consider submitting a TEP where it will take some time to implement measures that will bring the effluent discharge into compliance with your EA. The TEP will state the length of time that the upgrades will take, and how these measures will achieve compliance.

A TEP should not involve an extensive investigation to work out what needs to be done.

When is a TEP not appropriate?

TEPs are not appropriate and will typically not be considered by the department in circumstances where you are not in compliance because of a choice or decision that you have made about managing your environmental risk.

For example: if you choose to under-invest in a control measure and that control measure fails, the department will not approve a TEP to allow you to return to compliance. To do so would be to reward a decision which put the environment at risk, and put other operators who have invested in appropriate control measures at a disadvantage.

A TEP may also not be appropriate where you have been in non-compliance with the Act for an extended period, or where a TEP will seriously undermine the environmental outcomes you are required to achieve.

For example: if you have never complied with your EA conditions and have been given previous opportunities to remedy the non-compliance (through warnings or other compliance actions), a TEP will not generally be approved, as this would enable you to continue the non-compliance whilst other operators have been complying with their obligations.

³ Section 332 of the Act.

What is the effect of a TEP?

Once approved, a TEP gives you the ability to do, or not do, the thing under the TEP despite, and without being in contravention of:

- a regulation;
- an EPP;
- their EA or DA;
- a prescribed condition (small scale mining activity); or
- an accredited environmental risk management plan (ERMP).

How will I know if I am required to prepare and submit a draft TEP?

You will receive a written notice from the department if you are required to prepare and submit a draft TEP. The written notice will state:

- the grounds on which the requirement is made;
- the matters to be addressed by the TEP;
- the period over which the TEP is to be carried out;
- the day (at least a reasonable period after the notice is given) by which the TEP must be prepared and submitted to the department; and
- the review or appeal details.

Who can I contact?

The notice requiring you to prepare and submit a draft TEP will include the name and telephone number of a departmental officer than you can contact for assistance in relation to the notice or the matters surrounding the issuing of the notice.

Can a notice requiring a draft TEP be amended?

A notice requiring you to prepare and submit a draft TEP can be amended by the department if there have been minor errors or omissions indentified. The department will advise you by way of written correspondence when a minor amendment has occurred to correct those errors.

More serious errors that include errors of calculation, typing errors, errors of punctuation or of formatting which give rise to unintended changes of meaning can also be corrected by the department. If these are corrected, the department will advise you by way of written correspondence.

Significant amendments that affect your rights or liabilities will be detailed to you by way of a new notice, accompanied by a cover letter clearly stating the changes that have been made in the new notice. Significant amendments include, for example, imposing stricter requirements or an extension of time for requirement due dates.

What happens if I do not prepare and submit a draft TEP after receiving a notice?

Failure to comply with a notice to prepare and submit a draft TEP is an offence under the Act, unless you have a reasonable excuse.

- The maximum penalty for an individual is 100 penalty units.
- The maximum penalty for a corporation is 500 penalty units.

The State Penalties Enforcement Regulation 2014 prescribes the number of penalty units for an offence. Section 3 of the Penalties and Sentences Regulation prescribes the monetary value of a penalty unit.

The department will respond and may take further action in relation to non-compliance with a notice requiring a draft TEP. The following issues will be considered:

- **Providing extra time**—if extra time to comply has been granted, the details of the extra time allowed and the reasons for giving the extension of time will be provided in writing to you.
- **Other tools**—consideration will be given as to whether another statutory tool would be more likely to achieve compliance. For example, issuing an environmental protection order (EPO) in relation to the issue may be a more appropriate way to achieve compliance.
- **Prosecution**—if no other action is likely to be effective, prosecution may be considered for both the alleged failure to comply with the notice, and for any alleged environmental harm being caused.

What is a program notice?

If you are carrying out an activity that is lawful apart from the Act, you may give notice (a program notice) to the department about an action or a failure to act on your part, that has caused or threatened environmental harm (the relevant event). A program notice informs the department of the relevant event and your intention to prepare and submit a draft TEP.

The legislative provisions regarding program notices may be found in chapter 7, part 4 (sections 350–357) of the Act.

What must a program notice contain?

A program notice must be in the approved form ([ESR/2016/2219](#)) and must:

- give full details of the act or omission;
- declare your intention to prepare a draft TEP for the activity and submit it to the department; and
- state the other information prescribed by regulation.

You may submit with the notice any report, or the results of any analysis, monitoring program, test or examination, carried out by or for you for the relevant event.

Program notice privileged

If the relevant event stated in the program notice amounts to an offence against the Act (the original offence), the following are not admissible as evidence against you in a prosecution for the original offence:

- the giving of the program notice;
- the program notice itself; and
- any documents submitted with the program notice.

However, this does not prevent the department obtaining other evidence as a result of the information contained in the program notice and documents submitted with the notice, and using that other evidence in any legal proceeding against the person.

What happens once the department receives my program notice?

Within 10 business days after receiving a program notice, the department will give you a written notice:

- acknowledging receipt of the notice; and
- advising the day by which you must submit a draft TEP dealing with the activity to the department for approval, being a day not more than three months after the date the department received the program notice.

The effect of a program notice

Once the department receives a program notice, you cannot be prosecuted for a continuation of the original offence that occurs after the department receives the notice. This remains the case until any one of the following things happens:

- you receive an approval of a TEP from the department;
- you receive a notice of refusal to approve a draft TEP from the department; or
- if you do not submit a draft TEP for the activity to the department by the day stated in the receipt of program notice —the end of the stated day.

A program notice provides you with protection from prosecution while you are developing a draft TEP and if submitted, until an approval or a refusal is received from the department.

It is important to note that the department may take other compliance action against you, such as issuing an EPO, even if a program notice is submitted. The information in the program notice can be used to support the use of an EPO or other statutory tool.

If the approved TEP is not complied with, the program notice submitted in relation to the original offence ceases to apply, and therefore the holder of TEP is not provided immunity from prosecution for the original offence (the subject of the program notice).

Setting aside the effect of a program notice

The department is also able to apply to the Planning and Environment Court (the Court) for an order setting aside the effect of a program notice, in accordance with section 355 of the Act. The making of an application to the Court does not in itself automatically stop the program notice's effect.

The Court may set aside the effect of a program notice if satisfied that:

- the relevant act or omission has been wilfully done (or not done), with the intention of relying on the program notice as an excuse; or
- because of the nature and extent of the environmental harm caused, or threatened by a continuation of the offence, it is not appropriate for the effect of the program notice to apply.

The department must make an application to the Court within 20 business days of receiving the program notice unless the Court allows a longer period if there are special circumstances.

The Court may make any orders it considers appropriate pending a decision on the application, including anything to prevent a continuation of the original offence.

Failure to comply with an order of the Court is an offence.

- The maximum penalty for an individual is 3000 penalty units or two years imprisonment.
- The maximum penalty for a corporation is 15,000 penalty units.

The State Penalties Enforcement Regulation 2014 prescribes the number of penalty units for an offence. Section 3 of the Penalties and Sentences Regulation prescribes the monetary value of a penalty unit.

What must a draft TEP include?

Section 331 of the Act requires that a draft TEP must be in the approved form ([ESR/2016/2220](#)) and for the activity to which it relates:

- state the objectives to be achieved and maintained under the TEP for the activity;
- state the particular actions required to achieve the objectives, and the day by which each action must be carried out, taking into account:
 - the best practice environmental management for the activity; and
 - the risks of environmental harm being caused by the activity;
- state how any environmental harm that may be caused by the activity will be prevented or minimised, including any interim measures that are to be implemented;
- if the activity is to transition to an environmental standard, state:
 - details of the standard; and
 - how the activity is to transition to the standard before the TEP ends;
- if the activity is to transition to comply with a condition of an EA, a development condition or a prescribed condition for carrying out a small scale mining activity, state:
 - details of the condition and how the activity does not comply with it; and
 - how compliance with the condition will be achieved before the TEP ends;
- state the period over which the TEP is to be carried out;
- state appropriate performance indicators at intervals of not more than 6 months; and
- provide for monitoring and reporting on compliance with the TEP.

Best practice environmental management is defined in section 21 of the Act as the management of the activity to achieve an ongoing minimisation of the activity's environmental harm through cost-effective measures assessed against the measures currently used nationally and internationally for the activity. In deciding what is best practice environmental management of an activity, regard must be had to the following measures (without limitation):

- strategic planning by the person carrying out, or proposing to carry out, the activity;
- administrative systems put into effect by the person, including staff training and monitoring and review of the systems;
- public consultation carried out by the person;
- product and process design; and
- waste prevention, treatment and disposal.

Public notice requirement

The requirements in relation to public notice are detailed in section 335 of the Act. Public notice is required where you submit a draft TEP for approval that states the TEP is to be carried out over a period of longer than three years. The public notice must be given in the approved form ([ESR/2016/2286](#)).

Within 12 business days after the draft TEP is received by the department, you must give public notice of the submission by an advertisement published in a newspaper circulating generally in the area in which the activity subject to the draft program relates is, or is proposed to be, carried out. If the program relates to a premises, a notice must also be placed on the premises and served on the occupiers of all adjoining premises.

If further information is requested by the department to decide whether to approve the draft program, the public notice must be given within two business days of the response to the request for further information.

If the draft TEP requires public notification, the department must invite submissions on the draft TEP, and nominate a day by which submissions may be made to the department.

What happens once the department receives a draft TEP?

If you submit a draft TEP to the department, the department must consider the draft TEP and make a decision whether to approve or refuse the draft TEP, or to approve it with conditions.

Section 339 of the Act provides that the department may:

- approve a draft TEP as submitted;
- approve a draft TEP as amended at the request, or with the agreement, of the department; or
- refuse to approve a draft TEP.

If the department approves the draft TEP it may impose:

- any conditions the department must impose under a regulatory requirement;
- a condition requiring an amount of financial assurance as security for compliance with the TEP; and
- any other conditions considered appropriate by the department.

Section 340 of the Act provides that within eight business days of making a decision, the department must give you a written notice of the decision.

If the draft TEP is approved (with or without conditions), the notice of decision will:

- state the decision and reasons for the decision;
- state the review or appeal details;
- identify the documents forming the approved TEP, including any amendments;
- state any conditions imposed on the approval by the department; and
- state the day the approval ends.

If the draft TEP is refused, the notice will state:

- the decision;
- the reasons for the decision; and
- the review or appeal details.

Request for further information

In some cases a draft TEP cannot be approved because some matters have not been adequately addressed. In this situation, the department may ask for further information to be provided or that particular amendments are made to the draft TEP. If further information is required, you will receive an information request from the department. A request for further information will be made within 10 business days after the draft TEP is received. You must respond to the request for further information within the timeframe stated in the request. A

failure to do so within the timeframe will be taken as your response and the decision-making process will continue.

Circumstances when the department may call a conference

The department may invite you (the person who submitted the draft TEP), and another person who has made a submission under section 335 of the Act about the TEP, to a conference to help the department decide whether or not to approve the draft TEP.

What is the timeframe for the department in making a decision to approve a draft TEP?

Section 337(1) of the Act provides that the department must make its decision within 20 business days after:

- if a public notice is required under section 335—the day stated in the notice as the day by which public submissions may be made to the department;
- if public notice is not required and further information is not requested under section 334A(1)—the day the draft program is received by the department; or
- if public notice is not required and further information is requested under section 334A(1)—the day a response to the request for further information is received.

The department may extend the decision-making period if, before the extension starts, it gives an information notice about the decision to extend to:

- the person or public authority (you) that submitted the draft TEP; and
- any submitters.

The department may decide the length of the extension, and if necessary, whether any further extensions are required.

Note: If a public notice is required under section 335, the department must be satisfied public notice has been properly given before making a decision.

If the department fails to decide whether to approve or refuse a TEP in the required timeframe, the failure is, at the end of the time, taken to be a decision by the department to refuse to approve the program (section 343 of the Act).

What does the department consider in deciding whether to approve a draft TEP?

When deciding whether or not to approve a draft TEP or the conditions (if any) of an approval, the department:

- must comply with any relevant regulatory requirement; and
- subject to the above, must also consider (but is not limited to considering):
 - the standard criteria;
 - additional information given in relation to the draft TEP;
 - the views expressed at a conference held in relation to the draft TEP.

If the draft TEP is prepared because of a requirement of a development condition of a DA, the department may approve the draft TEP only if it is not inconsistent with other conditions of the approval.

What is the standard criteria?

The definition of 'standard criteria' in Schedule 4 of the Act includes:

- a) the following principles of environmental policy as set out in the Intergovernmental Agreement on the Environment:
 - i) the precautionary principle;
 - ii) intergeneration equity; and
 - iii) conservation of biological diversity and ecological integrity;
- b) any Commonwealth or State government plans, standards, agreements or requirements about environmental protection or ecologically sustainable development;
- c) any relevant environmental impact study, assessment or report;
- d) the character, resilience and values of the receiving environment;
- e) all submissions made by the applicant and submitters;
- f) the best practice environmental management for activities under any relevant instrument or proposed instrument as follows, and their financial implications as they would relate to the type of activity or industry carried out, or proposed to be carried out, under the instrument:
 - i) an EA;
 - ii) a TEP;
 - iii) an EPO;
 - iv) a disposal permit; and
 - v) a DA;
- g) the public interest;
- h) any relevant site management plan;
- i) any relevant integrated environmental management systems or proposed integrated environmental management system; and
- j) any other matter prescribed under a regulation.

Can a draft TEP be amended?

If only very minor amendments are necessary, the department will provide the opportunity to the person submitting a draft TEP to make the requested amendments.

However, if amendments are significant or complicated, the required amendments will be documented, and the department will formally ask you to provide further information, or make amendments and resubmit the draft TEP.

What is the content of an approved TEP?

An approved TEP consists of the following:

- the draft program as submitted under sections 332 or 333 of the Act, including any amendments made to the draft program at the request, or with the agreement of, the department;
- any conditions imposed on the program by the department.

Fees associated with TEPs

A fee is payable to the department for:

- assessment of a draft TEP;
- assessment of an annual return for a TEP;
- amendment of a TEP; and
- monitoring compliance with a TEP.

Fees for the assessment of a draft TEP are a minimum of \$445.60 (includes GST), plus an additional \$222.40 per hour (includes GST) or part thereof, charged after the first two hours. Fees for assessment of a TEP annual return and monitoring of a compliance program of a draft TEP are a minimum of \$445.60 (includes GST), plus an additional \$222.40 per hour (includes GST), or part thereof, charged after the first two hours plus any reasonable costs for analysis and travel.

- The reasonable cost for analysis will be the actual cost of the analysis to the department, plus GST.
- The reasonable cost of travel will be the cost of travel, plus GST.

The fee for assessing an application to amend a TEP is \$228.30 (includes GST).

An invoice will be issued by the department for the fees associated with the consideration of the draft TEP, at the time when the notice stating the department's decision is issued.

Annual returns

As the holder of a TEP, you must submit an annual return (on the approved annual return form [ESR/2016/2225](#)) and pay an annual fee within 22 business days after the anniversary of the TEP approval date. It is your responsibility to ensure that you submit an annual return to the department, and pay the corresponding fee.

Details on where to submit your annual return, and what payment methods are available, are outlined on the annual notice approved form ([ESR/2016/2225](#)).

Note: if your TEP exists for less than 12 months, the department will still calculate the reasonable cost of monitoring compliance against the TEP within the period of the TEP, and issue a tax invoice.

What happens if a TEP is approved and it relates to an EA?

Section 343A of the Act applies for TEPs relating to an EA. If a TEP is approved, the department must:

- include a note in the EA which states:
 - details of the approved TEP; and
 - that it is an offence to contravene a requirement of the TEP or a condition of an approval of a TEP; and
- give the EA holder a copy of the EA including the note.

The note is not an amendment to the EA.

Can an approved TEP be amended?

Once your draft TEP is approved, you may apply to amend an approved TEP under section 344 of the Act. The procedure for considering the amendment application is the same as for approval of a draft TEP, except the public notice requirements only apply in certain circumstances. If the amendment will extend the period over

which the TEP applies to longer than five years, the public notice requirements under section 335(2) and (3) apply to the amended submission as if the submission were for the approval of a draft TEP.

The department may approve the amendment only if it is reasonably satisfied that it will not result in an increase in environmental harm caused by the carrying out of the activity under the amended approval.

When deciding whether to approve an amendment the department must consider:

- the period under the original TEP;
- the period that remains under the original TEP;
- any change to the period under the original approval; and
- the nature of the risk of environmental harm being caused by the activity.

Review of decisions and appeals

The provisions regarding reviews of decisions and appeals are found in sections 519–539 of the Act.

A person who is dissatisfied with an original decision of the department may be able to apply to have the department review that original decision. The following decisions are original decisions and can be reviewed:

- the requirement by the department for a draft TEP;
- extension of time for the department to make a decision about whether to approve a draft TEP;
- decision on whether to approve, or to approve an amendment of an approval of, a draft TEP;
- approving a draft TEP with conditions;
- decision to make claim on, or realise, financial assurance;
- cancelling a TEP approval; and
- removal of immunity from prosecution for a person under a refusal to approve a draft TEP.

A dissatisfied person is the holder of the TEP approval or person or public authority that is required to submit, or submits the program.

Generally, an application for review of an original decision must be:

- provided to the department within 10 business days after the day on which the person receives notice of the original decision;
- supported by enough information to enable the department to decide the application for review; and
- made using the application for review of an original decision form ([ESR/2015/1573](#)).

Where an application has been made for an original 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.

The court may grant a stay of the review decision until such time as the appeal is decided. An appeal against a review decision does not affect the operation or the carrying out of a review decision unless that decision is stayed by the court.

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 ([ESR/2015/1572](#)).

Can a TEP be cancelled?

Section 344E of the Act gives the department the power to cancel approvals for TEPs for any of the following reasons:

- you agree in writing to the cancellation;
- you give the department notice under section 347(6) of the Act stating that you have disposed of the place or business to which the program relates;
- you give the department a notice under section 348 of the Act stating that you have ceased the activity to which the program relates;
- the department is otherwise satisfied that you have disposed of the place or business to which the program relates; or
- the department is otherwise satisfied that you have ceased the activity to which the program relates.

If the department decides to cancel an approval for a TEP, the department will:

- give you a notice that states the details of the cancellation; or
- if the department cannot locate you after making reasonable enquiries – record details of the cancellation in the register of TEPs.

The details of the cancellation that must be included in a notice or record include:

- that the approval is cancelled;
- the reason for the cancellation; and
- the date on which the cancellation takes effect.

Cancellation of a TEP approval takes effect on the date stated in the notice or record. The date for cancellation must be:

- at least 20 business days after the department gives the notice or makes the record; and
- if the approval is being cancelled after receiving a notice given under section 347(6) - after the place or business is disposed of.

If the department stops being satisfied that you have disposed of the place or business to which the program relates, or ceased the activity to which the program relates, the department must:

- give a notice under section 344F of the Act to withdraw the cancellation notice; or
- remove the record.

If a note about the TEP was included in an EA under section 343A of the Act, and that EA is still in force, the department must give the holder of the EA a copy of the EA that does not include the note.

Finalisation of a TEP

Once a TEP is complete, you should receive a finalisation letter as a courtesy to advise you that the department considers the TEP is finalised and is satisfied that all requirements have been met.

Penalties

The State Penalties Enforcement Regulation 2014 prescribes the number of penalty units for an offence. Section 3 of the Penalties and Sentences Regulation prescribes the monetary value of a penalty unit.

Penalties for a contravention of a requirement of a TEP

Failure to comply with a requirement of an approved TEP is an offence.

- The maximum penalty for an individual is 4500 penalty units.
- The maximum penalty for a corporation is 22,500 penalty units.

The holder of an approved TEP, or a person acting under a TEP, must not wilfully contravene a requirement of the program.

- The maximum penalty for an individual is 6250 penalty units or five years imprisonment.
- The maximum penalty for a corporation is 31,250 penalty units.

The holder of an approved TEP must ensure that everyone acting under the program complies with the program. If another person acting under the TEP contravenes a requirement of the TEP, then the holder of the TEP also commits an offence, namely the offence of failing to ensure the other person complies with the program. The same maximum penalty applies to the offence of failing to ensure another person complies with the requirements of the TEP and the offence of contravention of a requirement of a TEP.

Penalties for contravention of a condition of approval

Failure to comply with a condition of an approved TEP is an offence, unless the person has a reasonable excuse.

- The maximum penalty for an individual is 4500 penalty units.
- The maximum penalty for a corporation is 22,500 penalty units.

Wilfully contravening a condition of an approved TEP is an offence.

- The maximum penalty for an individual is 6250 penalty units or five years imprisonment.
- The maximum penalty for a corporation is 31,250 penalty units.

Other penalties

Failure to give the department an annual return within 22 business days after each anniversary of the day of approval of the TEP is an offence.

- The maximum penalty for an individual is 100 penalty units.
- The maximum penalty for a corporation is 500 penalty units.

If the holder of an approved prescribed TEP proposes to dispose of the place or business to which the program relates to someone else (the buyer), the holder must give written notice of the existence of the TEP to the buyer before agreeing to dispose of the place or business. A prescribed TEP is a program that does not relate to an EA.

Failure to give written notice of the existence of the TEP to the buyer before agreement is an offence.

- The maximum penalty for an individual is 50 penalty units.
- The maximum penalty for a corporation is 250 penalty units.

Failure to give written notice of the disposal to the department, within 10 business days after agreeing to dispose of the place or business, is an offence.

- The maximum penalty for an individual is 50 penalty units.
- The maximum penalty for a corporation is 250 penalty units.

Failure to give the department written notice of ceasing to carry out the activity to which a TEP relates, within 10 business days of ceasing the activity, is an offence.

- The maximum penalty for an individual is 50 penalty units.
- The maximum penalty for a corporation is 250 penalty units.

Other obligations for the holder of an approved TEP

In addition to the requirements of the TEP and any conditions imposed by the department, the holder must also meet their obligations under the Act, and the regulations made under the Act. For example:

- the holder must comply with the following provisions of the Act:
 - i. general environmental duty (section 319); and
 - ii. duty to notify environmental harm (sections 320–320G);
- the holder must also ensure that they do not commit offences of:
 - iii. causing serious or material environmental harm (sections 437–439);
 - iv. causing environmental nuisance (section 440);
 - v. depositing prescribed water contaminants in waters and related matters (section 440ZG); and
 - vi. placing contaminant where environmental harm or nuisance may be caused (section 443).

Penalties apply for each of these offences and the department will determine the appropriate compliance and enforcement response in accordance with its [enforcement guidelines](#).

Approved by:

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Date: 3 March 2016

Version history

Version	Effective date	Description of changes
1.01	3 March 2016	Initial upload.
2.00	18 July 2016	The document template, header and footer have been updated to reflect current Queensland Government corporate identity requirements and comply with the Policy Register.

Disclaimer

While this document has been prepared with care it contains general information and does not profess to offer legal, professional or commercial advice. The Queensland Government accepts no liability for any external decisions or actions taken on the basis of this document. Persons external to the Department of Environment and Heritage Protection should satisfy themselves independently and by consulting their own professional advisors before embarking on any proposed course of action. This document will be reviewed on an ongoing basis and is subject to change without notice.

Procedural Guide

Environmental Protection Act 1994

Environmental protection order

This document is intended for internal use to assist officers of the Department of Environment and Heritage Protection (the department) in issuing an environmental protection order, pursuant to Chapter 7 Part 5 of the Environmental Protection Act 1994.

Version history

Version	Effective date	Description of changes
1.00	29 September 2015	Initial upload.
2.00	6 July 2016	The document template, header and footer have been updated to reflect current Queensland Government corporate identity requirements and comply with the Policy Register.

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What is an environmental protection order?

An Environmental Protection Order (EPO) is an order that may be issued by the department to impose a reasonable requirement upon a person which is relevant to a matter or thing mentioned in section 358 of the *Environmental Protection Act 1994* (the Act). This can include requiring the person to:

- not start or stop a stated activity indefinitely, for a stated period or until further notice from the department;
- carry out a stated activity only during stated times or subject to stated conditions; or
- take stated action by a stated date.

Is this the appropriate statutory tool?

EPOs are a useful tool to use when it is known what action needs to be taken and the timeframe during which the action needs to be undertaken. An EPO should not be used where extensive work is required over a long period of time. A transitional environmental program (TEP) or an environmental evaluation (EE) can be used to determine what is causing harm, what needs to be done to rectify it and the appropriate regulatory tool to respond to, or manage, the issue.

An EPO is appropriate where there is a breach of an environmental condition or a need to ensure that an activity is carried out in a way to meet the general environmental duty.

Issuing an EPO

A decision to issue an EPO must be made by a person with the delegated authority to do so. Decisions made by individuals who do not have the delegated authority to make the decision will be invalid.

As the individual (or position) that holds delegation changes regularly, officers must review the department's list of [delegations](#).

When the department issues an EPO

Section 358 of the Act specifies that an EPO can be issued to a person in the following circumstances:

- if the person does not comply with a requirement to conduct or commission an environmental evaluation and submit it to the department; or
- if the person does not comply with a requirement to prepare a TEP and submit it to the department; or
- if the department is satisfied, because of an environmental evaluation conducted or commissioned, unlawful environmental harm is being, or is likely to be, caused, by the person; or
- to secure compliance with:

- the general environmental duty; or
- an environmental protection policy (EPP); or
- a condition of an environmental authority (EA) or a development approval (DA); or
- a prescribed condition for carrying out a small scale mining activity; or
- a condition of a site management plan; or
- an audit notice; or
- a surrender notice; or
- a rehabilitation direction; or
- a regulation; or
- an accredited environmental risk management plan (ERMP); or
- if the person is, or has been, contravening a provision relating to:
 - direction notices (section 363E);
 - noise standards (section 440Q);
 - depositing prescribed water contaminants in waters (section 440ZG);
 - air contamination (chapter 8, part 3E);
 - fuel standards (chapter 8, part 3F).

Consider the standard criteria

When making a decision about issuing an EPO, officers must consider the standard criteria¹. This ensures transparency of the process and fairness in application of EPOs. Some guidance on the standard criteria is set out below.

- The following principles of environmental policy as set out in the Intergovernmental Agreement on the Environment (IGAE);
 - the precautionary principle. This principle is often applied where the consequences of harm are not known and means that when the health of humans and the environment is at stake, it may not be necessary to wait for scientific certainty to take protective action. When considering this principle in the context of standard criteria, decisions should be guided by:
 - o careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment; and
 - o an assessment of the risk-weighted consequence of various options.
 - intergenerational equity. The present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations.
 - conservation of biological diversity and ecological integrity. This should be a fundamental consideration.
- Any Commonwealth or state government plans, standards, agreements or requirements about environmental protection or ecologically sustainable development. Ecologically sustainable development

¹ Standard criteria are listed in Schedule 4 of the Act.

is defined in the object of the Act and embodies the principles of the quality of life now and in the future, and maintaining ecological processes. Would the EPO be consistent with environmental protection policies on water, air, noise or waste for example? Consider other documents such as state or regional coastal plans.

- Any relevant wild river declaration.
- Any relevant environmental impact study, assessment or report.
- The character, resilience and values of the receiving environment. The Act states that an environmental value includes a quality or physical characteristic of the environment that is conducive to ecological health or public amenity or safety. Does the EPO have sufficient regard to the receiving environment?
- All submissions made by the applicant and submitters. Does the decision and the action allow for broad community involvement on the issues that affect them? Have any submissions by the applicant and anyone else who makes a properly made submission about the EPO been considered?
- The best practice environmental management for activities under any relevant instrument, or proposed instrument, as follows—
 - an environmental authority;
 - a transitional environmental program;
 - an environmental protection order;
 - a disposal permit;
 - a development approval.

In managing the activity (to achieve an ongoing minimisation of the activity's environmental harm), are the measures cost effective when compared to measures used nationally and internationally for the activity? Officers should consider section 21 of the Act.

- The financial implications of the requirements under an instrument, or proposed instrument, mentioned above as they would relate to the type of activity or industry carried out, or proposed to be carried out, under the instrument. Consider the cost effectiveness and flexibility of the requirement.
- The public interest. Is it in the interests of the community that the EPO be approved?
- Any relevant site management plan. If there is a site management plan for contaminated land (approved under Chapter 7, Part 8 of the Act), is the EPO consistent with the plan. If not, is the inconsistency necessary for addressing the matters under the EPO? How will any inconsistency be reconciled? Consult with the Waste and Land Contamination Assessment Unit as early as possible when there are any contaminated land issues.
- Any relevant integrated environmental management system (IEMS) or proposed IEMS. An IEMS for an environmentally relevant activity or activities means a system for the management of the environmental impacts of the carrying out of the activity or activities.
- Any other matter prescribed under a regulation. For example, noise standard AS 1055.

How does the department successfully issue an EPO?

Officers must complete an assessment report to document the decision as well as completing the EPO.

Step 1 - Completion of the assessment report

Before completing the EPO, officers are required to complete an EPO assessment report ([ESR/2016/2200](#))², which sets out the facts and circumstances relating to the matter and documents the decision making process used by the department in determining to issue an EPO.

The assessment report is not intended to replicate the department file. Rather it is designed to capture all critical aspects that have led to the department's decision. Accordingly, officers are encouraged to limit the information included to relevant points only.

1. Grounds for issuing an EPO

The Act states that an EPO can only be used in certain circumstances.

Administrative decisions, such as the decision to issue an EPO, are made based upon the balance of probabilities. This means that the decision-maker must be able to determine whether, based upon the information available, it was more likely than not that the events relevant to the issue of the EPO occurred. For further information regarding administrative decisions, view the administrative decision-making in response to non-compliance procedural guide ([ESR/2016/2288](#)).

2. Expand upon the grounds

The purpose of this section is to clearly identify what the department must 'prove' before deciding to use an EPO and should be used to expand upon the grounds which have previously been identified.

In instances where one action has resulted in multiple breaches each breach should be listed independently. For example, a site inspection could potentially detect a number of breached conditions associated with a single EA. In this situation each breach would need to be proven on its own merits and should be listed separately.

Each ground (including breaches or requirements) should be allocated a separate number.

3. Brief history of the matter

Please briefly outline any historical information relevant to this decision. This information should be presented in succinct chronological dot points and should include how the department became aware of the alleged breach.

This can include (but is not limited to) the following details:

- any EAs, DAs, EPPs and/or TEPs that are in place;
- any previous instances of non-compliances in respect to any of the above;
- how the matter was brought to the attention of the department (e.g. complaint from member of the public, routine department inspection);
- concisely reference if complaints have been received and comment on volume and nature of complaints; and
- any action carried out by the department to date.

4. Detail the matters considered

When documenting the evidence considered, officers are encouraged to limit the information to relevant points only. This can include:

- notes recorded in an officer's official notebook;
- samples collected for analysis and any subsequent lab reports;

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 <http://steps/steps/default.cfm>.

- photographs and copies of documents; and
- any observed actions and direct testimony received from individuals.

Officers must also include consideration of each of the standard criteria.

5. Proposed requirements

In instances where it is recommended that requirements are imposed upon the affected person, the officer is responsible for developing proposed requirements for consideration by the delegate. The Act provides that the department may impose a reasonable requirement relevant to the reason why the EPO is issued (section 358). Without limiting those requirements, section 360(2) provides that the EPO may:

- require the recipient to not start, or stop, a stated activity indefinitely, for a stated period or until further notice from the department;
- require the recipient to carry out a stated activity only during stated times or subject to stated conditions; or
- require the recipient to take stated action within a stated period.

When drafting the requirements, officers should consider how they will contribute to preventing or minimising environmental harm and whether the requirements are reasonable. As the recipient of the EPO is able to seek a review of a decision to impose one or more requirements, it is necessary for officers to provide justification for the inclusion of each requirement.

Where possible and appropriate, it is recommended that the draft EPO requirements are provided to the affected persons before finalising. This provides affected persons the opportunity to comment on the reasonableness of the proposed requirements and provides the department with an opportunity to understand how the proposed requirements will impact upon the affected persons. This process may assist the department if either the decision to issue the EPO was appealed or the department commences proceedings against the affected person for failing to comply with the EPO.

Refer to the writing effective and enforceable conditions procedural guide ([ESR/2016/2319](#)) for more information on developing requirements.

Example

From 31 January 2015 contaminated water must not be released from the site.

You are required to do the following things:

- (1) By no later than 5pm on 31 January 2015, you are required to transfer 20 mega litres of contaminated water contained within the stormwater pond system into secure tanks currently located on the site so as to prevent the release of contaminated water in contravention of conditions D1-1 and D1-2 of environmental authority ABC87654321.
- (2) By no later than 5pm on 7 February 2015, you are required to ensure that the water within the stormwater pond system meets either:
 - (a) the water quality limits set out in Schedule D – Table 5 (end of pipe contaminant release limits) of environmental authority ABC87654321; or
 - (b) the mandatory reporting level set out in the environmental authority ABC87654321.
- (3) From 5pm on 7 March 2015 you must prepare and implement an action plan to ensure that:

Release

- (a) at a minimum all storages on site meet the design storage allowance by 30 September 2015 pursuant to condition D1-4 of environmental authority ABC87654321;
- (b) adequate treatment and pumping options are available on the said premises prior to 1 December 2015 to prevent the release of contaminated during the wet season in breach of condition D1-1 and condition D2-2 of the environmental authority ABC8765432; and
- (c) monthly water reduction targets are set and provided to the department by 7 March 2015.

6. Provide for natural justice

Prior to the department making a decision which may adversely impact on an individual or group the department must provide for natural justice.

The seriousness of the matter will dictate the process by which natural justice is provided and is likely to vary from case to case. Accordingly, officers are encouraged to use their discretion in determining how to best ensure natural justice is afforded and the amount of time provided to the affected person to respond. While in some circumstances it may be appropriate for an officer to discuss the above information with the affected person during a site inspection or a telephone interview and to take contemporaneous notes, in more serious circumstances a written notification which includes a specific closing date for submissions should be used.

Regardless of the manner in which natural justice is afforded, any information provided by the affected person is to be documented. The summary of information should include how natural justice was provided as well as any representations or submissions provided by the affected person.

7. Recommendation

The investigating officer is required to make a recommendation in relation to the alleged breach.

Example

It is the opinion of the department that ABC Pty Ltd failed to comply with condition W3-2 of its EA by allowing storm water to leave 24 Jones Road and enter Murphy Creek. It is recommended that an EPO is issued to prevent further contamination of the affected waterway.

Administrative decisions are made based upon the balance of probabilities. This means that the decision-maker must be able to determine whether, based upon the information available, it was more likely than not that the events relevant to the issue of the EPO occurred. For further information regarding administrative decisions, view the [QLD Ombudsman good decision-making guide](#).

Officers are encouraged to consider alternative actions/tools, the department's [enforcement guidelines](#), details of any consultations including site visit details and discussions with the affected person. The reasonableness of proposed timeframes for the completion of requirements must also be considered. For example, if earthworks or sampling are involved the department should consider whether an impending wet season may result in delays, or if the location geographically isolated the department should consider allowing additional time to secure an appropriate contractor.

8. Decision

The assessment report is to be approved by an appropriately delegated officer.

The department's list of delegations can be found at [delegations](#).

The EPO should be signed by the delegated decision-maker in conjunction with the assessment report which records the formal decision.

Step 2 - Drafting the EPO

An EPO must meet a number of legislative requirements in order to be legally binding. Section 360 of the Act states that an EPO:

- must be in the form of a written notice ([ESR/2016/2212](#));
- must specify to whom the order is issued;
- may impose a reasonable requirement relevant to a matter mentioned in section 358 (e.g. to secure compliance by the person with a condition of an EA);
- must state the review or appeal details; and
- must be served on the recipient.

It is important to identify the appropriate person to whom the order should be issued. See the understanding legal entities procedural guide ([ESR/2016/2526](#)) for assistance.

Without limiting the reasonable requirements that may be imposed, an EPO may:

- require the recipient to not start, or stop, a stated activity indefinitely, for a stated period or until further notice from the department;
- require the recipient to carry out a stated activity only during stated times or subject to stated conditions; or
- require the recipient to take stated action within a stated period.

With regard to issuing the EPO, as the form of the EPO must be by way of written notice the department is required to state:

- the decision;
- the reasons for the decision; and
- the review or appeal details.

Recipient of an EPO

Each statutory notice must clearly identify who is the recipient of the notice. It is the recipient of the notice who is required to comply with the notice. Officers should avoid identifying or stating more than one person on a notice as this may affect the validity of the notice.

If the intended recipient of a notice is a company, officers should state only the company name and registered address in the notice. A letter *may* be sent to the director of the company attaching a *copy* of the notice, however the recipient of the notice and the entity that is required to comply is the company identified in the notice.

If both an individual person and a company are to be the subject of the same notice, individual notices should be served on each party. *For example* 'Mr Bloggs' in his personal capacity is the recipient of notice 1 and 'Bloggs and Others Pty Ltd', being the company that Mr Bloggs is employed by, is the recipient of notice 2.

Service of an EPO

Service means delivery to the party who is the subject of the notice. Officers are encouraged to use their discretion as to the most appropriate form of service, having regard to the recipient in question. Methods of service are provided for in ss39 and 39A of the *Acts Interpretation Act 1954*. Where the Act requires a document to be served on (which includes given, delivered or sent to) a person, the document may be served:

- on an individual:
 - by delivering it to the person personally; or
 - by leaving it at, or by sending it by pre-paid registered post to, the place of residence or business of the person.
- on a body corporate:
 - by leaving it at, or sending it by pre-paid registered post to, the head office, a registered office or a principal office of the body corporate.

The date, time and method of service should be documented by a contemporaneous file note. Depending on the method used, a photocopy of the addressed, prepaid envelope should be taken or any facsimile or email confirmations should be retained on the department's file.

If it is necessary for the EPO to be brought to the recipient's attention quickly, a copy of the EPO may be sent by facsimile or email and then be followed up by being served.

Follow up required by the department

It is important that the matter is appropriately followed up to make sure that the person to whom the EPO is issued is complying with any requirements imposed. Follow up is to be scheduled by the relevant officer and confirmed with the business area manager. The manager is responsible for ensuring follow up action is undertaken within the agreed timeframe.

This is usually achieved by a follow up site inspection or telephone call to be conducted one week after the time period nominated in the notice has expired.

Officers are encouraged to utilise tools such as diary reminders to ensure the matter is followed up in a timely manner.

Record keeping responsibilities

Officers must record all allegations of non-compliance in the EcoTrack system. This includes creating a complaint report/compliance activity, uploading copies of any relevant documents, updating the run sheet with commentary on actions and recording any decisions made on the enforcement measures screen (this includes a decision to take no further action). The department is required to make, and record, an informed decision about all allegations of non-compliance. It is important that officers adequately respond to and report on all identified issues in order to assist in building a comprehensive compliance history.

Making changes to an issued EPO

If changes to the notice are required to correct clerical mistakes and errors arising from accidental slips or omissions in the notice, officers should make the required changes to the notice and provide the corrected notice to the recipient.

A cover letter should be included with the corrected notice that clearly outlines the corrections that have been made, and the reasons for these corrections i.e. result of a typing error. The changed notice will not have a new decision date, as it is the same notice as the original.

The department is able to correct errors in an issued notice including errors of calculation, typing errors, errors of punctuation or of formatting which give rise to unintended changes of meaning. For example, the notice is issued with a requirement that a water quality parameter must not exceed 100mm, however the intended limit was 100ml. The department can correct errors such as this typing error by notifying the recipient in writing. Ideally, errors of this kind should be identified and corrected well within the review or appeal period for the

notice. This allows the notice to be corrected by the department and the recipient to receive the corrections within sufficient time to request a review of the decision or lodge an appeal.

If significant changes to the notice are required, that are not simple clerical corrections, officers should issue a new notice which reflects the desired amendments. The issue of a new notice must be carried out in the same way as the issuing of the original notice. Accordingly, a new assessment report or equivalent record of assessment must be completed and endorsed by the appropriate delegate. The assessment will determine the grounds of the new notice, which may or may not be the same as the original notice, depending on the individual circumstances, as well as the new decision date of the notice.

Significant changes include amendments which effect the recipient's rights or liabilities. For example, a change to a requirement of a notice that results in stricter release limits, as well as extensions of time to due dates stated in a notice, even in situations where the recipient has initiated or requested the amendment. It is important to note that the issue of a new notice will result in renewed appeal rights and recipients should be advised of this accordingly.

Officers should include a cover letter which outlines the reasons for the decision to issue the new notice and clearly states the changes that have been made in the new notice, compared with the original notice.

It is preferable that the decision to issue a new notice as a result of a significant amendment is made by the original decision-maker. If this is not possible, the decision should be made by a person with the appropriate delegation who holds a position equal to or higher than that of the original decision-maker.

Officers must also update all relevant records to reflect the changes that have been made to a notice including the correction of clerical errors and where significant changes have been required that have resulted in the issue of a new notice. All documentation relating to the issue of a notice and the decision-making process must be uploaded to EcoTrack and placed on the hard copy file.

As the circumstances of each case differ, and the guidance provided applies generally but may not be appropriate in all situations, officers are advised to contact the Compliance Support Team at compliance.support@ehp.qld.gov.au for assistance with amendments to notices that are likely to affect the rights and liabilities of the recipient.

Finalisation of an EPO

The EPO will remain in force for the period stated in the EPO or until further notice from the department.

Pursuant to section 363 of the Act, if the recipient ceases to carry out the activity to which the EPO relates, the recipient must give written notice to the department within 10 business days after ceasing to carry out the activity.

When the recipient has notified the department that the activity to which the EPO relates has ceased and the department is satisfied that the activity has ceased (e.g. through a site inspection, report or other investigation), the department should provide written notice to confirm that the EPO is no longer in effect.

If the EPO stated that the order remains in force until further notice from the department, and the department is satisfied that the requirements of the EPO have been complied with (e.g. through a site inspection, report or other investigation), the department should provide written notice to confirm that the EPO is no longer in effect. Officers can view the finalisation of an EPO letter using ([ESR/2016/2246](#)).

Review of decisions and appeals

The provisions regarding review of decisions and appeals may be found in sections 519 - 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. A decision to issue an EPO is an original decision and can be reviewed. If an EPO is issued, a dissatisfied person is the recipient of the notice.

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 original decision form ([ESR/2015/1573](#)).

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 appeal to the Planning and Environment Court ([ESR/2015/1572](#)).

Penalties for non-compliance with an EPO

Failing to comply with an EPO is an offence unless the person has a reasonable excuse.

- The maximum penalty for an individual for wilfully contravening an EPO is 6250 penalty units or five years imprisonment.
- The maximum penalty for a corporation for wilfully contravening an EPO is 31,250 penalty units.
- The maximum penalty for an individual for contravening an EPO is 4500 penalty units.
- The maximum penalty for a corporation for contravening an EPO is 22,500 penalty units.

Alternatively, and in accordance with the department's [enforcement guidelines](#), the department may issue a penalty infringement notice (PIN) for the offence of contravening an EPO. The State Penalties Enforcement Regulation 2014 prescribes the PIN amount for the offence.

Section 3 of the Penalties and Sentences Regulation 2015 prescribes the monetary value of a penalty unit. Officers should refer to the [Compliance Support intranet page](#) and the [Penalty Infringement Notices intranet page](#) for the current penalty unit values and further information.

Other penalties

Failure to provide written notice of disposal of the place or business to which the EPO relates (to the buyer) is an offence.

- The maximum penalty for an individual is 50 penalty units.
- The maximum penalty for a corporation is 250 penalty units.

Failure to provide written notice to the department within 10 business days of ceasing the activity is an offence.

- The maximum penalty for an individual is 50 penalty units.
- The maximum penalty for a corporation is 250 penalty units.

Published on EHP Disclosure Log
RTI Act 2009

Enforcement Guidelines

Release

Prepared by: Litigation Unit, Department of Environment and Heritage Protection

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February 2016

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1 Introduction

Queensland's economic, social and ecological welfare relies upon the sustainable management of its environment and conservation of its heritage.

The Queensland Government is committed to ecologically sustainable development—protecting the ecological processes on which life depends while allowing for development that improves the total quality of life, both now and in the future.

The Department of Environment and Heritage Protection is the government's lead agency for the administration of legislation that protects and manages Queensland's environment and heritage. The department has produced a solid policy platform on which it has built partnerships with the community and industry to encourage greater understanding of sustainable environmental and heritage practices and support for innovation.

To build a culture of voluntary compliance—where business and industry take responsibility for ensuring that their activities do not cause unlawful harm to the environment or heritage—the department will sometimes need to take enforcement action. Enforcement action provides a strong deterrent to non-compliance.

The effective protection of the environment and heritage, as well as good regulatory practice, calls for the department to have clear guidelines governing the taking of enforcement action. These Enforcement Guidelines complement the department's Regulatory Strategy, Annual Compliance Plan, and other documents which set out the department's approach to its enforcement activities (available on the department's website).

To the extent possible in the circumstances, it is the goal of the department's enforcement responses to:

- reinforce legal obligations under environmental and heritage legislation;
- achieve outcomes consistent with environmental and heritage legislation;
- deter non-compliant behaviour; and
- assertively apply consistent and proportionate enforcement action.

1.1 Scope

The department administers a number of pieces of legislation, including:

- *Coastal Protection and Management Act 1995*
- *Environmental Protection Act 1994*
- *Nature Conservation Act 1992* (with respect to the protection and management of wildlife and World Heritage)
- *Queensland Heritage Act 1992*
- *Sustainable Planning Act 2009* (with respect to those parts relevant to the department)
- *Waste Reduction and Recycling Act 2011*
- *Water Act 2000* (Chapter 3).

Under these pieces of legislation there are also a number of different government authorities that may also have delegated or devolved powers, such as the police or local governments. To ensure consistency and transparency of enforcement actions, these enforcement guidelines apply to all decisions about enforcement action made by the department in administering its legislation. It is also intended to guide decisions made under this legislation by other authorities, however it does not bind these authorities.

1.2 Purpose

These enforcement guidelines assist the department and other relevant authorities in making decisions about taking enforcement action under legislation administered by the department. The guidelines set out principles of a general nature to provide an understanding of how the department will approach enforcement.

The department publishes its enforcement guidelines as part of its commitment to transparency in its compliance activities, and to educate the public about the department's expectations and compliance approach. People and businesses who have specific obligations under legislation administered by the department are encouraged to familiarise themselves with these guidelines.

It is important to note that these are guidelines and not directions. They are designed to assist the making of enforcement decisions to achieve consistency, efficiency, effectiveness and transparency in the administration of legislation by the department.

1.3 Procedure

The department will assess all notifications it receives of possible breaches of its legislation, and based on these assessments and any associated investigations, will make decisions as to the appropriate response. In some cases, the decision may be to take no action, for example, if an investigation reveals that no breach of the legislation has taken place. In some cases, the department may provide advice, guidance, or assistance to help a person comply with the legislation. In other cases, it may be necessary for the department to take enforcement action in response to a breach of the legislation.

In these guidelines, enforcement action includes any action taken to punish a breach of legislation administered by the department, to deter or prevent a person or persons from committing future breaches of the legislation, or to require someone to remedy or stop committing a breach of the legislation. Enforcement actions do not include measures intended only to inform or educate a person, and do not include investigations into alleged breaches of legislation although such investigations may be required to inform various enforcement actions.

The range of enforcement actions available to the department includes:

- warning notices and letters;
- penalty infringement notices;
- administrative notices and orders made under legislation;
- proceedings for court orders provided for under legislation;
- prosecution; and
- suspension or cancellation of permit, licence or authority.

Sometimes a number of enforcement actions may be taken in combination.

From time to time, the department becomes aware of matters that are offences against legislation it administers, and which are also offences against legislation administered by another government agency. In these circumstances, the following principles will apply:

- The department may consult the other agency to determine which agency should lead any investigation, and which agency would be the appropriate agency to take any enforcement action. There may be circumstances in which it is appropriate for a joint investigation to take place, and for each agency to take its own enforcement action.
- The department may be the appropriate agency to lead an investigation or take enforcement action where one or more of the following applies:
 - The subject matter is more closely aligned with the department's portfolio of responsibilities than that of the other agency.
 - Enforcement action by the department would more effectively prevent or remedy impacts on the environment or heritage than enforcement action by the other agency.
 - The penalties that apply for the offence under the department's legislation reflect the seriousness of the offence more accurately than the penalties under the other agency's legislation.
- The department will refer a matter to a local government for investigation or enforcement action where the matter is within the devolved responsibility of the local government.
- Where fraud or dishonesty or other criminal offences are involved, the department may refer the matter to the Queensland Police Service, the Australian Federal Police or other authorities as appropriate.

1.4 Principles

The following principles guide the department in making decision about taking enforcement action:

- Enforcement action will be proportionate to the seriousness of the breach.
- Decisions about enforcement action will be impartial, based on available evidence, and on the strategic objectives of the department.
- Where enforcement action involves litigation, the department is bound by the Queensland Government's Model Litigant Principles, which can be found on the Department of Justice and Attorney General website at www.justice.qld.gov.au. The principles ensure that, when conducting litigation, the department meets the community's and the courts' expectations that the State conduct itself in a manner which exemplifies the principles of justice, and that State's power be used in the public interest.

The department is guided by the overriding principle that enforcement action must not be taken for improper purposes. A decision whether or not to take enforcement action will not be influenced by factors such as:

- the alleged offender's gender, ethnicity, nationality, political associations, religion or beliefs;
- a departmental employee's personal feelings towards the alleged offender or the victim;
- possible political advantage or disadvantage to a government or any political group or party; or
- the possible effect of the decision on the personal or professional circumstances of those responsible for the decision.

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2 Who enforcement action will be taken against

One of the main aims of Parliament in making a breach of the law a criminal offence is to deter the offenders and others from similar behaviour. By extending criminal liability to many people (for example, landowners and directors and managers of corporations), the law generates increased awareness and responsibility for environmental performance and heritage management within corporate structures and throughout the community.

Situations can arise where a number of people may be responsible for the commission of an offence and may therefore be liable for enforcement action. The department recognises that it may not always be appropriate to take enforcement action against every person who may be liable for an offence. The following sections set out what the department will consider when determining who enforcement action may be taken against.

2.1 Identification of offender(s)

In determining who was responsible for an offence, the department will take the following considerations into account:

- Who was primarily responsible for the offence, that is:
 - who committed the act;
 - who formed the intention (if relevant);
 - who created the material circumstances leading to the alleged offence; and
 - who benefited from the offence;
- What was the role of each alleged offender (where there is more than one alleged offender).

2.2 Notification

The department will also take into account any notification it receives of a breach by an alleged offender. It will specifically consider whether:

- the alleged offender notified the department of the breach promptly;
- the information assisted in the control or mitigation of any impacts on the environment or heritage;
- the information substantially aided the department's investigation of the incident;
- the information was available from other sources;
- there was a failure to comply with an obligation to notify the department of the breach, and/or
- the notification occurred prior to the department or any other regulatory body obtaining knowledge of the breach.

2.3 Corporate liability

Corporations as well as individuals can be liable for offences against legislation. Where an offence is committed by employees, agents or officers of a corporation in the course of their employment, proceedings will usually be commenced against the corporation. Where, however, the offence has occurred because the employee, agent or officer has committed an offence of their own volition, outside the scope of their employment or authority, proceedings may be instituted against the employee, agent or officer and not against the corporation. Another factor which will be considered is the existence and effective implementation of any training and compliance programs of the corporation.

2.4 Liability of employees and contractors

Employees' obligations under the department's legislation cannot be overridden by an instruction from their employer—it is not a defence for an employee to assert that he or she was acting under direction from a supervisor, although this may be a consideration and a mitigating factor in sentencing or choice of appropriate enforcement action. This principle equally applies to contractors. Therefore the guiding principle in deciding whether to pursue an employee or a contractor is their degree of culpability or responsibility.

In addition to the issues set out in section 3.1.3, factors to be considered in assessing the degree of culpability include:

- whether the employee or contractor knew or should have known that the activity was likely to be illegal or inappropriate;
- the seniority of the employee and the scope of their duties;
- whether, having regard to the employee's seniority and employment duties or the contractor's contract, the employee or contractor had taken reasonable steps to draw to the attention of the employer or any other relevant person the impropriety of the practice; and
- whether the employee or contractor has taken reasonable steps to mitigate or prevent any impacts (if it was in the employee's or contractor's power to do so).

2.5 Liability of directors and executive officers

Most of the legislation administered by the department contains provisions extending liability for offences committed by a corporation to its executive officers.

When determining whether to take enforcement action against an executive officer in accordance with such a provision, the key consideration will be whether the person had actual control or influence over the conduct of the corporation in a relevant respect. As a general policy, the department will take enforcement action under the executive officer liability provisions only where evidence links the person with the corporation's illegal activity. That evidence will need to show, for example, that the executive officer:

- intended to engage in the action or omission;
- was negligent or reckless with respect to the action or omission;
- intended to deceive the department; or
- failed to monitor or periodically assess and manage risks associated with the corporation's relevant activities or review supporting systems and programs.

The general legislative exceptions to executive officer liability are that:

- the executive officer was not in a position to influence the corporation's conduct; or
- the officer took all reasonable steps to ensure that the corporation complied with the law.

The department may take the view that reasonable steps were taken to ensure that the corporation complied with the law where it can be demonstrated the executive officer ensured that:

- the corporation had an effective environmental or heritage risk management system in place which was aimed at ensuring compliance with relevant legislative requirements;
- all staff were aware of the system;
- the system had been effectively implemented throughout the corporation; and
- the system was regularly reviewed and was amended when necessary.

2.6 Unlicensed operators

When considering enforcement action against people conducting regulated activities without necessary approvals ('unlicensed operators'), the following principles apply:

- The department's first priority is to ensure that any risk of harm or impacts from an unlicensed operation is appropriately managed.
- The department will work cooperatively with other regulators who may also have responsibility for regulating the unlicensed activity (for example, an unlicensed industrial site may have failed to obtain a development approval from local government as well as an environmental authority from the department).
- In deciding the appropriate response, the department will take account of the level of competitive advantage enjoyed by the unlicensed operator as one factor for consideration, however in most cases, some type of enforcement action will be taken in response to an unlicensed operator.

- In rare cases, the department will defer enforcement action until an unlicensed operator has had the opportunity to obtain a licence and operate lawfully. In such cases the operator will be expected to meet contemporary standards for the management of its environmental risk.
- Where the offence is serious or persistent, the department will consider prosecution.

2.7 Liability of external administrators

In terms of ensuring compliance with legislation administered by the department, external administrators (including liquidators, receivers and managers and administrators) who are responsible for the management of a corporation, will be subject to the same considerations as other executive officers. External administrators who assume control of a corporation and become aware of activities or conduct that breaches legislation administered by the department should ensure that the activity or conduct ceases and that the department is informed of the activity or conduct. External administrators should also ensure that the company complies with any notices or orders given to the company by the department as far as is possible given the provisions of the *Corporations Act 2001*.

2.8 Liability of government agencies

The legislation administered by the department binds all persons, including government agencies. The decision to take enforcement action against a government agency will depend on whether to do so is in the public interest. The department acknowledges that there are two competing factors:

- That legislation administered by the department applies equally to both the private and public sectors, and the public has an expectation that both sectors will be treated equally.
- That it is the taxpayer who bears both the costs of a prosecution and ultimately any penalty imposed upon a public authority.

A decision about taking enforcement action against a government agency will consider these factors, together with the other matters set out in these guidelines.

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3 Choice of enforcement action

3.1 Determining seriousness of a breach of legislation

The department determines the seriousness of a breach of legislation by reference to three general considerations:

- The objectives of the relevant legislation including the type of impact the offence provision is designed to deter or prevent.
- The actual or potential impact of the offence.
- The level of culpability of the alleged offender.

The seriousness of the breach of the legislation will inform the decision on the appropriate enforcement action taken in response to the offence. This guideline sets out five levels of seriousness for breaches of legislation: low, minor, moderate, major, and serious. Outlined below are some criteria which can be used to assist the department in assessing the level of seriousness of a breach. The tables below regarding the impacts of the offence and the level of culpability of the alleged offender indicate the way the level of seriousness may be determined for each of these considerations. The final assigned level of seriousness of the breach will balance each of these considerations.

3.1.1 Objectives of legislation

The objectives or purpose of any legislation are generally outlined at the beginning of the legislation, and provide context to the following legislative provisions. To determine the purpose of the particular offence provision, often it is useful to refer to both the objectives of the legislation and to other documents such as the explanatory notes or Parliamentary speeches.

The seriousness with which the Legislature views an offence may often be apparent by maximum penalty or class of offence assigned to it in the legislation. Where legislation designates levels or classes of offence, this will be considered in deciding the appropriate enforcement response.

3.1.2 Impact

The impact of an offence can be characterised by reference to the effects or consequences of the offence and also by reference to the act or omission the offence provision has been designed to prevent or deter (see the objectives of the legislation discussed above).

To determine the level of impact, for example for the offence of contravention of an environmental authority condition, reference may be made to the level and extent of impact on the environment resulting from the breach. Similarly, the level of impact of an offence involving unauthorised works on a heritage place may be measured by the level and extent of impact to the building, structure or place. For conservation offences, the level of impact may be measured both by the impact on the specific wildlife or protected area involved, and by reference to impacts or potential impacts on the species or protected area.

An offence not involving environmental, heritage or conservation impacts, for example for the offence of the providing false or misleading information to the department, may be characterised as an administrative offence. This does not mean that the offence is not serious. The seriousness of the impacts for administrative offences can be measured by reference to the impact on the legislative scheme or records the administrative requirements support. For example, the wilful provision of false or misleading annual returns to the department seriously undermines its ability to effectively administer its legislation. Examples of administrative offences include:

- failure to notify the department of a breach or non-compliance with the legislation;
- fraud or a breach that undermines a legislative scheme (e.g. failure to pay financial assurance, registration or other fees etc.);
- the provision of false or misleading statements in applications or other material submitted to the department;
- fraud or breach in a reporting requirement (e.g. failure to notify the department of an environmental incident); and
- failure to implement preventative measures (e.g. failure to train staff on Environmental Management Plans and procedures).

There may be some overlap between administrative offences and environmental, heritage or conservation offences.

Release

Five levels of impacts have been developed to assist the department in classifying the seriousness of an alleged offence and inform a decision on the appropriate enforcement response (refer to Table 1 – Criteria to be considered in determining impact of breach). These levels also include the risk or potential impact of an alleged offence. If an offence satisfies criteria across a range of the impact levels, generally, it will be assigned the highest applicable level. For example, if there is an incident which has caused permanent impacts on the environment (which falls into the serious level), however the level of public concern is low (which falls into the minor level); the matter will be regarded as serious.

3.1.3 Culpability

Culpability refers to the blame and responsibility of the alleged offender for the alleged offence. Three levels of culpability have been developed which, along with the levels of impact, will assist the department in classifying the seriousness of an alleged offence and therefore determine the appropriate enforcement response (refer to Table 2 – Criteria to be considered in determining culpability of alleged offender). Again, if an alleged offender has satisfied criteria across a range of the levels, the most serious category will be assigned.

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Table 1. Criteria to be considered in determining impact of breach

IMPACT	5 Serious impact or risk of impact	4 Major impact or risk of impact	3 Moderate impact or risk of impact	2 Minor impact or risk of impact	1 Low impact or risk of impact
	<ul style="list-style-type: none"> • permanent, or potential for permanent, long-term impact on the environment, heritage or animal; • impact on the environment or heritage is on or potentially on a wide-scale, or of great intensity; • widespread or high level of public concern about the incident; and/or • where offence is of an administrative nature, it severely undermines the legislative scheme or the offender wilfully provides false or misleading information. 	<ul style="list-style-type: none"> • medium to long-term impact, or potential impact, on the environment, heritage or animal; • impact on the environment or heritage is on or potentially on a medium to wide-scale, or of medium to great intensity; • high level of public concern; and/or • where the offence is of an administrative nature, it undermines the legislative scheme or the offender conceals information or avoids liability for fees or taking necessary actions to prevent offence. 	<ul style="list-style-type: none"> • temporary to medium-term impact, or potential impact, on the environment, heritage or animal; • impact on the environment or heritage is on or potentially on a localised to medium scale, or is of a low to medium intensity; • moderate level of public concern; and/or • where the offence is of an administrative nature, it has a moderate impact on the legislative scheme, or the offender recklessly fails to comply with administrative requirement. 	<ul style="list-style-type: none"> • transient impact, or potential impact, on the environment, heritage, or animal; • impact on the environment or heritage is on or potentially on a localised scale, or is of a low intensity; • low level of public concern; and/or • where the offence is of an administrative nature, it has no impact on the legislative scheme or is of an inadvertent nature. 	<ul style="list-style-type: none"> • no impact, or potential impact, on the environment, heritage or animal; • no public concern; and/or • where the offence is of an administrative nature, it could not have been prevented.

Table 2. Criteria to be considered in determining culpability of alleged offender

CULPABILITY	3 Serious culpability	2 Moderate culpability	1 Low culpability
	<ul style="list-style-type: none"> • intentional or wilful acts; • past non-compliances or convictions involving the same or similar legislative provisions; • non-compliances of an ongoing duration; • no attempt at clean-up or remedial action undertaken; • motivated by profit or clearly benefits from the non-compliance; • involves fraud or serious misleading conduct; • failure to notify the department effectively or notification outside of reasonable timeframes; • wilful ignorance of clear directions or warnings (from either employees, consultants, the department, or other government officers) which may have prevented or mitigated the impact; and/or • the impact or risk of impact was obvious and/or preventable by implementing or following accepted industry standards. 	<ul style="list-style-type: none"> • careless acts; • isolated prior non-compliances with legislation or similar legislation; • non-compliance of a medium duration; • genuine attempt at remediation or remediation partially effective; • attempt at notification of department of incident within reasonable timeframe; • may have benefitted from the non-compliance; • was aware of the risk of impact or the impact was foreseeable; and/or • the impact or risk of impact may have been prevented by following accepted industry standards. 	<ul style="list-style-type: none"> • inadvertent acts; • no prior non-compliances with legislation or similar legislation; • non-compliance of short-term duration; • remediation effective; • notification of department of incident within reasonable timeframe; • did not benefit from the non-compliance; • the impact or risk of impact was not foreseeable; and/or • the impact or risk of impact was not prevented by high standards of operation (greater than accepted industry standards).

3.2 Application of objectives of legislation, impact, and culpability to offence

The department will exercise its discretion to take any enforcement action it considers appropriate in the circumstances, taking into account the seriousness of the breach of the legislation. The goal of some enforcement actions may be considered punitive, whilst others may be aimed at preventing, deterring or rectifying impacts of offences. Some enforcement actions do both; for example a prosecution may result in a fine (being punitive or a deterrent) and orders to remediate an affected area (rectifying the impacts of the offence).

There are seven general categories of enforcement actions available to the department:

- warning notices and letters;
- infringement notices;
- administrative notices and orders made under legislation;
- proceedings for court orders provided for under legislation;
- enforceable undertakings;
- prosecution; and
- suspension or cancellation of permit, licence or authority.

The choice of the enforcement action will be determined by reference to the seriousness of the breach of legislation and the desired outcome at the conclusion of the action.

As a guide, warning notices and letters are generally reserved for low or minor breaches; infringement notices for minor breaches, administrative notices and orders (with the exception of cancellation of licences or permits) for moderate to serious breaches; enforceable undertakings are considered to be an alternative enforcement action for moderate breaches; and court orders, prosecutions and cancellation of permits or licences are generally reserved for major or serious breaches of legislation.

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4 Warning notices and letters

Warning notices and letters are generally not provided for in legislation, but are a response that the department may take in response to minor breaches of legislation where the imposition of a financial penalty is not considered appropriate, and where a warning that the offender's conduct is a breach of the legislation is considered a sufficient response.

Warning notices should be used for the most minor breaches of the department's legislation, involving little or no environmental or heritage impact and where the offender has a low level of culpability. They are not appropriate for ongoing or repeated minor breaches to legislation.

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5 Infringement notices

Infringement notices are a means of dealing with minor breaches of legislation administered by the department which warrant some form of sanction, but which are not serious enough to warrant a prosecution. Such breaches might include a minor contravention of a licence or permit condition, littering of rubbish or cigarette butts, or illegal dumping of waste. Infringement notices have the advantage of allowing an offence to be dealt with quickly and without the time and cost involved in a prosecution.

The issuing of infringement notices is governed by the *State Penalties Enforcement Act 1999*. The offences for which infringement notices can be issued, and the associated penalties, are set out in the *State Penalties Enforcement Regulation 2000*.

While an infringement notice is issued because a person has committed an offence, payment of the penalty does not lead to the recording of a criminal conviction against the person (although the department will record the infringement notice against the person's compliance history). Non-payment of the penalty is recoverable as a debt.

If a person elects to contest the infringement notice, the department will review the matter, confirm that the evidence establishes that an offence has been committed, and if so, commence a prosecution in the Magistrates Court. If a person who contests an infringement notice is found guilty, the Court may impose a penalty higher than the amount of the infringement notice, and may order the payment of costs and the recording of a conviction.

In making decisions about issuing an infringement notice, the department will be guided by the following principles:

- Infringement notices should be issued where the breach is minor and the scale of the impact is known and small.
- An infringement notice will generally not be appropriate where the breach is ongoing.
- Infringement notices should not be issued for multiple offences arising out of the same course of conduct, unless the offences go to separate and distinct aspects of that conduct.
- Infringement notices should be issued only where the facts of the offence are apparently indisputable.
- Infringement notices should be issued only where the infringement notice is likely to act as a deterrent. If an infringement notice is not likely to deter the offender from committing a similar offence in the future, consideration should be given to whether prosecution is a more appropriate response. For example, an infringement notice should not be issued where the benefit gained by the commission of the offence is greater than the fine imposed.
- Infringement notices should be issued as soon as reasonably possible after the offence comes to the attention of the department.

6 Administrative actions

Administrative actions are enforcement actions that include the range of notices and orders that the department may issue under legislation it administers in order to secure compliance with obligations under that legislation. They are generally used in response to moderate to serious breaches of the legislation. Administrative actions differ from prosecutions and infringement notices in that they are usually aimed at preventing or rectifying a breach of the legislation, while prosecutions and infringement notices are usually aimed at punishing and/or deterring unlawful conduct.

The department may take an administrative action where:

- it is the most effective means of preventing or rectifying impacts on the environment or heritage; and
- it is reasonable and proportionate in light of all of the relevant circumstances.

The taking of a particular administrative action by the department does not preclude it from taking other enforcement action (including other administrative actions). In order to properly and effectively address breaches of the legislation, a number of enforcement actions may need to be taken either simultaneously or over time as part of a strategy for addressing the offending conduct and achieving a sound environmental or heritage management outcome.

For example, it may be appropriate to issue a notice to conduct an environmental evaluation to a corporation to determine the cause of a particular equipment failure which led to an unlawful emission; however this administrative action does not prevent the department from prosecuting the company for the unlawful emission associated with the equipment failure. In this example, the environmental evaluation informs the necessary steps to rectify and prevent the equipment failure in the future, whilst the prosecution will punish and deter the conduct that resulted in the unlawful emission.

In some situations it may not be appropriate to take more than one enforcement action in response to a situation. For example, it may not be appropriate to issue an environmental protection order to require certain actions by the recipient where a transitional environmental program is in force (and is being complied with) to rectify the same issue.

When deciding whether to take or not take administrative action, the department will comply with the requirements of the legislation that authorises the action, the principles of natural justice and any other requirements of a lawful administrative decision.

7 Civil proceedings for court orders

Most of the legislation administered by the department administers enables it to apply for civil court orders requiring a person to stop committing an offence, or to remedy or rectify the consequences of an offence. Applications for court orders are generally appropriate in circumstances where there has been a major or serious breach of the legislation.

These applications are civil proceedings (governed by civil procedures and burdens of proof) as opposed to criminal proceedings as is the case with prosecutions. In commencing and conducting proceedings for court orders, the department will adhere to the Model Litigant Principles (refer to section 0 of these guidelines).

The department may commence proceedings for such orders where:

- sufficient evidence exists to satisfy the requirements of the legislation under which the proceedings are to be brought;
- the department has reasonable prospects of success; and
- the orders sought by the department will likely address the offending behaviour or the consequences of the offence.

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8 Enforceable Undertakings

An enforceable undertaking is a published agreement between the department and a person which can require the person to carry out a wide range of actions to achieve compliance with the *Environmental Protection Act 1994* and further improve the protection of the environment. An enforceable undertaking can be suggested by the department or initiated by a person where there has been a breach or breaches of the *Environmental Protection Act 1994*, provided the breach or breaches are not indictable offences.

An enforceable undertaking is essentially an alternative to prosecution and whilst it does not require an admission to be made in relation to a contravention(s), it does require the inclusion of a statement of regret and must detail the circumstances that led to the contravention(s). For further information on enforceable undertakings, refer to the Guideline – Enforceable undertakings under the *Environmental Protection Act 1994* (EM1388) available on the EHP website.

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9 Prosecution

Prosecution is part of the department's strategy for achieving its legislative and policy objectives, however as outlined in these guidelines it is usually not the only enforcement action available and will be used after careful consideration. If an alternative to prosecution may be more effective in achieving the objects of the legislation, then that alternative will be considered. Prosecutions may be an appropriate enforcement action in response to major or serious breaches of the legislation.

9.1 The decision to prosecute

The decision to prosecute is generally made by the Deputy Director-General of the Environmental Services and Regulation division on behalf of the department. The decision is based on:

- whether the available evidence provides reasonable prospects of successfully obtaining a conviction; and
- if so, whether it is in the public interest to exercise the discretion to commence a prosecution.

9.1.1 Prospects of success

The determination of prospects of success of a proposed prosecution will consider whether:

- the available evidence is capable of proving each element of the offence beyond reasonable doubt;
- the admissibility of evidence;
- the credibility of available witnesses;
- the availability or strength of any expert evidence required to prove the offence; and
- any defences that are plainly open to the alleged offender.

9.1.2 Public interest considerations

The commencement of a prosecution is discretionary, and the dominant factor in the exercise of that discretion is the public interest. When deciding whether to commence a prosecution the department may take into account the following public interest considerations:

- the seriousness of the offence including the impacts or potential impacts the environment or heritage caused by the alleged offence;
- the degree of culpability of the alleged offender including any mitigating or aggravating circumstances (including notification, cooperation or a display of contrition);
- the availability and effectiveness of any alternatives to prosecution;
- the alleged offender's compliance history;
- whether the alleged breach is a continuing or subsequent offence;
- the prevalence of the alleged offence and the need for general deterrence;
- the length of time since the alleged offence occurred;
- the age and physical or mental health of the alleged offenders;
- whether there are counter-productive features of the prosecution;
- in cases involving Aboriginal and Torres Strait Islander use or management of natural resources, the views of the traditional owners of the area;
- the length and expense of any court hearing;
- the likely outcome in the event of a conviction having regard to the sentencing options available to the court;
- any precedent which may be set by not instituting proceedings;
- whether the consequences of a prosecution would be unduly harsh or oppressive;
- whether proceedings are to be instituted against others arising out of the same incident;
- the sentencing principles set out in the *Penalties and Sentences Act 1992*; and

- the extent to which the alleged offender cooperates in the investigation or prosecution of other offenders.¹

In addition to the public interest factors, the decision to commence a prosecution will also take account of the principles in section 0 of these guidelines.

Once a decision has been made to prosecute, the department must present the evidence fairly and impartially to the court. The department's only interest in procuring a conviction is to ensure that the right person is convicted, that the truth is known and that justice is done.

9.2 Choice of charges

The charges against an alleged offender must reflect the nature and extent of the conduct disclosed by the evidence, with the aim of providing a basis for the court to impose an appropriate penalty and make appropriate orders. There will be occasions where the same conduct is prohibited under separate statutes and involves an offence under each. In circumstances where it would be inappropriate to lay both charges, the department will consider the legislation and exercise its discretion to lay charges for a breach of one of the offence provisions taking into account the seriousness of the alleged conduct and the penalties available for each offence provision. Where another prosecuting agency is involved, the department will liaise with the other agency to ensure the most appropriate charge(s) are made (refer to section 1.3 of these guidelines).

9.3 Mode of trial – summary or indictable proceedings

Most offences under legislation administered by the department are summary offences which are heard and dealt with by a magistrate. However, some offences are indictable and may be heard in the District Court at the election of the prosecution, the defendant or the magistrate.

Proceeding summarily on an indictable offence may have the effect of limiting the custodial or financial penalty that may be sought by the prosecution and imposed by the Magistrates Court. For prosecutions commenced by the department, the decision as to whether to proceed on indictment rests with the Office of the Director of Public Prosecutions (ODPP). Before referring the matter to the ODPP, the department will consider the ODPP's guidelines which set out the test to be applied to determine whether a prosecution should proceed on indictment.

9.4 Charge negotiations

Once a prosecution has commenced, the department may enter into discussions with a defendant about which charges should proceed to a hearing. No agreement can be reached with a defendant who is not prepared to take responsibility for the impacts of their unlawful conduct. When taking part in discussions, the department will take into consideration the public interest considerations outlined in section 9.1.2, and:

- any new information received by the department that was not available when the original decision to prosecute was made;
- whether the potential penalty, the remaining charges, or remaining defendants set an unsatisfactory precedent for the conduct; and
- whether a negotiated response provides an adequate deterrent for similar conduct, and adequately reflects the seriousness of the matter.

¹ The department does not have the power to grant indemnity from prosecution to accomplices; this power resides with the Attorney General. The Office of the Director of Public Prosecutions (ODPP) Guidelines set out how an application for an indemnity from prosecution can be made. The ODPP Guidelines are available online at <http://www.justice.qld.gov.au>. An accomplice who pleads guilty and agrees to testify against an alleged co-offender may receive a sentencing discount for that co-operation.

9.5 Sentencing considerations

The *Penalties and Sentences Act 1992* outlines the general factors that can be considered by a court at sentence. The following is a non-exhaustive list of factors which may be considered by the department in preparing sentence submissions:

- The impacts or potential impacts resulting from the offence, including:
 - the seriousness of the impact, or risk of impact, on the environment, heritage and/or community (the 'victim' of the offence);
 - the potential for the impacts to be rectified or mitigated.
- The culpability of the offender, including:
 - the steps taken by the defendant to rectify or mitigate the impacts;
 - the level of cooperation by the defendant with the department;
 - any prior convictions of the defendants relevant to environmental or heritage protection;
 - any benefit or profit derived by the defendant due to the offence.
- The level of penalty sufficient to deter others from similar conduct.
- The prevalence of the offence.
- The availability and appropriateness of alternative sentencing orders.
- The maximum penalty for the offence.
- Any relevant sentencing precedents or comparative cases.

9.6 Sentencing orders

In addition to any penalties, fines or orders which may be made by the courts under the *Penalties and Sentences Act 1992*, legislation administered by the department provides for additional specific orders upon sentencing an offender for an environmental or heritage offence. The premise of these additional orders is to provide court with the flexibility to impose a penalty that:

- is proportionate and tailored to the particular circumstances of the case;
- will enhance compliance with the environmental or heritage management legislation; and
- will allow for remediation of any impacts caused and/or compensation paid to those affected.

Many other jurisdictions around Australia have incorporated these types of orders into their environmental protection legislation, and have been successfully applying them for some time. The department will seek such orders in appropriate circumstances, and with reference to any applicable policies.

9.7 Recording of Convictions

Section 12(2) of the *Penalties and Sentences Act 1994* (the PSA) gives the Court the discretion to decide to record or not record a conviction for an offence.

The decision about whether a conviction is recorded lies entirely within the discretion of the Magistrate or Judge presiding over a particular case. Some factors which the PSA states must be considered by the Magistrate or Judge in exercising their discretion are:

- the nature of the offence;
- the offender's character and age; and
- the impact that recording a conviction will have on the offender's economic or social wellbeing, and their chance of finding employment.

EHP will always consider the individual circumstances of the case when deciding whether to ask the Court to record a conviction.

Subject to the individual circumstances of the case, EHP will ask the Court to record a conviction where:

- there is a wilful element to the offence; or
- the nature of the offence is serious – such as for serious environmental harm, material environmental harm, or providing false or misleading information or documentation to EHP; or
- the defendant has previously been successfully prosecuted by EHP or found guilty of a similar offence in Queensland or another jurisdiction; or
- there is a commercial element to the offence, that is, the offender was likely to have obtained a commercial gain as a result of the offence.

EHP may also ask the Court to record a conviction where:

- the defendant is a corporation; or
- the defendant failed to notify EHP of an offence where it was required to do so by legislation or other document (such as environmental authority, transitional environmental program or temporary emissions licence); or
- the defendant has a compliance history with EHP; or
- there is rehabilitation required as a result of the offence.

Whenever EHP asks the Court to record a conviction, it will do within the ambit of the PSA and will take into account the factors that the Court must consider under section 12(2) of the PSA.

9.8 Appeals against sentence

While the department may appeal against a sentence imposed by a court, such appeals are generally rare. In considering whether to appeal against a sentence, the department will have regard to the principles regarding appeals against sentence set out in the ODPP guideline's, as well as the Model Litigant Principles (refer to section 1.4 of the Enforcement Guidelines). An appeal will only be instituted where the department considers that the appeal is likely to succeed.

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10 Suspension or cancellation of licence, permit or authority

Legislation administered by the department usually contains a list of grounds for the suspension or cancellation of permits, licences or authorities. These grounds might include a failure to perform administrative requirements such as payment of fees or lodging of returns. They might also include the holder being convicted of an offence under that legislation or not meeting the legislative suitability criteria for the permit, licence or authority.

Payment of fees due under legislation is a fundamental obligation of someone who holds an approval from the department. Operators who fail to pay fees obtain a commercial advantage over their competitors, and can undermine the legitimacy of the regulatory regime. Where legislation administered by the department permits, the department may suspend the relevant permit, licence or authority of an operator with overdue fees until the fees are paid.

When deciding whether to cancel or suspend a licence, permit or authority, the department may consider any suitability criteria or standards and the following matters:

- the seriousness of the breach of legislation;
- the connection of the breach to the permit, licence or authority conditions;
- the culpability of the permit, licence or authority holder in relation to the breach;
- the likelihood that further breaches of legislation will be committed by the permit, licence or authority holder; and
- the need to protect the environment and community from further potential breaches.

The aim of cancellation or suspension of a permit, licence or authority is not punitive; rather it is based on the need to protect the environment and community from unsuitable operators.

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Guideline

Mining

Model mining conditions

The purpose of this guideline is to provide a set of model conditions to form general environmental protection commitments given for mining activities, and environmental authority conditions for resource activities – mining activities imposed by the administering authority under the Environmental Protection Act 1994.

Introduction

The *Environmental Protection Act 1994* (EP Act) provides for the granting of environmental authorities for resource activities – mining activities.

In giving approval under the EP Act, the administering authority must address the regulatory requirements set out in the Environmental Protection Regulation 2008 and the standard criteria contained in the EP Act. The administering authority will give consideration to these regulatory requirements in the context of specific information about the environmental impacts of a particular project provided through an environmental impact statement or application documents.

The following model conditions may be used as a basis for proposing environmental protection commitments in the application documents. They may also be used to expedite the process of developing appropriate conditions for an environmental authority for a mining project in consultation with the administering authority.

The model conditions can be modified to suit the specific circumstances of a mining project subject to the assessment criteria outlined above. In such circumstances, variants of these conditions and/or different conditions may be applied at the discretion of the administering authority delegate and in consultation with the applicant. It is unlikely the administering authority will accept less rigorous environmental protection commitments or environmental authority conditions without clear evidence that the risk of the particular type of environmental harm addressed by those model conditions is otherwise addressed to at least the same extent by:

- a) the specific environmental management practices to be implemented
- b) technologies to be used; or
- c) the nature of the environmental values impacted by the project.

To meet the test of 'necessary or desirable' it is considered that a condition will meet this test if a demonstrable link exists to achieving the object of the EP Act. It is considered that conditions relating to monitoring and reporting under the issued authority allow the administering authority to assess the accuracy of information and assumptions made in the application and allow the detection of any trend toward environmental harm resulting from the activity.

Release

The conditions in this guideline do not cover all the conditions necessary for regulating a resource activity – mining activity. Officers should also refer to the separate guidelines: *Structures which are dams or levees constructed as part of environmentally relevant activities* (EM634). The water schedule has been based on the model water conditions for coal mines in the Fitzroy Basin. As a result the surface water schedule conditions may not be applicable to other catchments or to other types of mines. The water schedule may also be subject to change as a result of the Isaac River mine water release pilot.

How to use this guideline

New project applications

The model conditions should be applied to all new mining project applications lodged after the guideline is approved.

Applications for new projects in progress

For applications in progress on the date this guideline is approved, the applicant should be advised of the availability of the model conditions. If public notification has been completed on the basis of different draft conditions from the model conditions, the model conditions cannot be used unless the applicant wishes to re-notify.

Amendments

For amendment applications where the amendment involves altering activities covered in the model mining conditions, negotiation with the environmental authority (EA) holder should take place such that the original conditions are amended to reflect the model mining conditions to the extent of the changed impacts as a result of the alteration to activities. If there is no increase in impacts or only a trivial increase in impacts as a result of the change, this is not an opportunity to impose the model conditions on an existing project, except to the extent that the applicant seeks to adopt the model conditions.

Compulsory amendments

Where there are continual non-compliance issues and the model conditions would clearly alleviate the non-compliance then they can be used without negotiation, to the extent of the changed impacts as a result of the non-compliance. If there is no increase in impacts or only a trivial increase in impacts as a result of the non-compliance, this is not an opportunity to impose the model conditions on an existing project, except to the extent that the applicant seeks to adopt the model conditions.

The guidance above about not imposing model conditions on an existing mine without the consent of the EA holder obviously does not apply if the particular model conditions are considered necessary to address one or more of the circumstances listed in section 215(2) of the EP Act, for example, if an existing condition was on the basis of materially misleading information or it would overcome contraventions of the EP Act. However, in that situation, the model conditions should only be compulsorily imposed to the extent necessary to address the particular circumstance triggered by section 215.

Transfer of environmental authority holder

The model conditions should not be imposed upon a transfer, unless at the request of the transferee.

Holders may choose to apply

Holders of environmental authorities for existing mines may apply to adopt model conditions either in whole or on a schedule by schedule basis (or even part of a schedule, for example, if the existing mine has some site-specific conditions on a particular topic and other pro forma conditions). However, if an EA holder for an existing mine applies to adopt model conditions on one topic, this does not mean that model conditions on a different topic can be imposed in response to that amendment application. Similarly, if an application for an extension project is lodged, this should not be seen as an opportunity to impose the model conditions retrospectively on the existing mine except with the agreement of the holder.

If additional conditions are needed to manage particular site-specific or project-specific risks, they may be included. A company may also propose alternative conditions for particular site circumstances for negotiations with the department.

Further information

The latest version of this publication can be found at www.ehp.qld.gov.au using the publication number ESR/2016/1936 (previously EM944) as a search term.

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Note:

Explanatory notes are in green. Please delete prior to issue of EA.

Insertions required by applicants and/or the administering authority are in blue. Please delete prior to issue.

If an impact is not objectively relevant to the particular location or the project, then, unless the applicant has specifically requested the model conditions on that topic, there is no need to include conditions about it (for example, if the application does not include sewage treatment plants, there is no need to include conditions about them). Potentially, an applicant may request model conditions relating to an impact even if it is not relevant at the time of the decision, in case it becomes relevant later for reasons beyond the control of the applicant, such as residential development encroaching in future in the direction of a mine.

The terms 'sensitive place' and 'commercial place' used in these model conditions do not include places that are within the boundaries of the mining lease, nor places that are owned or leased by the holder of the authority or its related companies. For example, a mining camp operated by the EA holder would not be a sensitive place.

Schedule A – General

- A1** This environmental authority authorises environmental harm referred to in the conditions. Where there is no condition or this environmental authority is silent on a matter, the lack of a condition or silence does not authorise environmental harm.

Explanatory note – The first version of A2 may be used where the supporting EIS or application documents have enough information to demonstrate that an acceptable level of ground-truthing has been done on potential for flora/fauna impacts and other risk assessment so that EHP is comfortable that the right areas have been identified to indicate no go areas. If the EIS or other supporting information only proposes two types of areas (those to be disturbed and those not to be disturbed), it is only necessary to use paragraphs a) and b) below. However, if the EIS or other supporting information addresses and justifies limited disturbance within a mapped area, paragraph c) may be added, on the basis that the conditions for that limited disturbance are set out elsewhere in the conditions or in a report that is adopted by the conditions. If the limited disturbance relates to flora and fauna, refer to condition A3.

Where there is not enough information to show that an acceptable level of ground-truthing has been done, the second version of A2 should be used.

- A2** EITHER:

In carrying out the mining activity authorised by this environmental authority, disturbance of land:

- a) may occur in the areas marked 'A'
- b) must not occur in the areas marked 'B'
- c) may occur in the areas marked 'C' on the map that is annexure 1 to this environmental authority, but only in accordance with condition A3.

OR

In carrying out the mining activity authorised by this environmental authority, the holder of this environmental authority must comply with Schedule K—Figure 1a (Project Infrastructure Layout—Mine Area) and Schedule K—Figure 1b (Project Infrastructure Layout—Support Infrastructure).

Explanatory note: Condition A3 should only be used if condition A2 includes optional paragraph c) authorising limited disturbance within a mapped area. These conditions are not to be used in relation to paragraphs a) and b) of condition A2. The model conditions below are examples only. Any authorisation of limited disturbance should be site-specific and based on an assessment of the EIS or other supporting information, including ground-truthing of the areas.

Option 1 (for limited surface infrastructure)

- A3** Any disturbance within the areas marked 'C' on the map that is annexure 1 to this environmental authority:
- a) is only authorised to the extent reasonably necessary for a road, fence, underground service, low-impact telecommunications facility, electrical sub-station, transmission grid works and supply network works, storage depots, similar minor infrastructure and ancillary facilities for any of the above minor infrastructure
 - b) any disturbance within areas marked 'A' or 'C' is not to impact adversely on areas marked 'B'.

Option 2 (authorising sub-surface disturbance)

- A3** Only sub-surface disturbance is authorised within the areas marked 'C' on the map that is annexure 1 to this environmental authority.
- A4** The holder of this environmental authority must:
- a) install all measures, plant and equipment necessary to ensure compliance with the conditions of this environmental authority
 - b) maintain such measures, plant and equipment in a proper and efficient condition
 - c) operate such measures, plant and equipment in a proper and efficient manner
 - d) ensure all instruments and devices used for the measurement or monitoring of any parameter under any condition of this environmental authority are properly calibrated.

Monitoring

- A5** Except where specified otherwise in another condition of this environmental authority, all monitoring records or reports required by this environmental authority must be kept for a period of not less than five years.

Financial assurance

- A6** The activity must not be carried out until the environmental authority holder has given financial assurance to the administering authority as security for compliance with this environmental authority and any costs or expenses, or likely costs or expenses, mentioned in section 298 of the Act.
- A7** The amount of financial assurance must be reviewed by the holder of this environmental authority when a plan of operations is amended or replaced or the authority is amended.

Risk management

Explanatory note—risk management

Holders have the option of providing a risk management plan which is structured differently from the ISO provided that the alternative approach is reasonably justified.

- A8** The holder of this environmental authority must develop and implement a risk management system for mining activities which mirrors the content requirement of the Standard for Risk Management (ISO31000:2009), or the latest edition of an Australian standard for risk management, to the extent relevant to environmental management, by <<Insert date 3 months from date of issue>>
-

Notification of emergencies, incidents and exceptions

Explanatory note—notification

If notification is given under an alternative notification condition of the environmental authority it is taken to be notification under this condition. If notification is required under sections 320–320G of the EP Act the additional requirements under sections 320–320G apply.

- A9** The holder of this environmental authority must notify the administering authority by written notification within 24 hours, after becoming aware of any emergency or incident which results in the release of contaminants not in accordance, or reasonably expected to be not in accordance with, the conditions of this environmental authority.
- A10** Within 10 business days following the initial notification of an emergency or incident, or receipt of monitoring results, whichever is the latter, further written advice must be provided to the administering authority, including the following:
- a) results and interpretation of any samples taken and analysed
 - b) outcomes of actions taken at the time to prevent or minimise unlawful environmental harm
 - c) proposed actions to prevent a recurrence of the emergency or incident.
-

Complaints

- A11** The holder of this environmental authority must record all environmental complaints received about the mining activities including:
- a) name, address and contact number for of the complainant
 - b) time and date of complaint
 - c) reasons for the complaint
 - d) investigations undertaken
 - e) conclusions formed
 - f) actions taken to resolve the complaint
 - g) any abatement measures implemented
 - h) person responsible for resolving the complaint.

- A12** The holder of this environmental authority must, when requested by the administering authority, undertake relevant specified monitoring within a reasonable timeframe nominated or agreed to by the administering authority to investigate any complaint of environmental harm. The results of the investigation (including an analysis and interpretation of the monitoring results) and abatement measures, where implemented, must be provided to the administering authority within 10 business days of completion of the investigation, or no later than 10 business days after the end of the timeframe nominated by the administering authority to undertake the investigation.

Third-party reporting

- A13** The holder of this environmental authority must:
- a) within one year of the commencement of this environmental authority, obtain from an appropriately qualified person a report on compliance with the conditions of this environmental authority
 - b) obtain further such reports at regular intervals, not exceeding three-yearly intervals, from the completion of the report referred to above
 - c) provide each report to the administering authority within 90 days of its completion.

-
- A14** Where a condition of this environmental authority requires compliance with a standard, policy or guideline published externally to this environmental authority and the standard is amended or changed subsequent to the issue of this environmental authority, the holder of this environmental authority must:
- a) comply with the amended or changed standard, policy or guideline within two years of the amendment or change being made, unless a different period is specified in the amended standard or relevant legislation, or where the amendment or change relates specifically to regulated structures referred to in condition **XX**, the time specified in that condition
 - b) until compliance with the amended or changed standard, policy or guideline is achieved, continue to remain in compliance with the corresponding provision that was current immediately prior to the relevant amendment or change.

Schedule B – Air

Point source releases to air

- B1** Discharges of contaminants to air from the activity, other than dust and particulate matter addressed by condition B4, must be in accordance with **Tables B1—Release points (air)** and **B2—Contaminant limits (air)**.
- B2** Conduct a monitoring program of contaminant releases to the atmosphere at the release points, frequency and for the contaminants specified in **Table B2—Contaminant limits (air)** and which complies with the most recent edition of *AS4323.1 Stationary source emissions method 1: Selection of sampling positions*, and the most recent edition of the administering authority's air quality sampling manual.

Table B1—Release points (air)

Release point	Release point description	Source description	Minimum release height (metres above ground)	Minimum exit gas temperature (°C)	Minimum efflux velocity (m/s)
RP1	Processor mainstack	Mineral processor			
RP2	Drier stack	Crusher and drier			

Table B2—Contaminant limits (air)

Contaminant	Release point	Limit type	Release limit	Release limit units	Minimum monitoring frequency

- B3** The release of point source and fugitive emissions from the mining activities must not cause the concentrations of the contaminants listed in Table XX, when measured at [a sensitive place or at specified monitoring stations], to exceed the levels shown in Table XX.

Dust and particulate matter monitoring

Explanatory note—sources of PM_{2.5} are primarily from combustion sources and PM_{2.5} is unlikely to be elevated if significant combustion sources are not present. Condition B4 (c) will therefore only be required if there is a significant source of air emissions from combustion sources.

The five exceedances for the PM₁₀ standard outlined in B4 (b) were introduced to account for the impact of bushfires, dust storms and fuel reduction burning for fire management purposes. The five exceedances are in essence arbitrary in that the number was chosen as it is difficult to determine exactly the number of times these events may happen in any one year. More than five exceedances as a result of one or more of these events would not be considered to be a breach of condition.

- B4** The environmental authority holder shall ensure that all reasonable and feasible avoidance and mitigation measures are employed so that the dust and particulate matter emissions generated by the mining activities do not cause exceedances of the following levels when measured at any sensitive or commercial place:
- a) Dust deposition of 120 milligrams per square metre per day, averaged over one month, when monitored in accordance with the most recent version of *Australian Standard AS3580.10.1 Methods for sampling and analysis of ambient air—Determination of particulate matter—Deposited matter – Gravimetric method*.

- b) A concentration of particulate matter with an aerodynamic diameter of less than 10 micrometres (PM₁₀) suspended in the atmosphere of 50 micrograms per cubic metre over a 24-hour averaging time, for no more than five exceedances recorded each year, when monitored in accordance with the most recent version of either:
 - 1. *Australian Standard AS3580.9.6 Methods for sampling and analysis of ambient air—Determination of suspended particulate matter—PM₁₀ high volume sampler with size-selective inlet – Gravimetric method, or*
 - 2. *Australian Standard AS3580.9.9 Methods for sampling and analysis of ambient air—Determination of suspended particulate matter—PM₁₀ low volume sampler—Gravimetric method.*
- c) A concentration of particulate matter with an aerodynamic diameter of less than 2.5 micrometres (PM_{2.5}) suspended in the atmosphere of 25 micrograms per cubic metre over a 24-hour averaging time, when monitored in accordance with the most recent version of *AS/NZS3580.9.10 Methods for sampling and analysis of ambient air—Determination of suspended particulate matter—PM (sub)_{2.5}(/sub) low volume sampler—Gravimetric method.*
- d) A concentration of particulate matter suspended in the atmosphere of 90 micrograms per cubic metre over a 1 year averaging time, when monitored in accordance with the most recent version of *AS/NZS3580.9.3:2003 Methods for sampling and analysis of ambient air—Determination of suspended particulate matter—Total suspended particulate matter (TSP)—High volume sampler gravimetric method.*

Schedule C - Waste management

- C1** General waste must only be disposed of into the waste disposal trench facility of <insert tenement number> and identified in Schedule # Figure # – Site Map.

Explanatory note—burning

If it can be demonstrated that other possible options have been considered in accordance with the waste management hierarchy, burning may also be permitted for mining activities in addition to clearing for extraction activities.

- C2** Unless otherwise permitted by the conditions of this environmental authority or with prior approval from the administering authority and in accordance with a relevant standard operating procedure, waste must not be burnt.
- C3** The holder of this environmental authority may burn vegetation cleared in the course of carrying out extraction activities provided the activity does not cause environmental harm at any sensitive place or commercial place.

Tailings disposal

- C4** Tailings must be managed in accordance with procedures contained within the current plan of operations. These procedures must include provisions for:
- a) containment of tailings
 - b) the management of seepage and leachates both during operation and the foreseeable future
 - c) the control of fugitive emissions to air
 - d) a program of progressive sampling and characterisation to identify acid producing potential and metal concentrations of tailings
 - e) maintaining records of the relative locations of any other waste stored within the tailings
 - f) rehabilitation strategy
 - g) monitoring of rehabilitation, research and/or trials to verify the requirements and methods for decommissioning and final rehabilitation of tailings, including the prevention and management of acid mine drainage, erosion minimisation and establishment of vegetation cover.

Acid sulphate soils

- C5** Treat and manage acid sulphate soils in accordance with the latest edition of the *Queensland Acid Sulfate Soil Technical Manual*.

Schedule D - Noise

Noise limits

- D1** The holder of this environmental authority must ensure that noise generated by the mining activities does not cause the criteria in **Table D1 – Noise limits** to be exceeded at a sensitive place or commercial place.

Table D1 – Noise limits

Sensitive place						
Noise level dB(A) measured as:	Monday to Saturday			Sundays and public holidays		
	7am to 6pm	6pm to 10pm	10pm to 7am	9am to 6pm	6pm to 10pm	10pm to 9am
L_{Aeq} , adj, 15 mins	CV = 50	CV = 45	CV = 40	CV = 45	CV = 40	CV = 35
	AV = 5	AV = 5	AV = 0	AV = 5	AV = 5	AV = 0
L_{A1} , adj, 15 mins	CV = 55	CV = 50	CV = 45	CV = 50	CV = 45	CV = 40
	AV = 10	AV = 10	AV = 5	AV = 10	AV = 10	AV = 5
Commercial place						
Noise level dB(A) measured as:	Monday to Saturday			Sundays and public holidays		
	7am to 6pm	6pm to10pm	10pm to7am	7am to 6pm	6pm to 10pm	10pm to 7am
L_{Aeq} , adj, 15 mins	CV = 55	CV = 50	CV = 45	CV = 50	CV = 45	CV = 40
	AV = 10	AV = 10	AV = 5	AV = 10	AV = 10	AV = 5

Table D1 – Noise limits notes:

1. CV = Critical Value
2. AV = Adjustment Value
3. *bg* = background noise level (**L_{A90}**, adj, 15 mins) measured over 3-5 days at the nearest sensitive receptor
4. To calculate noise limits in Table D1:
 If $bg \leq (CV - AV)$:
 Noise limit = $bg + AV$
 If $(CV - AV) < bg \leq CV$:
 Noise limit = CV
 If $bg > CV$:
 Noise limit = $bg + 0$
5. In the event that measured *bg* (**L_{A90}**, adj, 15 mins) is less than 30 dB(A), then 30 dB(A) can be substituted for the measured background level
6. If the project is unable to meet the noise limits as calculated above alternative limits may be calculated using the processes outlined in the "Planning for Noise Control" guideline.

Airblast overpressure nuisance

- D2** The holder of this environmental authority must ensure that blasting does not cause the limits for peak particle velocity and air blast overpressure in **Table D2 – Blasting noise limits** to be exceeded at a sensitive place or commercial place.

Table D2 – Blasting noise limits

Blasting noise limits	Sensitive or commercial place limits	
	7am to 6pm	6pm to 7am
Airblast overpressure	115 dB (Linear) Peak for 9 out of 10 consecutive blasts initiated and not greater than 120 dB (Linear) Peak at any time	<insert either no blasting or limits justified by proponent not less stringent than 7am – 6pm>
Ground vibration peak particle velocity	5mm/second peak particle velocity for 9 out of 10 consecutive blasts and not greater than 10 mm/second peak particle velocity at any time	<insert either no blasting or limits justified by proponent not less stringent than 7am – 6pm>

Monitoring and reporting

- D3** Noise monitoring and recording must include the following descriptor characteristics and matters:
- L_{AN,T} (where N equals the statistical levels of 1, 10 and 90 and T = 15 mins)
 - background noise LA90
 - the level and frequency of occurrence of impulsive or tonal noise and any adjustment and penalties to statistical levels
 - atmospheric conditions including temperature, relative humidity and wind speed and directions
 - effects due to any extraneous factors such as traffic noise
 - location, date and time of monitoring
 - if the complaint concerns low frequency noise, Max L_{pLIN,T} and one third octave band measurements in dB(LIN) for centre frequencies in the 10 – 200 Hz range.
- D4** The holder of this environmental authority must develop and implement a blast monitoring program to monitor compliance with **Table D2 – Blasting noise limits** for:
- at least <insert number> % of all blasts undertaken on this site in each <insert period for example, month or year> at the nearest sensitive place or commercial place <at insert a place nominated in this authority>
 - all blasts conducted during any time period specified by the administering authority at the nearest sensitive place or commercial place.

Schedule E - Groundwater

Contaminant release

Explanatory note—the first version of condition E1 is only to be used when it has been identified that no release of contaminants to groundwater is to occur as a result of mining activities. The definition of a ‘contaminant’ is set out in Section 11 of the EP Act and relevantly includes any ‘gas, liquid or solid’, not just hazardous contaminants. For example, it would include the replenishment of aquifers with water of the same quality or higher quality than the aquifers.

The term ‘release’ is defined in Schedule 4 of the EP Act and relevantly, it should be noted that this includes passive releases and not merely controlled releases. Accordingly, if it is likely that the activity will lead to the passive replenishment of aquifers, even with good quality water, version 1 of condition E1 should not be used.

In relation to version 2 of condition E1 - Section 63 of the Environmental Protection Regulation 2008 addresses the topic of the release of ‘waste’ to groundwater. The term ‘waste’ is defined in Section 13 of the EP Act. Section 63 of the EP Regulation requires the administering authority to refuse an application if:

- a) the waste is not being, or may not be, released entirely within a confined aquifer (except for petroleum activities) or
- b) the release of the waste is affecting adversely, or may affect adversely, a surface ecological system; or
- c) the waste is likely to result in a deterioration in the environmental values of the receiving groundwater.

Paragraph b) is not intended to apply to a surface ecological system which is authorised to be cleared for the purpose of the mining activities. Paragraphs b) and c) are not intended to apply to trivial impacts.

Where contaminants are proposed to be released to groundwater the limits set out in the condition must not be exceeded at the release point. All the potential contaminants generated as part of the mining activity that have a release limit will be included in this table. The limit type and value will need to be determined in consultation with the administering authority.

E1 EITHER

The holder of this environmental authority must not release contaminants to groundwater.

Or

The holder of this environmental authority is authorised to release contaminants at the release points and at the release frequencies specified in **Table E1 - Groundwater release points, frequency** and comply with the release limits specified in **Table E2 - Groundwater release quality**.

Table E1 - Groundwater release points, frequency

Release points	Release frequency	Location	
		Easting (GDA94 – Zone 54)	Northing (GDA94 – Zone 54)

Table E2 - Groundwater release quality

Parameter	Release limit

Monitoring and reporting

- E2** All determinations of groundwater quality and biological monitoring must be performed by an appropriately qualified person.
- E3** Groundwater quality and levels must be monitored at the locations and frequencies defined in **Table - E3 Groundwater monitoring locations and frequency** and **Schedule # – Figure #** (Groundwater Bore Monitoring Locations) for quality characteristics identified in **Table E4 - Groundwater quality triggers and limits**.

Table E3 - Groundwater monitoring locations and frequency

Monitoring point	Location		Surface RL (m) ¹	Monitoring frequency
	Easting (GDA94 – Zone 54)	Northing (GDA94 – Zone 54)		
Reference bores²				
Compliance bores				

1. *Monitoring is not required where a bore has been removed as a direct result of the mining activity.*
2. *RL must be measured to the nearest 5cm from the top of the bore casing.*
3. *Reference sites must:*
 - (a) *have a similar flow regime*
 - (b) *be from the same bio-geographic and climatic region*
 - (c) *have similar geology, soil types and topography*
 - (d) *not be so close to the test sites that any disturbance at the test site also results in a change at the reference site.*

Table E4 - Groundwater quality triggers and limits

Parameter	Contaminant triggers	Contaminant limit

E4 Groundwater levels when measured at the monitoring locations specified in **Table E3 - Groundwater monitoring locations and frequency** must not exceed the groundwater level trigger change thresholds specified in **Table E5 - Groundwater level monitoring** below.

Table E5 - Groundwater level monitoring

Monitoring location	Level trigger threshold

Exceedance investigation

- E5** If quality characteristics of groundwater from compliance bores identified in **Table E3 - Groundwater monitoring locations and frequency** exceed any of the trigger levels stated in **Table E4 - Groundwater quality triggers and limits** or exceed any of the groundwater level trigger threshold stated in **Table E5 - Groundwater level monitoring**, the holder of this environmental authority must compare the compliance monitoring bore results to the reference bore results and complete an investigation in accordance with the ANZECC and ARMCANZ 2000.
- E6** Results of monitoring of groundwater from compliance bores identified in **Table E3 - Groundwater monitoring locations and frequency**, must not exceed any of the limits defined in **Table E4 - Groundwater quality triggers and limits**.

Bore construction and maintenance and decommissioning.

- E7** The construction, maintenance and management of groundwater bores (including groundwater monitoring bores) must be undertaken in a manner that prevents or minimises impacts to the environment and ensures the integrity of the bores to obtain accurate monitoring

Schedule F - Water (Fitzroy model conditions)

Explanatory note—the model conditions in this schedule are based on the Model Water conditions for coal mines in the Fitzroy River Basin. Alterations to the conditions will be necessary in different catchments to capture the environmental values, use of water resources and the quality characteristics of those catchments. Similarly, alterations will be required for mines other than coal mines.

An alternative approach to the surface water release conditions contained within this guideline is available based on the Isaac River mine water release pilot. Certain prerequisites will have to be met before a mining activity may apply to adopt the pilot water release conditions.

It should also be noted that these conditions may be subject to amendments that are dependent on the outcome of the Isaac River mine water release pilot.

Contaminant release

Explanatory note—the definition of ‘mine affected water’ is set out in the Definitions Schedule. The release of waters other than mine affected waters does not need to be listed in Table F1 (e.g.: overland flow water that has been diverted around mine infrastructure). Release points associated with erosion and sediment control structures that have been installed in accordance with the standards and requirements of an Erosion and Sediment Control Plan to manage run-off containing sediment only that is not likely to have properties that would cause environmental harm based on the water quality parameters for mine affected water in Tables ##, do not need to be identified in Table F1.

There is no intention to prevent the internal transfer of waters on mine sites. Where this is adequately addressed in a water management plan, condition F3 is not required.

In addition, there is no requirement to list in Table F1 the holder’s or third parties’ artificial storage or transfer structures or other beneficial re-use points which are authorised under condition F24 (Water re-use).

- F1** Contaminants that will, or have the potential to cause environmental harm must not be released directly or indirectly to any waters as a result of the authorised mining activities, except as permitted under the conditions of this environmental authority.
- F2** Unless otherwise permitted under the conditions of this environmental authority, the release of mine affected water to waters must only occur from the release points specified in **Table F1 - Mine affected water release points, sources and receiving waters** and depicted in Figure 1 attached to this environmental authority.
- F3** The release of mine affected water to internal water management infrastructure installed and operated in accordance with a water management plan that complies with condition F28 is permitted.

Table F1 - Mine affected water release points, sources and receiving waters

Release point (RP)	Latitude (decimal degree, GDA94)	Longitude (decimal degree, GDA94)	Mine affected water source and location	Monitoring point	Receiving waters description
RP 1	XXXX	XXXX	e.g. Stormwater dam spillway Overflow	Dam spillway	Wet Creek
RP 2	XXXX	XXXX	e.g. Dam overflow pipe	Sampling tap on pipe where the pipe enters Sandy Creek	Sandy Creek

- F4** The release of mine affected water to waters in accordance with condition F2 must not exceed the release limits stated in **Table F2 - Mine affected water release limits** when measured at the monitoring points specified in **Table F1 - Mine affected water release points, sources and receiving waters** for each quality characteristic.

Table F2 - Mine affected water release limits

Quality characteristic	Release limits	Monitoring frequency	Comment
Electrical conductivity (µS/cm)	Release limits specified in Table F4 for variable flow criteria or condition F11.	Daily during release (the first sample must be taken within two hours of commencement of release)	
pH (pH Unit)	6.5 (minimum) 9.0 (maximum)	Daily during release (the first sample must be taken within two hours of commencement of release)	
Turbidity (NTU)	Current limit or limit derived from suspended solids limit and demonstrated correlation between turbidity to suspended solids historical monitoring data for dam water*	Daily during release* (first sample within two hours of commencement of release)	Turbidity is required to assess ecosystems impacts and can provide instantaneous results.

F5 The release of mine affected water to waters from the release points must be monitored at the locations specified in **Table F1 - Mine affected water release points, sources and receiving waters** for each quality characteristic and at the frequency specified in **Table F2 - Mine affected water release limits** and **Table F3 - Release contaminant trigger investigation levels, potential contaminants**.

Note: The administering authority will take into consideration any extenuating circumstances prior to determining an appropriate enforcement response in the event condition F5 is contravened due to a temporary lack of safe or practical access. The administering authority expects the environmental authority holder to take all reasonable and practicable measures to maintain safe and practical access to designated monitoring locations.

Explanatory note—the quality characteristics listed in **Table F3 - Release contaminant trigger investigation levels, potential contaminants** should be assessed on a site by site basis by each mine prior to finalisation of amendment applications. The assessment should take into account such characteristics as the geology and chemical characteristics of the land to be disturbed, the types of contaminants likely to be found in processing and quality characteristics of receiving waters.

Based on this assessment, the quality characteristic should be either not be included in **Table F3 - Release contaminant trigger investigation levels, potential contaminants** if below trigger levels; or included as priority contaminants in **Table F3 - Release contaminant trigger investigation levels, potential contaminants** if above trigger levels. Assessment should involve comparison of representative data from dams that have historically been discharged or likely to be discharged from contaminant release points in **Table F1 - Mine affected water release points, sources and receiving waters**. Data may include historical results or sampling undertaken for this specific purpose.

It could also be demonstrated based on existing water quality information that the water source and relative water quality of some dams are the same, in which case such dams may not need to be sampled individually. For metals and metalloids, trigger levels apply if dissolved results exceed trigger levels. However, total (unfiltered) results for metals and metalloids can be used to disregard a characteristic for inclusion in **Table F3 - Release contaminant trigger investigation levels, potential contaminants**.

Table F3 - Release contaminant trigger investigation levels, potential contaminants

Quality characteristic	Trigger levels (µg/L)	Comment on trigger level	Monitoring frequency
Aluminium	55	<i>For aquatic ecosystem protection, based on SMD guideline</i>	Commencement of release and thereafter weekly during release
Arsenic	13	<i>For aquatic ecosystem protection, based on SMD guideline</i>	
Cadmium	0.2	<i>For aquatic ecosystem protection, based on SMD guideline</i>	
Chromium	1	<i>For aquatic ecosystem protection, based on SMD guideline</i>	
Copper	2	<i>For aquatic ecosystem protection, based on LOR for ICPMS</i>	
Iron	300	<i>For aquatic ecosystem protection, based on low reliability guideline</i>	
Lead	4	<i>For aquatic ecosystem protection, based on SMD guideline</i>	
Mercury	0.2	<i>For aquatic ecosystem protection, based on LOR for CV FIMS</i>	
Nickel	11	<i>For aquatic ecosystem protection, based on SMD guideline</i>	
Zinc	8	<i>For aquatic ecosystem protection, based on SMD guideline</i>	
Boron	370	<i>For aquatic ecosystem protection, based on SMD guideline</i>	
Cobalt	90	<i>For aquatic ecosystem protection, based on low reliability guideline</i>	
Manganese	1900	<i>For aquatic ecosystem protection, based on SMD guideline</i>	
Molybdenum	34	<i>For aquatic ecosystem protection, based on low reliability guideline</i>	
Selenium	10	<i>For aquatic ecosystem protection, based on LOR for ICPMS</i>	
Silver	1	<i>For aquatic ecosystem protection, based on LOR for ICPMS</i>	
Uranium	1	<i>For aquatic ecosystem protection, based on LOR for ICPMS</i>	
Vanadium	10	<i>For aquatic ecosystem protection, based on LOR for ICPMS</i>	
Ammonia	900	<i>For aquatic ecosystem protection, based on SMD guideline</i>	
Nitrate	1100	<i>For aquatic ecosystem protection, based on ambient Qld WQ Guidelines (2006) for TN</i>	
Petroleum hydrocarbons (C6-C9)	20		

Quality characteristic	Trigger levels (µg/L)	Comment on trigger level	Monitoring frequency
Petroleum hydrocarbons (C10-C36)	100		
Fluoride (total)	2000	<i>Protection of livestock and short term irrigation guideline</i>	
Sodium	TBA		
Suspended Solids	Limit to be determined based on receiving water reference data and achievable best practice sedimentation control and treatment*		
Sulphate (SO42-) (mg/L)	Limit to be determined based on receiving water reference data and achievable best practice sedimentation control and treatment*	<i>Drinking water environmental values from NHMRC 2006 guidelines OR ANZECC</i>	

Table F3 - Release contaminant trigger investigation levels, potential contaminants notes:

1. All metals and metalloids must be measured as total (unfiltered) and dissolved (filtered). Trigger levels for metal/metalloids apply if dissolved results exceed trigger.
2. The quality characteristics required to be monitored as per **Table F3 - Release contaminant trigger investigation levels, potential contaminants** can be reviewed once the results of two years monitoring data is available, or if sufficient data is available to adequately demonstrate negligible environmental risk, and it may be determined that a reduced monitoring frequency is appropriate or that certain quality characteristics can be removed from **Table F3 - Release contaminant trigger investigation levels, potential contaminants** by amendment.
3. SMD – slightly moderately disturbed level of protection, guideline refers ANZECC & ARMCANZ (2000).
4. LOR (limit of reporting) – typical reporting for method stated. ICPMS/CV FIMS – analytical method required to achieve LOR.

F6 If quality characteristics of the release exceed any of the trigger levels specified in **Table F3 - Release contaminant trigger investigation levels, potential contaminants** during a release event, the environmental authority holder must compare the downstream results in the receiving waters to the trigger values specified in **Table F3 - Release contaminant trigger investigation levels, potential contaminants** and:

- a) where the trigger values are not exceeded then no action is to be taken, or
- b) where the downstream results exceed the trigger values specified **Table F3 - Release contaminant trigger investigation levels, potential contaminants** for any quality characteristic, compare the results of the downstream site to the data from background monitoring sites and:
 1. if the result is less than the background monitoring site data, then no action is to be taken, or

2. if the result is greater than the background monitoring site data, complete an investigation into the potential for environmental harm and provide a written report to the administering authority within 90 days of receiving the result, outlining:
 - (i) details of the investigations carried out
 - (ii) actions taken to prevent environmental harm.

Note: Where an exceedance of a trigger level has occurred and is being investigated, in accordance with F6 b (2) of this condition, no further reporting is required for subsequent trigger events for that quality characteristic.

- F7** If an exceedance in accordance with condition F6 b (2) is identified, the holder of the environmental authority must notify the administering authority in writing within 24 hours of receiving the result.

Mine affected water release events

- F8** The holder must ensure a stream flow gauging station/s is installed, operated and maintained to determine and record stream flows at the locations and flow recording frequency specified in **Table F4 - Mine affected water release during flow events**.

- F9** Notwithstanding any other condition of this environmental authority, the release of mine affected water to waters in accordance with condition F2 must only take place during periods of natural flow in accordance with the receiving water flow criteria for discharge specified in **Table F4 - Mine affected water release during flow events** for the release point(s) specified in **Table F1 - Mine affected water release points, sources and receiving waters**.

- F10** The release of mine affected water to waters in accordance with condition F2 must not exceed the Maximum Release Rate (for all combined release point flows) for each receiving water flow criterion for discharge specified in **Table F4 - Mine affected water release during flow events** when measured at the monitoring points specified in **Table F1 - Mine affected water release points, sources and receiving waters**.

or

- F11** The 80th percentile of electrical conductivity (EC) values recorded at the downstream monitoring points listed in **Table F4 - Mine affected water release during flow events** must not exceed XXXuS/cm over the duration of the release influence period and have a maximum value of no greater than 20 per cent of XXXuS/cm. The 80th percentile must be calculated using all EC values recorded by the monitoring station during the release influence period.

Note: The release influence period is the period during which the downstream monitoring points are influenced by mine affected water releases and includes both the duration of release and any lag time between release point/s and downstream monitoring points.

Explanatory note— Table F4 – Mine affected water release during flow events

Gauging station description:

The intent here is that every release point in **Table F1 - Mine affected water release points, sources and receiving waters** is associated with a gauging station that measures flow upstream of the discharge point. More than one discharge point may be associated with the same gauging station. The gauging station should be

at a minimum distance from the discharge point such that water flow under trigger flow events will not significantly diminish by the time it reaches the discharge point.

The location of the gauging station should ideally be such that it is not significantly affected by other upstream point source releases or times of discharge are limited to periods of 'natural' flow. In the situation where there is an existing gauging station that is capable of performing all the monitoring functions required by these conditions, this gauging station may be used instead of having to install a new gauging station. Agreement to access the gauging stations is the responsibility of the environmental authority holder and is to be provided in writing to the administering authority.

Under certain circumstances it may be appropriate to have a downstream gauging station in addition to or in replacement of an upstream gauging station. The location should ideally not be affected by the discharge (for example, be measured off the main waterway). The need for this must be demonstrated on a case by case basis to show why an upstream gauging station is insufficient. This may be the case when mines are located in the upper parts of catchments or near the downstream confluence or a major waterway. Similarly, the gauging station should be at a distance from the discharge point such that water flow during triggered flow events will not significantly diminish between the discharge point and the measuring point (or the confluence with the creek being measured). For downstream flow triggers, some changes to calculation for flow triggers and maximum release flows would typically be required based on the relative sizes of the waterways involved.

Flow triggers and EC quality criteria:

The intent for flow triggers is that the times of discharge are limited to times around natural flow events only. Different flow regime methodologies are used to define mine affected water release opportunities, provide flexibility for site operators and to protect identified environmental values within receiving waters. The expectation is that where flow gauging data is available, it is used to calculate flow triggers. Where gauging data is not available or is insufficient, flow triggers should be based on runoff/stream flow estimates using appropriate hydrological calculations or models and known catchment area, rainfall estimations etc.

Separate methodologies for discharges which occur to local waterways rather than regional waterways will be applied as part of this revised approach. Due to the increased flexibility of the revised approach and consideration of a wider range of local factors the application of these model conditions to individual sites will require case-by case assessment and require sufficient background information to be provided. For example, it should be noted that discharges upstream of dams or lakes may require special considerations and generally stricter controls. Also, where multiple mines discharge to the same or closely connected waterways consideration of cumulative impacts will be necessary as part of the assessment process.

Model conditions do not preclude applicants from proposing alternative or additional conditions, nor restrict the administering authority from using alternative conditions where the case warrants. However, applications proposing alternative approaches will need to be supported by sufficient environmental risk assessment and contingency planning information to allow the administering authority to adequately consider the proposal.

There may be instances where case-by-case proposals can be considered for conditions to address management of particularly heavy rainfall and flooding that is similar to previous events, where there is sufficient information available based on: previous transitional environmental programs, monitoring and analysis, the environmental values of the receiving environment together with the experience of impacts on those environmental values, rigorous contingency and disaster response planning, and with particular regard to actual and potential cumulative impacts. For example, there may be potential to tailor a schedule of conditions to be triggered upon reaching nominated thresholds of rainfall, flow, flooding (or a combination) based on learning from an event that has occurred in the past; possibly adopting a similar framework to previous discharge permissions granted in similar circumstances, provided the framework was demonstrated to adequately address environmental risk to the satisfaction of the delegate.

No/low flow stream conditions (best quality / low EC mine affected water):

Discharge water quality will need to meet or be better than water quality objectives (or long-term background reference 75th / 80th percentile) for EC and will only be permitted for temporary periods after periods of significant flow. The focus of this is to allow 'good' quality water to be released when collected rather than having it stored over long durations resulting in deteriorating water quality. Any discharges made under no/low flow stream conditions must not contribute to or cause erosion and due consideration should be given to road/rail access, stock crossings etc. (particularly in relation to multiple mines discharging under no/low flow stream conditions on connected waterways). General principles include:

- a) Release at times when flow is on tail end of flow event only that is, following a flow above specified event flow trigger and when the flow reduces below the flow trigger again. This trigger will commence a discharge window of 4–6 weeks for good quality water only.
- b) End of pipe WQ ≤ WQO (or long term background reference 75th/80th percentile). May require assessment of downstream environmental values where WQO is more stringent (for example, drinking water supply).
- c) Duration of release is limited (dry ephemeral stream, four weeks after flow event ceases, use time after flow trigger for below – add additional time).
- d) Volume/rate will be considered on a case by case basis.

Medium flow stream conditions (medium quality mine affected water):

A flow trigger for the stream is required and will be set to avoid discharge of medium quality water during periods of no or low flow. General principles include:

- a) Requires the use of a stream flow trigger above which release can occur. The stream flow trigger must be representative of event flow and be above base/low flow (typically determined from hydrographs, historical flow/water quality data and/or modeling).
- b) End-of pipe EC <3500µS/cm. Options for either <1500µs/cm and <3500µS/cm as maximum limits can be considered which will result in different maximum discharge rates for different quality water. The better the quality of water to be released, the greater the volume that can be permitted.
- c) The design dilution/maximum discharge rate should be based on a site specific risk assessment. These should be designed to achieve an in-stream EC based on the location – upper (Zone 1), mid (Zone 2) or lower (Zone 3) catchment. The EC_{WQO high flow} should be adopted as background EC for design calculations.

- Zone 1, upper catchment mines, approximately <10km from top of waterway catchment.

EC_{in stream} = 1000µS/cm (toxicity guideline).

- Zone 2, mid catchment mines, zones not within Zone 1 or Zone 3

EC_{in stream} = 700µS/cm

- Zone 3, lower catchment mines (All regional waterways are considered Zone 3 from distance >50km from top of waterway catchment, refer to Zone 3 map) –

EC_{in stream} = EC_{high flow WQO} + multiplier x (EC_{WQO low flow} – EC_{WQO high flow})

for example, multiplier = 0.2 for Isaac, Nogoia, Dawson

- d) EC in stream for calculations may vary according to other locally relevant environmental values that may need to be considered.

High flow stream conditions (poorer quality water)

This option might be used in some cases for mines that need to discharge higher EC wastewater than is allowable under medium flow stream conditions. Any discharge is required to have a higher level of dilution than with medium flow cases but still achieve a maximum incremental increase in the waterway. This option is most feasible for mines situated on regional waterways as the window for discharge is likely to be limited for local waterways. Some additional considerations on management of mixing zones and acute/chronic toxicity may be required in this case. General principles include:

- a) Requires the use of a stream flow trigger above which release can occur. The stream flow trigger must be representative of high event flow and be above medium flow (typically determined from hydrographs, historical flow/water quality data and/or modeling)
- b) End-of pipe EC must be > 3500 μ S/cm (but <10,000 μ S/cm). The better the quality of water to be released, the greater the volume that can be permitted
- c) The design dilution/maximum discharge rate should be based on a site specific risk assessment. These should be designed to achieve an in-stream EC based on the location – upper (Zone 1), mid (Zone 2) or lower (Zone 3) catchment as described above
- d) May need some additional indicators/requirements and requires case by case assessment

This option is likely to be less feasible for Zone 1 and 2 mines.

Using condition F11 in place of F10

Where condition F11 has been used instead of F10, Table F4 is to be modified to remove references to electrical conductivity release limits. The low, medium and high flow criteria and maximum release rate are also to be removed and replaced with minimum flow in receiving water criteria.

Table F4 - Mine affected water release during flow events

Receiving waters/stream	Release point (RP)	Gauging station	Gauging station latitude (decimal degree, GDA94)	Gauging station longitude (decimal degree, GDA94)	Receiving water flow recording frequency	Receiving water flow criteria for discharge (m ³ /s)	Maximum release rate (for all combined RP flows)	Electrical conductivity release limits
e.g. Wet Creek	Insert all release points that will release based on this gauging station flow. e.g. RP1, RP2 & RP3	e.g. Gauging station 1	XXXX	XXXX	Continuous (minimum daily)	Low Flow <XX m ³ /s for a period of <insert number of days> after natural flow events that exceed XX m ³ /s (where XX is a specified event flow trigger)	Insert < xx ML/day or < xx m ³ /s Volume/rate to be determined on case by case basis	Electrical conductivity (µS/cm): <insert water quality objective or 75th percentile of long term background reference data>
						Medium Flow > XX m ³ /s (where XX is specified event flow trigger)	< XX m ³ /s (where XX is the maximum release rate determined on case by case basis)	Electrical conductivity (µS/cm) <insert value determined on case specific basis but typically <1500
							< YY m ³ /s (where YY is the maximum release rate determined on case by case basis)	Electrical conductivity (µS/cm) <insert value determined on case specific basis but typically <3500
						High Flow > ZZ m ³ /s (where ZZ is a specified high flow event trigger)	< ZZ m ³ /s (where ZZ is the maximum release rate determined on case by case basis)	Electrical conductivity (µS/cm) <insert value determined on case specific basis but typically within a range of <3500 to <10,000

Release

- F12** The daily quantity of mine affected water released from each release point must be measured and recorded.
- F13** Releases to waters must be undertaken so as not to cause erosion of the bed and banks of the receiving waters, or cause a material build-up of sediment in such waters.

Notification of release event

- F14** The environmental authority holder must notify the administering authority as soon as practicable and no later than 24 hours after commencing to release mine affected water to the receiving environment. Notification must include the submission of written advice to the administering authority of the following information:
- a) release commencement date / time
 - b) details regarding the compliance of the release with the conditions of Department Interest: Water of this environmental authority (that is, contaminant limits, natural flow, discharge volume)
 - c) release point/s
 - d) release rate
 - e) release salinity
 - f) receiving water/s including the natural flow rate.

Note: Notification to the administering authority must be addressed to the Manager and Project Manager of the local Administering Authority via email or facsimile.

- F15** The environmental authority holder must notify the administering authority as soon as practicable and nominally no later than 24 hours after cessation of a release event of the cessation of a release notified under Condition F14 and within 28 days provide the following information in writing:
- a) release cessation date/time
 - b) natural flow rate in receiving water
 - c) volume of water released
 - d) details regarding the compliance of the release with the conditions of Department Interest; Water of this environmental authority (i.e. contaminant limits, natural flow, discharge volume)
 - e) all in-situ water quality monitoring results
 - f) any other matters pertinent to the water release event.

Note: Successive or intermittent releases occurring within 24 hours of the cessation of any individual release can be considered part of a single release event and do not require individual notification for the purpose of compliance with conditions F14 and F15, provided the relevant details of the release are included within the notification provided in accordance with conditions F14 and F15.

Notification of release event exceedance

- F16** If the release limits defined in **Table F2 - Mine affected water release limits** are exceeded, the holder of the environmental authority must notify the administering authority within 24 hours of receiving the results.

F17 The environmental authority holder must, within 28 days of a release that is not compliant with the conditions of this environmental authority, provide a report to the administering authority detailing:

- a) the reason for the release
- b) the location of the release
- c) the total volume of the release and which (if any) part of this volume was non-compliant
- d) the total duration of the release and which (if any) part of this period was non-compliant
- e) all water quality monitoring results (including all laboratory analyses)
- f) identification of any environmental harm as a result of the non-compliance
- g) all calculations
- h) any other matters pertinent to the water release event.

Receiving environment monitoring and contaminant trigger levels

F18 The quality of the receiving waters must be monitored at the locations specified in **Table F6 - Receiving water upstream background sites and downstream monitoring points** for each quality characteristic and at the monitoring frequency stated in **Table F5 - Receiving waters contaminant trigger levels**.

Table F5 - Receiving waters contaminant trigger levels

Quality Characteristic	Trigger Level	Monitoring Frequency
pH (pH units)	6.5 – 9.0	Daily during the release
Electrical Conductivity (µS/cm)	TBA Note: for protection against toxicity this may need to be reduced in some circumstances e.g. where in close proximity upstream of a drinking water dam or regional waterway	
Suspended solids (mg/L)	To Be Determined. Turbidity may be required to assess ecosystems impacts and can provide instantaneous results.	
Sulphate (SO ₄ ²⁻) (mg/L)	250 (Protection of drinking water Environmental Value)	

Table F6 - Receiving water upstream background sites and downstream monitoring points

Monitoring points	Receiving waters location description	Latitude (decimal degree, GDA94)	Longitude (decimal degree, GDA94)
Upstream background monitoring points			
Monitoring point XX	XXXX Creek XX metres upstream of RP XX	XXXX	XXXX
Monitoring point XX	XXXX Creek XX metres upstream of RP XX	XXXX	XXXX
Downstream monitoring points			
Monitoring point XX	XXXX Creek XX metres downstream of RP XX	XXXX	XXXX
Monitoring point XX	XXXX Creek XX metres downstream of RP XX	XXXX	XXXX

Table F6 - Receiving water upstream background sites and downstream monitoring points notes:

- a) The upstream monitoring point should be within Xkm the release point.
- b) The downstream point should not be greater than Xm from the release point.
- c) The data from background monitoring points must not be used where they are affected by releases from other mines.

F19 If quality characteristics of the receiving water at the downstream monitoring points exceed any of the trigger levels specified in **Table F5 - Receiving waters contaminant trigger levels** during a release event the environmental authority holder must compare the downstream results to the upstream results in the receiving waters and:

- a) where the downstream result is the same or a lower value than the upstream value for the quality characteristic, then no action is to be taken, or
- b) where the downstream results exceed the upstream results, complete an investigation into the potential for environmental harm and provide a written report to the administering authority in the next annual return, outlining
 1. details of the investigations carried out
 2. actions taken to prevent environmental harm.

Note: Where an exceedance of a trigger level has occurred and is being investigated, in accordance with F19 b) of this condition, no further reporting is required for subsequent trigger events for that quality characteristic.

F20 All determinations of water quality and biological monitoring must be performed by an appropriately qualified person.

Receiving environment monitoring program (REMP)

- F21** The environmental authority holder must develop and implement a Receiving Environment Monitoring Program (REMP) to monitor, identify and describe any adverse impacts to surface water environmental values, quality and flows due to the authorised mining activity. This must include monitoring the effects of the mine on the receiving environment periodically (under natural flow conditions) and while mine affected water is being discharged from the site. For the purposes of the REMP, the receiving environment is the waters of the *XX* and connected or surrounding waterways within *XX* (for example, *X*km) downstream of the release. The REMP should encompass any sensitive receiving waters or environmental values downstream of the authorised mining activity that will potentially be directly affected by an authorised release of mine affected water.
- F22** A REMP Design Document that addresses the requirements of the REMP must be prepared and made available to the administering authority upon request.
- F23** A report outlining the findings of the REMP, including all monitoring results and interpretations must be prepared annually and made available on request to the administering authority. This must include an assessment of background reference water quality, the condition of downstream water quality compared against water quality objectives, and the suitability of current discharge limits to protect downstream environmental values.

Water reuse

Explanatory notes—Water reuse conditions

Mine affected water reuse conditions acknowledge that there is beneficial potential for using mine affected water. How the water is to be reused is not to be stipulated, this is for the third party to determine as they are better placed to make this decision.

- F24** Mine affected water may be piped or trucked or transferred by some other means that does not contravene the conditions of this environmental authority and deposited into artificial water storage structures, such as farm dams or tanks, or used directly at properties owned by the environmental authority holder or a third party (with the consent of the third party).

Annual water monitoring reporting

- F25** The following information must be recorded in relation to all water monitoring required under the conditions of this environmental authority and submitted to the administering authority in the specified format:
- a) the date on which the sample was taken
 - b) the time at which the sample was taken
 - c) the monitoring point at which the sample was taken
 - d) the measured or estimated daily quantity of mine affected water released from all release points
 - e) the release flow rate at the time of sampling for each release point
 - f) the results of all monitoring and details of any exceedances of the conditions of this environmental authority
 - g) water quality monitoring data must be provided to the administering authority in the specified electronic format upon request.

Temporary interference with waterways

- F26** Destroying native vegetation, excavating, or placing fill in a watercourse, lake or spring necessary for and associated with mining operations must be undertaken in accordance with Department of Natural Resources and Mines (or its successor) *Guideline – Activities in a Watercourse, Lake or Spring associated with Mining Activities*.

Water management plan

- F27** A Water Management Plan must be developed by an appropriately qualified person and implemented.

Stormwater and water sediment controls

- F28** An Erosion and Sediment Control Plan must be developed by an appropriately qualified person and implemented for all stages of the mining activities on the site to minimise erosion and the release of sediment to receiving waters and contamination of stormwater.
- F29** Stormwater, other than mine affected water, is permitted to be released to waters from:
- a) erosion and sediment control structures that are installed and operated in accordance with the Erosion and Sediment Control Plan required by condition F28
 - b) water management infrastructure that is installed and operated, in accordance with a Water Management Plan that complies with condition F27, for the purpose of ensuring water does not become mine affected water.

Schedule G - Sewage treatment

Explanatory note—G1 may need amendment if other contaminants are permitted to be released to land. Monthly monitoring of E-coli may be revised based on location/remoteness of mine site.

- G1** The only contaminant permitted to be released to land is treated sewage effluent in compliance with the release limits stated in **Table G1 - Contaminant release limits to land**.

Table G1 - Contaminant release limits to land

Contaminant	Unit	Release limit	Limit type	Frequency
5 day Biochemical oxygen demand (BOD) ¹	mg/L	20	Maximum	Monthly
Total suspended solids	mg/L	30	Maximum	Monthly
Nitrogen	mg/L	30	Maximum	Monthly
Phosphorus	mg/L	15	Maximum	Monthly
E-coli	Organisms/100ml	1000	Maximum	Monthly
pH	pH units	6.0 – 9.0.	Range	Monthly

- G2** Treated sewage effluent may only be released to land in accordance with the conditions of this approval at the following locations:
- a) within the nominated area(s) identified in [Schedule ##—Figure ##](#) (sewage treatment plant and effluent disposal)
 - b) other land for the purpose of dust suppression and/or firefighting.
- G3** The application of treated effluent to land must be carried out in a manner such that:
- a) vegetation is not damaged
 - b) there is no surface ponding of effluent
 - c) there is no run-off of effluent.
- G4** If areas irrigated with effluent are accessible to employees or the general public, prominent signage must be provided advising that effluent is present and care should be taken to avoid consuming or otherwise coming into unprotected contact with the effluent.
- G5** All sewage effluent released to land must be monitored at the frequency and for the parameters specified in **Table G1 - Contaminant release limits to land**.
- G6** The daily volume of effluent release to land must be measured and records kept of the volumes of effluent released.
- G7** When circumstances prevent the irrigation or beneficial reuse of treated sewage effluent such as during or following rain events, waters must be directed to a wet weather storage or alternative measures must be taken to store/lawfully dispose of effluent.
- G8** A minimum area of <<insert area>> of land, excluding any necessary buffer zones, must be utilised for the irrigation and/or beneficial reuse of treated sewage effluent.

Explanatory note — the supply of treated wastewater for re-use is regulated under the [Water Supply \(Safety and Reliability\) Act 2008](#).

- G9** Treated sewage effluent must only be supplied to another person or organisation that has a written plan detailing how the user of the treated sewage effluent will comply with their general environmental duty under section 319 of the Act whilst using the treated sewage effluent.

Schedule H - Land and rehabilitation

Explanatory note—Table H1 - Rehabilitation Requirements

*Tables should be kept as concise as reasonably practicable, without losing clarity. For example, if requirements for more than 1 domain are the same, there is no need to set out a separate row for each domain. The components shown in the table below are only examples of rehabilitation requirements. Only mine features that are present in the mines should be listed. The contents of **Table H1 - Rehabilitation Requirements** below are included as examples only.*

- H1** Land disturbed by mining must be rehabilitated in accordance with **Table H1 - Rehabilitation requirements**.

Table H1 - Rehabilitation requirements

Mine domain	Mine feature name	Rehabilitation goal	Rehabilitation objectives	Indicators	Completion criteria
Dams ML XXXX	Tailings dam	1. Safe	(a) Site safe for humans and animals	(a) Structural, geotechnical and hydraulic adequacy of the dam	
		2. Non-polluting	(a) Acid mine drainage will not cause environmental harm	(a) Technical design of capping (b) Surface and groundwater monitoring	e.g. Monitoring meeting release limits
		3. Stable	(a) Minimise erosion	(a) Engineered structure to control water flow (b) Vegetation cover	e.g. Surface armour/ engineered drop structures in place and functioning e.g. X% foliage cover recorded over a period of X years
		4. Self-sustaining	Describe post mine land use of land suitability or land capability	(a) Species diversity (b) Presence of key species	e.g. Certification that X% species diversity achieved and maintained for X years e.g. Certification that key species present over a period of X years
Waste rock dump					
Infrastructure					
Voids					
Roads					

H2 Rehabilitation must commence progressively in accordance with the plan of operations.

Contaminated Land

- H3** Before applying for surrender of a mining lease, the holder must (if applicable) provide to the administering authority a site investigation report under the Act, in relation to any part of the mining lease which has been used for notifiable activities or which the holder is aware is likely to be contaminated land, and also carry out any further work that is required as a result of that report to ensure that the land is suitable for its final land use.
- H4** Before applying for progressive rehabilitation certification for an area, the holder must (if applicable) provide to the administering authority a site investigation report under the Act, in relation to any part of the area the subject of the application which has been used for notifiable activities or which the holder is aware is likely to be contaminated land, and also carry out any further work that is required as a result of that report to ensure that the land is suitable for its final land use under condition H1.
- H5** Minimise the potential for contamination of land by hazardous contaminants.

Impacts to Prescribed Environmental Matters

Note: Conditions H6-H16 were developed separately by EHP in consultation with QRC, APPEA and AMEC to reflect the requirements of the Environmental Offsets Act 2014 following its introduction in July 2014. These conditions have replaced conditions H6 and H7 from Version 5 of this guideline. Definitions for 'significant residual impacts', 'prescribed environmental matters', 'existing authority', 'designated precinct', 'strategic environmental areas', 'appropriately qualified person', 'environmental offset', 'maximum extent of impact' and 'notice of election' are provided for in the definitions schedule.

If significant residual impacts to a prescribed environmental matter were not proposed or authorised, there is no need to include Table H2 - Significant residual impacts to prescribed environmental matters or a reference to Table H2 in condition H6. Or, if significant residual impacts to a prescribed environmental matter were proposed and authorised, include the full condition H6 and Table H2, populated as per the instructions given in Appendix 1.

- H6** Significant residual impacts to prescribed environmental matters <<other than if the impacts were authorised by an existing authority issued before the commencement of the *Environmental Offsets Act 2014*>>, are not authorised under this environmental authority or the *Environmental Offsets Act 2014* <<unless the impact(s) is specified in Table H2 - Significant residual impacts to prescribed environmental matters>>.

Table H2 - Significant residual impacts to prescribed environmental matters

Prescribed environmental matter	Location of impact	Maximum extent of impact <<OR Maximum extent of impact – stage 1>>
REGULATED VEGETATION		
Endangered regional ecosystem – insert RE ID	e.g., maps/figures, coordinates, lot(s) on plan(s), resource authorities or project areas.	X ha
Of concern regional ecosystem (not within an urban area) – insert RE ID	as per above	X ha

Prescribed environmental matter	Location of impact	Maximum extent of impact <<OR Maximum extent of impact – stage 1>>
Regional ecosystems (not within an urban area) that intersect a wetland on the vegetation management wetlands map – insert RE ID	as per above	X ha
Regional ecosystems (not within an urban area) within the defined distance from the defining banks of a relevant watercourse on the vegetation management watercourse map – insert RE ID and Broad Vegetation Group	as per above	X ha
Essential habitat (not in an urban area) for endangered wildlife – insert species name	as per above	X ha
Essential habitat (not in an urban area) for vulnerable wildlife – insert species name	as per above	X ha
Connectivity areas		
Connectivity area that is a regional ecosystem (not in urban area) – insert RE ID	as per above	X ha
Wetlands and watercourses		
A wetland in a wetland protection area shown on the Map of referable wetlands (HES wetlands in GBR) – insert reference	as per above	X ha
A wetland of high ecological significance shown on the Map of referable wetlands – insert reference	as per above	X ha
Designated precincts in strategic environmental areas		
Designated precinct in a strategic environmental areas – insert reference	as per above	X ha
Protected wildlife habitat		
An area shown as a high risk area on the flora survey trigger map that contains plants that are endangered or vulnerable wildlife – insert area and species names	as per above	X ha
An area not shown as a high risk area on the flora survey trigger map that contains plants that are endangered or vulnerable wildlife – insert area and species names	as per above	X ha
A non-juvenile koala habitat tree located in an area shown as a bushland habitat, high value rehabilitation habitat or medium value rehabilitation habitat in the 'Map of Assessable Development Area Koala Habitat Values' – insert reference	as per above	X ha
Habitat for an animal that is endangered wildlife – insert area and species name	as per above	X ha
Habitat for an animal that is vulnerable wildlife – insert area and species name	as per above	X ha
Habitat for an animal that is special least concern wildlife – insert area and species name	as per above	X ha
Protected areas		

Release

Prescribed environmental matter	Location of impact	Maximum extent of impact <<OR Maximum extent of impact – stage 1>>
National park – insert reference	as per above	X ha
Regional park – insert reference	as per above	X ha
Nature refuge – insert reference	as per above	X ha
Highly protected zones of State marine parks		
Conservation park zone – insert reference	as per above	X ha
Marine national park zone – insert reference	as per above	X ha
Preservation zone – insert reference	as per above	X ha
Other zones – insert reference	as per above	X ha
Fish habitat areas		
A declared fish habitat area – insert reference	as per above	X ha
Waterway providing for fish passage		
Fish passage (not in an urban area) – insert reference	as per above	X ha
Marine plants		
Marine plant (not in an urban area) – insert reference	as per above	X ha
Legally secured offset area		
Legally secured offset area – insert reference	as per above	X ha

Include condition H7 in all environmental authorities. If Table H2 is not needed to be included in the environmental authority, then delete all grey text from the condition.

- H7** Records demonstrating that each impact to a prescribed environmental matter <<*not listed in Table H2 - Significant residual impacts to prescribed environmental matters*>> did not, or is not likely to, result in a significant residual impact to that matter must be:
- a) completed by an appropriately qualified person; and
 - b) kept for the life of the environmental authority.

Include condition H8 in all environmental authorities that authorise a significant residual impact to a prescribed environmental matter. Include the relevant condition reference, depending on whether staging will be undertaken.

- H8** An environmental offset made in accordance with the *Environmental Offsets Act 2014* and Queensland Environmental Offsets Policy, as amended from time to time, must be undertaken for the maximum extent of impact to each prescribed environmental matter authorised in **Table H2 - Significant residual impacts to prescribed environmental matters**, unless a lesser extent of the impact has been approved in accordance with condition H11 [for staged offsets] OR condition H15 [for non-staged offsets].

Staged impacts

Insert conditions H9-H13 if the environmental authority application, or a notice of election provided prior to the environmental authority application being decided, proposed to carry out the activities that will, or are likely to, result in a significant residual impact to a prescribed environmental matter in stages, as well as the undertaking of environmental offsets in stages.

- H9** The significant residual impacts to a prescribed environmental matter authorised in condition H6 for which an environmental offset is required by condition H8 may be carried out in stages. An environmental offset can be delivered for each stage of the impacts to prescribed environmental matters.
- H10** Prior to the commencement of each stage, a report completed by an appropriately qualified person, that includes an analysis of the following must be provided to the administering authority:
- a) for the forthcoming stage—the estimated significant residual impacts to each prescribed environmental matter; and
 - b) for the previous stage, if applicable—the actual significant residual impacts to each prescribed environmental matter, to date.
- H11** The report required by condition H10 must be approved by the administering authority before a notice of election for the forthcoming stage, if applicable, is given to the administering authority.
- H12** A notice of election for the staged environmental offset referred to in condition H11, if applicable, must be provided to the administering authority no less than three months before the proposed commencement of that stage, unless a lesser timeframe has been agreed to by the administering authority.
- H13** Within six months from the completion of the final stage of the project, a report completed by an appropriately qualified person, that includes the following matters must be provided to the administering authority:
- a) an analysis of the actual impacts on prescribed environmental matters resulting from the final stage; and
 - b) if applicable, a notice of election to address any outstanding offset debits for the authorised impacts.

Non-staged impacts

Insert conditions H14-H16 if the environmental authority application, or a notice of election provided prior to the environmental authority application being decided, did not propose to carry out the activities that will, or are likely to, result in significant residual impacts to a prescribed environmental matter, or the undertaking of environmental offsets in stages. Offset debits are not allowed for non-staged impacts and any exceedances of the maximum extent of impact authorised in Table H2 are likely to be investigated further as a compliance matter.

If the administering authority is satisfied that conditions H14 and H15 are not required, i.e., because sufficient information has been provided in the environmental authority application, then these conditions are not necessary for inclusion in the environmental authority.

- H14** Prior to the commencement of any impacts to a prescribed environmental matter for which an environmental offset is required by condition H8, a report completed by an appropriately qualified person that contains an analysis of the estimated maximum extent of impact to each prescribed environmental matter must be provided to the administering authority.
- H15** The report required by condition H14 must be approved by the administering authority before the notice of election, if applicable, is given to the administering authority.
- H16** The notice of election for the environmental offset required by condition H15, if applicable, must be provided to the administering authority no less than three months before the proposed commencement of the significant residual impacts for which the environmental offset is required.

Schedule I – Watercourse diversions

Explanatory note— Watercourse diversions

The following conditions are only to be used where approval is sought to divert a watercourse associated with a resource activity under a new or amending an environmental authority pursuant to the EP Act. A watercourse diversion must meet criteria defined under section 20(4) of the *Water Act 2000*. This specifies that:

A person may interfere with water if:

- a) the interference is a diversion of a watercourse and is associated with a resource activity
- b) the impacts of the interference were assessed as part of a grant of an environmental authority for the resource activity
- c) the environmental authority was granted with a condition about the diversion of the watercourse.

These conditions do not apply to existing watercourse diversions authorised under the Water Act or other relevant legislation (e.g. *Central Queensland Coal Associates Agreement Act 1968*). It is not proposed that current authorised watercourse diversions regulated under the Water Act will automatically transition across to the EP Act or a transition will be encouraged.

Existing water licences will remain under the regulatory framework of the Water Act unless a proponent requests a transition to the EP Act. Such a transition could only occur under an amendment to an existing EA. The administering authority will decide on a case-by-case basis whether or not this application for an EA amendment represents a minor amendment.

The watercourse diversion must achieve the outcomes of a permanent or temporary watercourse diversion as part of any future performance criteria.

Permanent watercourse diversions

- 11** Permanent watercourse diversions, or the re-establishment of a pre-existing watercourse where a temporary watercourse diversion is being replaced, must be designed and constructed to:
 - a) incorporate natural features (including geomorphic and vegetation) present at the location of the diversion
 - b) maintain the pre-existing hydrologic characteristics of surface water and groundwater systems for the area in which the watercourse diversion is located
 - c) maintain the hydraulic characteristics of the permanent watercourse diversion that are equivalent to other local watercourses and are suitable for the area in which the diversion is located without using artificial structures that require on-going maintenance
 - d) maintain sediment transport and water quality regimes that allow the diversion to be self-sustaining, while minimising any impacts to upstream and downstream water quality, geomorphology or vegetation
 - e) maintain equilibrium and functionality in all substrate conditions at the location of the diversion.

Temporary watercourse diversions

- I2** Temporary watercourse diversions must be designed and constructed to:
- a) maintain the pre-existing hydrologic characteristics of surface water systems for the area in which the watercourse diversion is located
 - b) maintain the hydraulic characteristics of the watercourse diversion that are equivalent to other local watercourses and are suitable for the area in which the diversion is located. Where structures that require on-going maintenance are used, they must not compromise the equilibrium and performance of the temporary watercourse diversion and adjoining watercourses
 - c) maintain sediment transport and water quality regimes that minimise any impacts to upstream and downstream water quality, geomorphology or vegetation
 - d) maintain equilibrium and functionality at all substrate conditions at the location of the diversion.
-

Design plan – All diversions

- I3** A certified Design Plan that achieves condition I1 for permanent watercourse diversions and condition I2 for temporary watercourse diversions must be submitted to the administering authority at least 10 business days before commencing construction of the diversion.
- I4** The certified design plan for any temporary or permanent watercourse diversion must be consistent with the functional design/s that formed a part of the application documents for this authority.
-

Construction and operation – All diversions

- I5** A certified set of 'as constructed' drawings and specifications must be submitted to the administering authority within 60 business days from the completion of construction of the temporary or permanent watercourse diversion, or re-establishment of the pre-existing watercourse. These drawings and specifications must state:
- a) that the 'as constructed' drawings and specifications meet the original intent of the design plan for the watercourse diversion
 - b) construction of the watercourse diversion is in accordance with the design plan.
-

Register – All diversions

- I6** The details of watercourse diversions planned and constructed under an environmental authority must be accurately recorded on the Register of Watercourse Diversions kept by the holder of the authority. An electronic copy must be provided to the administering authority on request.

End of conditions

ADVICE - OTHER AREAS OF CONCERN TO BE CONSIDERED

Monitoring

Upon request from the administering authority, copies of monitoring records and reports should be made available and provided to the administering authority's nominated office within 10 business days or an alternative timeframe agreed between the administering authority and the holder.

Any management or monitoring plans, systems or programs required to be developed and implemented by a condition of this environmental authority should be reviewed for effectiveness in minimising the likelihood of environmental harm on an annual basis, and amended promptly if required, unless a particular review date and amendment program is specified in the plan, system or program.

Light

A condition about light should not be imposed unless this is likely to be a relevant issue for the mine due to the proximity of sensitive places. If so, the following condition may be included:

- AXX In the event of a complaint about light from any mining activity that, after investigation, is in the opinion of an authorised person causing a nuisance at a sensitive place, the holder of this environmental authority must take appropriate action to mitigate the nuisance. The holder of this environmental authority must take the action within the reasonable time set by the administering authority.

Chemicals and flammable or combustible liquids

All explosives, hazardous chemicals, corrosive substances, toxic substances, gases and dangerous goods should be stored and handled in accordance with the current Australian standard where such is applicable.

Flammable and combustible liquids, including petroleum products, should be stored and handled in accordance with the latest edition of AS1940—The storage and handling of flammable and combustible liquids.

Where no relevant Australian standard exists store such materials within an effective on-site containment system.

Minimise the potential for contamination of land and waters by diverting stormwater around contaminated areas and facilities used for the storage of chemicals and flammable or combustible liquids.

Meteorological monitoring

Environmental authority holders are encouraged to establish and maintain an automatic weather station to measure and record wind speed, wind direction, temperature and rainfall intensity to aid in the compliance with conditions of approval.

It is possible for environmental authority holders to utilise relevant and available weather monitoring information collected by other parties as reference data.

Waste rock

A waste rock and spoil disposal plan should be developed and include, where relevant, at least:

- a) effective characterisation of the waste rock and spoil to predict under the proposed placement and disposal strategy the quality of runoff and seepage generated concerning potentially environmentally significant effects including salinity, acidity, alkalinity and dissolved metals, metalloids and non-metallic inorganic substances
- b) a program of progressive sampling and characterisation to identify dispersive and non-dispersive spoil and the salinity, acid and alkali producing potential and metal concentrations of waste rock

- c) a materials balance and disposal plan demonstrating how potentially acid forming and acid forming waste rock will be selectively placed and/or encapsulated to minimise the potential generation of acid mine drainage
- d) where relevant, a sampling program to verify encapsulation and/or placement of potentially acid-forming and acid-forming waste rock
- e) how often the performance of the plan will be assessed
- f) the indicators or other criteria on which the performance of the plan will be assessed
- g) rehabilitation strategy.

Monitoring or rehabilitation, research and/or trials to verify the requirements and methods for decommissioning and final rehabilitation of the placed materials, including the prevention and management of acid mine drainage, erosion minimisation and establishment of vegetation cover.

Transportation

It is recommended that the holder of the environmental authority ensure that vehicles (including trains) used for transporting bulk materials from mining lease(s), leave the mining lease(s) with appropriate load preparation to prevent the spillage and/or loss of particulate matter and/or windblown dust during transport.

Published on EHP Disclosure Log
RTI Act 2009

Definitions

Words and phrases used throughout this environmental authority are defined below. Where a definition for a term used in this environmental authority is not provided within this environmental authority, but is provided in the EP Act 1994 or subordinate legislation, the definition in the EP Act or subordinate legislation must be used.

‘acid rock drainage’ means any contaminated discharge emanating from a mining activity formed through a series of chemical and biological reactions, when geological strata is disturbed and exposed to oxygen and moisture.

‘administering authority’ is the agency or department that administers the environmental authority provisions under the *Environmental Protection Act 1994*.

‘airblast overpressure’ means energy transmitted from the blast site within the atmosphere in the form of pressure waves. The maximum excess pressure in this wave, above ambient pressure is the peak airblast overpressure measured in decibels linear (dBL).

‘appropriately qualified person’ means a person who has professional qualifications, training, skills or experience relevant to the nominated subject matter and can give authoritative assessment, advice and analysis on performance relating to the subject matter using the relevant protocols, standards, methods or literature.

‘background’, with reference to the water schedule means the average of samples taken prior to the commencement of mining from the same waterway that the current sample has been taken.

‘blasting’ means the use of explosive materials to fracture:

- a) rock, coal and other minerals for later recovery, or
- b) structural components or other items to facilitate removal from a site or for reuse.

‘certified’, with respect to watercourse diversions, means assessed and approved by a suitably qualified and experienced person. In relation to ‘as constructed’ drawings and specifications, the certification must be by the suitably qualified person who supervised the construction of the watercourse diversion, or re-establishment of the watercourse.

Explanatory note— **‘certification’**, **‘certifying’** or **‘certified’**

Only include regulated structures version of this definition if environmental authority controls regulated structures in the conditions.

‘certification’, **‘certifying’** or **‘certified’** by an appropriately qualified and experienced person in relation to a design plan or an annual report regarding dams/structures, means that a statutory declaration has been made by that person and, when taken together with any attached or appended documents referenced in that declaration, all of the following aspects are addressed and are sufficient to allow an independent audit at any time:

- a) exactly what is being certified and the precise nature of that certification
- b) the relevant legislative, regulatory and technical criteria on which the certification has been based
- c) the relevant data and facts on which the certification has been based, the source of that material, and the efforts made to obtain all relevant data and facts
- d) the reasoning on which the certification has been based using the relevant data and facts, and the relevant criteria.

'chemical' means:

- a) an agricultural chemical product or veterinary chemical product within the meaning of the Agricultural and *Veterinary Chemicals Code Act 1994* (Commonwealth), or
- b) a dangerous good under the *Australian Code for the Transport of Dangerous Goods by Road and Rail approved by the Australian Transport Council*, or
- c) a lead hazardous substance within the meaning of the *Workplace Health and Safety Regulation 1997*, or
- d) a drug or poison in the *Standard for the Uniform Scheduling of Drugs and Poisons* prepared by the Australian Health Ministers' Advisory Council and published by the Commonwealth, or
- e) any substance used as, or intended for use as:
 - (i) a pesticide, insecticide, fungicide, herbicide, rodenticide, nematocide, miticide, fumigant or related product, or
 - (ii) a surface active agent, including, for example, soap or related detergent, or
 - (iii) a paint solvent, pigment, dye, printing ink, industrial polish, adhesive, sealant, food additive, bleach, sanitiser, disinfectant, or biocide, or
 - (iv) a fertiliser for agricultural, horticultural or garden use, or
 - (v) a substance used for, or intended for use for mineral processing or treatment of metal, pulp and paper, textile, timber, water or wastewater, or
 - (vi) manufacture of plastic or synthetic rubber.

'commercial place' means a workplace used as an office or for business or commercial purposes, which is not part of the mining activity and does not include employees' accommodation or public roads.

'construction' or **'constructed'** in relation to a regulated structure includes building a new regulated structure and lifting or otherwise modifying an existing regulated structure, but does not include investigations and testing necessary for the purpose of preparing a design plan.

'construction' or **'constructed'**, in relation to watercourse diversions, is the process of building, or modifying an existing diversion, but does not include investigations and testing necessary for the purpose of preparing a design plan.

'design plan' is a document that contains the design, operation, monitoring and revegetation criteria of a watercourse diversion that addresses the outcomes stated in conditions on the environmental authority relating to the diversion. The document should include, but not be limited to:

- a) required information under a functional design
- b) the location, function and description of geomorphic and riparian vegetation features within the proposed watercourse diversion
- c) results from hydrologic, hydraulic and sediment transportation modelling used in the design of the diversion
- d) a revegetation and vegetation management plan (a revegetation plan) for the diversion
- e) engineering drawings depicting the physical attributes and dimensions of the diversion
- f) (if relevant) the staged development of a permanent watercourse diversion including the proposed use of temporary watercourse diversions with identified lifespans
- g) all investigation and other reports relied on by the design

- h) plans and specifications sufficient to complete construction and revegetation in accordance with the design.

‘designated precinct’ has the meaning in Part 5 section 15(3) of the Regional Planning Interests Regulation 2014 and means:

- for a strategic environmental area mentioned in section 4(1) – the area identified as a designated precinct on the strategic environmental area map for the strategic environmental area; or
- if a strategic environmental area is shown on a map in a regional plan – the area identified on the map as a designated precinct for the strategic environmental area.

‘disturbance’ of land includes:

- a) compacting, removing, covering, exposing or stockpiling of earth
- b) removal or destruction of vegetation or topsoil or both to an extent where the land has been made susceptible to erosion
- c) carrying out mining within a watercourse, waterway, wetland or lake
- d) the submersion of areas by tailings or hazardous contaminant storage and dam/structure walls
- e) temporary infrastructure, including any infrastructure (roads, tracks, bridges, culverts, dam/structures, bores, buildings, fixed machinery, hardstand areas, airstrips, helipads etc) which is to be removed after the mining activity has ceased
- f) releasing of contaminants into the soil, or underlying geological strata.

However, the following areas are not included when calculating areas of ‘disturbance’:

- a) areas off lease (e.g. roads or tracks which provide access to the mining lease)
- b) areas previously disturbed which have achieved the rehabilitation outcomes
- c) by agreement with the administering authority, areas previously disturbed which have not achieved the rehabilitation objective(s) due to circumstances beyond the control of the mine operator (such as climatic conditions)
- d) areas under permanent infrastructure. Permanent infrastructure includes any infrastructure (roads, tracks, bridges, culverts, dam/structures, bores, buildings, fixed machinery, hardstand areas, airstrips, helipads etc) which is to be left by agreement with the landowner
- e) disturbance that pre-existed the grant of the tenure.

‘EC’ means electrical conductivity.

‘effluent’ means treated waste water released from sewage treatment plants.

‘environmental offset’ has the meaning in section 7 of the *Environmental Offsets Act 2014*.

‘equilibrium’ means a state where ‘balance’ is achieved despite changing variables.

‘existing authority’ has the meaning in section 94 of the *Environmental Offsets Act 2014*.

‘functional design’ is a document that contains ‘conceptual’ information about the design, operation and revegetation criteria of a watercourse diversion that addresses the outcomes stated in the conditions on the environmental authority relating to the diversion. The document should include, but not be limited to:

- a) geomorphic and vegetation assessment of the existing watercourse
- b) hydrologic conditions of the existing watercourse

- c) the proposed watercourse diversion route
- d) results from hydrologic, hydraulic and sediment transportation modelling used in the design of the diversion.

‘functionality’: the purpose that something is designed or expected to fulfil.

‘hazard category’ means a category, either low significant or high, into which a dam is assessed as a result of the application of tables and other criteria in *Manual for Assessing Hazard Categories and Hydraulic Performance of Dams*.

‘holder’, for a mining tenement, means a holder of the tenement under the *Mineral Resources Act 1989*, and the holder of the associated environmental authority under the *Environmental Protection Act 1994*.

‘infrastructure’ means water storage dams, levees,, roads and tracks, buildings and other structures built for the purpose of the mining activity.

‘land’ in the ‘land schedule’ of this document means land excluding waters and the atmosphere, that is, the term has a different meaning from the term as defined in the *Environmental Protection Act 1994*. For the purposes of the *Acts Interpretation Act 1954*, it is expressly noted that the term ‘land’ in this environmental authority relates to physical land and not to interests in land.

‘land use’ –means the selected post mining use of the land, which is planned to occur after the cessation of mining operations.

‘leachate’ means a liquid that has passed through or emerged from, or is likely to have passed through or emerged from, a material stored, processed or disposed of at the operational land which contains soluble, suspended or miscible contaminants likely to have been derived from the said material.

‘licensed place’ means the mining activities carried out at the mining tenements detailed in Table # (page #) of this environmental authority.

‘m’ means metres.

‘maximum extent of impact’ means the total, cumulative, residual extent and duration of impact to a prescribed environmental matter that will occur over a project’s life after all reasonable avoidance and reasonable on-site mitigation measures have been, or will be, undertaken.

‘measures’ includes any measures to prevent or minimise environmental impacts of the mining activity such as bunds, silt fences, diversion drains, capping, and containment systems.

‘mine affected water’:

- a) means the following types of water:
 - i) pit water, tailings dam water, processing plant water
 - ii) water contaminated by a mining activity which would have been an environmentally relevant activity under Schedule 2 of the *Environmental Protection Regulation 2008* if it had not formed part of the mining activity
 - iii) rainfall runoff which has been in contact with any areas disturbed by mining activities which have not yet been rehabilitated, excluding rainfall runoff discharging through release points associated with erosion and sediment control structures that have been installed in accordance with the standards and requirements of an Erosion and Sediment Control Plan to manage such runoff, provided that this water has not been mixed with pit water, tailings dam water, processing plant water or workshop water
 - iv) groundwater which has been in contact with any areas disturbed by mining activities which have not yet been rehabilitated

- v) groundwater from the mine's dewatering activities
 - vi) a mix of mine affected water (under any of paragraphs i)-v) and other water.
- b) does not include surface water runoff which, to the extent that it has been in contact with areas disturbed by mining activities that have not yet been completely rehabilitated, has only been in contact with:
- i) land that has been rehabilitated to a stable landform and either capped or revegetated in accordance with the acceptance criteria set out in the environmental authority but only still awaiting maintenance and monitoring of the rehabilitation over a specified period of time to demonstrate rehabilitation success, or
 - ii) land that has partially been rehabilitated and monitoring demonstrates the relevant part of the landform with which the water has been in contact does not cause environmental harm to waters or groundwater, for example:
 - a. areas that are been capped and have monitoring data demonstrating hazardous material adequately contained with the site
 - b. evidence provided through monitoring that the relevant surface water would have met the water quality parameters for mine affected water release limits in this environmental authority, if those parameters had been applicable to the surface water runoff, or
 - iii) both.

'minimise' is to reduce to the smallest possible amount or degree.

'NATA' means National Association of Testing Authorities, Australia.

'natural flow' means the flow of water through waters caused by nature.

'non polluting' means having no adverse impacts upon the receiving environment.

'notice of election' has the meaning in section 18(2) *Environmental Offsets Act 2014*.

'peak particle velocity (ppv)' means a measure of ground vibration magnitude which is the maximum rate of change of ground displacement with time, usually measured in millimetres/second (mm/s).

'permanent watercourse diversion' is a man-made structure that incorporates the geomorphologic, hydraulic, hydrologic and ecological components of a local watercourse and is designed, constructed, operated and maintained according to an engineering standard that ultimately achieves a self-sustaining watercourse able to function without features or characteristics that rely on ongoing maintenance or that impose a financial or other burden on the proponent, government or the community.

'pre-existing watercourse' is the section of watercourse from which the flow of water will be diverted as a result of the construction and operation of a watercourse diversion.

'prescribed environmental matters' has the meaning in section 10 of the *Environmental Offsets Act 2014*, limited to the matters of State environmental significant listed in schedule 2 of the Environmental Offsets Regulation 2014.

'protected area' means – a protected area under the *Nature Conservation Act 1992*, or

- a) a marine park under the *Marine Parks Act 1992*, or
- b) a World Heritage Area.

'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. The receiving environment includes (but is not limited to):

- a) a watercourse
- b) groundwater
- c) an area of land that is not specified in [Schedule # – Table # \(Authorised Activities\)](#) of this environmental authority.

The term does not include land that is specified in [Schedule # – Table # \(Authorised Activities\)](#) of this environmental authority.

‘receiving waters’ means the waters into which this environmental authority authorises releases of mine affected water.

‘rehabilitation’ the process of reshaping and revegetating land to restore it to a stable landform.

‘release event’ means a surface water discharge from mine affected water storages or contaminated areas on the licensed place.

‘representative’ means a sample set which covers the variance in monitoring or other data either due to natural changes or operational phases of the mining activities.

‘revegetation’ is the re-establishment of vegetation¹ of a species and density of cover similar to surrounding undisturbed areas or the landform that existed before mining activities on soil surfaces associated with the construction or rehabilitation of a watercourse diversion.

‘RL’ means reduced level, relative to mean sea level as distinct from depths to water.

‘saline drainage’ The movement of waters, contaminated with salts, as a result of the mining activity.

‘self-sustaining’ means not requiring on-going intervention and maintenance to maintain functional riverine processes and characteristics

‘sensitive place’ means:

- a) a dwelling, residential allotment, mobile home or caravan park, residential marina or other residential premises, or
- b) a motel, hotel or hostel, or
- c) an educational institution, or
- d) a medical centre or hospital, or
- e) a protected area under the *Nature Conservation Act 1992*, the *Marine Parks Act 1992* or a World Heritage Area, or
- f) a public park or gardens.

Note: The definition of ‘sensitive place’ and ‘commercial place’ is based on Schedule 1 of EPP Noise. That is, a sensitive place is inside or outside on a dwelling, library and educational institution, childcare or kindergarten, school or playground, hospital, surgery or other medical institution, commercial & retail activity, protected area or an area identified under a conservation plan under *Nature Conservation Act 1992* as a critical habitat or an area of major interest, marine park under *Marine Parks Act 2004*, park or garden that is outside of the mining lease and open to the public for the use other than for sport or organised entertainment. A commercial place is inside or outside a commercial or retail activity.

¹Not including a species declared under the Land Protection (Pest and Stock Route Management) Regulation 2003 as a category class 1 pest, category class 2 pest or category class 3 pest.

A mining camp (i.e., accommodation and ancillary facilities for mine employees or contractors or both, associated with the mine the subject of the environmental authority) is not a sensitive place for that mine or mining project, whether or not the mining camp is located within a mining tenement that is part of the mining project the subject of the environmental authority. For example, the mining camp might be located on neighbouring land owned or leased by the same company as one of the holders of the environmental authority for the mining project, or a related company. Accommodation for mine employees or contractors is a sensitive place if the land is held by a mining company or related company, and if occupation is restricted to the employees, contractors and their families for the particular mine or mines which are held by the same company or a related company.

For example, a township (occupied by the mine employees, contractors and their families for multiple mines that are held by different companies) would be a sensitive place, even if part or all of the township is constructed on land owned by one or more of the companies.

'significant residual impact' has the meaning in section 8 *Environmental Offsets Act 2014*.

'strategic environmental areas' has the meaning in section 11(1) of the *Regional Planning Interest Act 2014*.

'suitably qualified and experienced person' means a person who is a Registered Professional Engineer of Queensland under the provisions of the *Professional Engineers Act 2002*, who has an **appropriate level of expertise** in the structures, geomechanics, hydrology, hydraulics and environmental impact of watercourse diversions.

An **appropriate level of expertise** includes:

- demonstrable competency, experience and expertise in:
 - investigation, design or construction of watercourses diversions
 - operation and maintenance of watercourse diversions
 - geomechanics with particular emphasis on channel equilibrium, geology and geochemistry
 - hydrology with particular reference to flooding, estimation of extreme storms, water management or meteorology
 - hydraulics with particular reference to sediment transport and deposition and erosion control
 - hydrogeology with particular reference to seepage and groundwater
 - solute transport processes and monitoring thereof, or
- sufficient knowledge and experience to certify that where the **suitably qualified and experienced person** has relied on advice and information provided by other **persons with relevant expertise***:
 - they consider it reasonable to rely on that advice and information
 - the expert providing the advice and information has knowledge, competency, suitable experience and demonstrated expertise in the matters related to watercourse diversions.

Persons with relevant expertise include:

- Geomorphologist: person who has demonstrated competency and relevant experience in stream geomorphology and watercourse diversions.
- Geotechnical Expert: person who has demonstrated competency and relevant experience in geotechnical assessment of soil characteristics suitable for watercourse diversions.

- **Vegetation Expert:** person who has demonstrated competency and relevant experience in the identification, role and function of vegetation with watercourses and adjoining floodplains, and has demonstrated competency and relevant experience in revegetation of watercourse diversions and adjoining floodplains. .
- **Groundwater Expert:** person who has demonstrated competency and relevant experience in groundwater systems.
- **Surface Water Expert:** person who has demonstrated competency and relevant experience in hydrology.
- **Engineer:** person who is a Registered Professional Engineer of Queensland (RPEQ) under the provisions of the *Professional Persons Act 2002* or has similar qualifications under a respected professional registration association, and has demonstrated competency and relevant experience in design and construction of watercourse diversions.
- **Soils Expert:** person who has demonstrated competency and relevant experience in soil classification including the physical, chemical and hydrologic analysis of soil.

'temporary watercourse diversion' is a man-made structure that may incorporate geomorphologic, hydraulic, hydrologic and ecological components of a local watercourse and is designed, constructed, operated and maintained to an engineering standard that ensures the diversion does not compromise the equilibrium and performance of the diversion and adjoining watercourses. A temporary diversion is replaced by a permanent diversion, or the re-establishment of the pre existing watercourse, within the timeframe specified in the design plan.

'the Act' means the *Environmental Protection Act 1994*.

' μ S/cm' means micro siemens per centimetre.

'water' is defined under Schedule 4 of the *Water Act 2000*.

'watercourse' has the same meaning given in the *Water Act 2000*.

'water quality' means the chemical, physical and biological condition of water.

'waters' includes river, stream, lake, lagoon, pond, swamp, wetland, unconfined surface water, unconfined natural or artificial watercourse, bed and bank of any waters, dams, non-tidal or tidal waters (including the sea), storm water channel, storm water drain, and groundwater and any part thereof.

Disclaimer:

While this document has been prepared with care it contains general information and does not profess to offer legal, professional or commercial advice. The Queensland Government accepts no liability for any external decisions or actions taken on the basis of this document. Persons external to the administering authority should satisfy themselves independently and by consulting their own professional advisors before embarking on any proposed course of action.

Approved by

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Published on EHP Disclosure Log
RTI Act 2009

Appendix

Guidance on compliance with model mining conditions

This section provides guidance on how to comply with the general conditions outlined in Model mining conditions guideline, EM944. Officers should also refer to the separate guidelines: Structures which are dams or levees constructed as part of environmentally relevant activities (EM634).

Generally the conditions do not outline 'how' the environmental authority (EA) holder must achieve the required environmental outcomes. This is referred to as outcome focused conditioning. With outcome focused conditioning, it is the responsibility of the EA holder to assess the most efficient and effective way to achieve the outcome for their own particular circumstance.

In addition to outcome-focussed conditions, in some instances 'how to' conditions may be appropriate for site-specific or project-specific reasons. While these 'how' conditions are by nature not outcome focused, they are required to ensure that a clear environmental value that has been identified can be protected.

The following information has been provided to aid the EA holder in determining the most effective and efficient method to achieve compliance with each model condition of an environmental authority. Possible solutions to achieving compliance with each condition are provided but they are not an exhaustive source. It is possible for the EA holder to decide to achieve the condition outcomes in a manner that is different to that outlined below. The EA holder will need to be satisfied that they can demonstrate, if required, that the outcome of the condition can still be achieved by the alternate approach.

Guidance on how to comply with conditions is not provided for every condition. Where there is no guidance provided on how to comply with a condition there may be details of the requirements to meet the desired outcome within the condition.

Please note, if amended conditions are imposed or agreed which involve changes to existing infrastructure, consideration should be given to an appropriate transitional period enabling the infrastructure work to be undertaken and this should be included in the condition, on a case-by-case basis.

Schedule A – General

A1 This environmental authority authorises environmental harm referred to in the conditions. Where there is no condition or this environmental authority is silent on a matter, the lack of a condition or silence does not authorise environmental harm.

How do I comply?

No further guidance provided to that outlined in the condition.

A2 Either:

In carrying out the mining activity authorised by this environmental authority, disturbance of land

- a) may occur in the areas marked 'A'
- b) must not occur in the areas marked 'B'
- c) may occur in the areas marked 'C' but only in accordance with the conditions in Schedule Z on the map that is annexure 1 to this environmental authority.

OR

In carrying out the mining activity authorised by this environmental authority, the holder of this environmental authority must comply with Schedule K—Figure 1a (Project Infrastructure Layout—Mine Area) and Schedule K—Figure 1b (Project Infrastructure Layout—Support Infrastructure).

How do I comply?

The first version of A2 may be used where the supporting EIS or application documents have enough information to demonstrate that an acceptable level of ground-truthing has been done on potential for flora/fauna impacts and other risk assessment so that EHP is comfortable that the right areas have been identified to indicate no go areas. If the EIS or other supporting information only proposes two types of areas (those to be disturbed and those not to be disturbed), it is only necessary to use paragraphs a) and b) below. However, if the EIS or other supporting information addresses and justifies limited disturbance within a mapped area, paragraph c) may be added, on the basis that the conditions for that limited disturbance are set out elsewhere in the conditions or in a report that is adopted by the conditions. If the limited disturbance relates to flora and fauna, refer to Schedule Z.

Where there is not enough information to show that an acceptable level of ground-truthing has been done, the second version of A2 should be used.

Option 1 (for limited surface infrastructure)

A3 Any disturbance within the areas marked 'C' on the map that is annexure 1 to this environmental authority:

- a) is only authorised to the extent reasonably necessary for a road, fence, underground service, low-impact telecommunications facility, electrical sub-station, transmission grid works and supply network works, storage depots, similar minor infrastructure and ancillary facilities for any of the above minor infrastructure
- b) any disturbance within areas marked 'A' or 'C' is not to impact adversely on areas marked 'B'.

Option 2 (authorising sub-surface disturbance)

A3 Only sub-surface disturbance is authorised within the areas marked 'C' on the map that is annexure 1 to this environmental authority.

How do I comply?

Condition A3 should only be used if condition A2 includes optional paragraph c) authorising limited disturbance within a mapped area. These conditions are not to be used in relation to paragraphs a) and b) of condition A2. The model conditions are examples only. Any authorisation of limited disturbance should be site-specific and based on an assessment of the EIS or other supporting information, including ground-truthing of the areas.

- A4** The holder of this environmental authority must:
- a) install all measures, plant and equipment necessary to ensure compliance with the conditions of this environmental authority
 - b) maintain such measures, plant and equipment in a proper and efficient condition
 - c) operate such measures, plant and equipment in a proper and efficient manner
 - d) ensure all instruments and devices used for the measurement or monitoring of any parameter under any condition of this environmental authority are properly calibrated.

How do I comply?

No further guidance provided other than that outlined in the condition.

Monitoring

A5 Except where specified otherwise in another condition of this environmental authority, all monitoring records or reports required by this environmental authority must be kept for a period of not less than five years.

How do I comply?

The holder of the environmental authority should implement a monitoring program that enables the holder and administering authority to determine compliance with this approval.

Financial assurance

A6 The activity must not be carried out until the environmental authority holder has given financial assurance to the administering authority as security for compliance with this environmental authority and any costs or expenses, or likely costs or expenses, mentioned in section 298 of the Act.

How do I comply?

Refer to the latest version of the Financial assurance under the EP Act guideline, which can be located on the administering authority's website at www.ehp.qld.gov.au (search for EM1010).

A7 The amount of financial assurance must be reviewed by the holder of this environmental authority when a plan of operations is amended or replaced or the authority is amended.

How do I comply?

No further guidance provided to that outlined in the condition.

Risk management

A8 The holder of this environmental authority must develop and implement a risk management system for mining activities which mirrors the content requirement of the Standard for Risk Management (ISO31000:2009), or the latest edition of an Australian standard for risk management, to the extent relevant to environmental management, by <<Insert date 3 months from date of issue>>

How do I comply?

Companies have the option of providing a risk management plan which is structured differently from the ISO provided that the alternative approach is reasonably justified.

Notification of emergencies, incidents and exceptions

A9 The holder of this environmental authority must notify the administering authority by written notification within 24 hours, after becoming aware of any emergency or incident which results in the release of contaminants not in accordance, or reasonably expected to be not in accordance with the conditions of this environmental authority.

How do I comply?

If notification is given under an alternative notification condition of the environmental authority it is taken to be notification under this condition. If notification is required under sections 320–320G of the EP Act the additional requirements under sections 320–320G apply.

The notification should include, but not be limited to:

- a) the environmental authority number and name of the holder
- b) the name and telephone number of the designated contact person
- c) the location of the emergency or incident
- d) the date and time of the emergency or incident
- e) the time the holder of the environmental authority became aware of the emergency or incident
- f) where known
 1. the estimated quantity and type of substances involved in the emergency or incident
 2. the actual or potential cause of the emergency or incident
 3. a description of the nature and effects of the emergency or incident including environmental risks, and any risks to public health or livestock
- g) any sampling conducted or proposed, relevant to the emergency or incident
- h) immediate actions taken to prevent or mitigate any further environmental harm caused by the emergency or incident
- i) what notification of owners and occupiers who may be affected by the emergency or incident has occurred or is being undertaken.

A10 Within 10 business days following the initial notification of an emergency or incident, or receipt of monitoring results, whichever is the latter, further written advice must be provided to the administering authority, including the following:

- a) results and interpretation of any samples taken and analysed
- b) outcomes of actions taken at the time to prevent or minimise unlawful environmental harm
- c) proposed actions to prevent a recurrence of the emergency or incident.

How do I comply?

No further guidance provided to that outlined in the condition.

Complaints

A11 The holder of this environmental authority must record all environmental complaints received about the mining activities including:

- a) name, address and contact number for of the complainant
- b) time and date of complaint
- c) reasons for the complaint
- d) investigations undertaken
- e) conclusions formed
- f) actions taken to resolve the complaint
- g) any abatement measures implemented
- h) person responsible for resolving the complaint.

How do I comply?

No further guidance provided other than that outlined in the condition.

A12 The holder of this environmental authority must, when requested by the administering authority, undertake relevant specified monitoring within a reasonable timeframe nominated or agreed to by the administering authority to investigate any complaint of environmental harm. The results of the investigation (including an analysis and interpretation of the monitoring results) and abatement measures, where implemented, must be provided to the administering authority within 10 business days of completion of the investigation, or no later than 10 business days after the end of the timeframe nominated by the administering authority to undertake the investigation.

How do I comply?

No further guidance provided to that outlined in the condition.

Third-party reporting

A13 The holder of this environmental authority must:

- a) within one year of the commencement of this environmental authority, obtain from an appropriately qualified person a report on compliance with the conditions of this environmental authority
- b) obtain further such reports at regular intervals, not exceeding three yearly intervals, from the completion of the report referred to above
- c) provide each report to the administering authority within 90 days of its completion.

How do I comply?

The holder must, at its cost, arrange for independent certification by the third party within one year to report on compliance with the conditions of the environmental authority. Within 90 days of completing the report required under condition A13, provide the written report to the administering authority which should contain details of any non-compliance issues that were found (if no non-compliance issues were found this should be stated in the report). If non-compliance issues were found the report must also address:

- a) actions taken, or being undertaken, by the holder of this environmental authority to ensure compliance with this environmental authority
- b) actions taken, or being undertaken, to prevent a recurrence of non-compliance.

A14 Where a condition of this environmental authority requires compliance with a standard, policy or guideline published externally to this environmental authority and the standard is amended or changed subsequent to the issue of this environmental authority the holder of this environmental authority must:

- a) comply with the amended or changed standard, policy or guideline within two years of the amendment or change being made, unless a different period is specified in the amended standard or relevant legislation, or where the amendment or change relates specifically to regulated structures referred to in condition **XX**, the time specified in that condition
- b) until compliance with the amended or changed standard, policy or guideline is achieved, continue to remain in compliance with the corresponding provision that was current immediately prior to the relevant amendment or change.

How do I comply?

No further guidance provided to that outlined in the condition.

Schedule B - Air

Point source releases to air

B1 Discharges of contaminants to air from the activity, other than dust and particulate matter addressed by condition B4, must be in accordance with **Tables B1—release points (air)** and **B2—contaminant limits (air)**.

How do I comply?

The release of contaminants specified in condition should be:

- a) directed vertically upwards, with no impedence
- b) in accordance with the criteria in **Table B1—Release points (air)**
- c) at a mass emission rate and concentration that do not exceed the limits stated in **Table B2—Contaminant limits (air)**.

B2 Conduct a monitoring program of contaminant releases to the atmosphere at the release points, frequency and for the contaminants specified in **Table B2—Contaminant limits (air)** and which complies with the most recent edition of AS4323.1 'Stationary source emissions method 1: Selection of sampling positions' and the most recent edition of the administering authority's air quality sampling manual.

Table B1—Release points (air)

Table B2—Contaminant limits (air)

How do I comply?

A monitoring program of contaminant releases to the atmosphere at the release points, frequency and for the contaminants specified in **Table B2—Contaminant limits (air)** should be conducted to comply with the following:

- a) Monitoring at the release points should comply with the most recent edition of AS4323.1 Stationary source emissions method 1: Selection of sampling positions
- b) The following tests should be performed and recorded for each sample taken at each release point specified in **Table B1 - Point Source Air Emissions**
 - 1. gas velocity, volume and mass flow rate
 - 2. temperature
 - 3. water vapour concentration (for non-continuous sampling)
 - 4. the actual test methods and accuracy
- c) During the sampling period the following additional information should be gathered
 - 1. plant throughput rate at time of sampling
 - 2. fuel type and consumption rate
 - 3. any factors that may influenced odour and particular emissions
 - 4. the odour and/or particulates treatment system operating status
- d) Monitoring of contaminant release should be carried out in accordance with the most recent edition of the administering authority's air quality sampling manual.

B3 The release of point source and fugitive emissions from the mining activities must not cause the concentrations of the contaminants listed in **Table XX**, when measured at [\[a sensitive place or at specified monitoring stations\]](#), to exceed the levels shown in **Table XX**.

How do I comply?

No further guidance provided to that outlined in the condition.

- B4** The Proponent shall ensure that all reasonable and feasible avoidance and mitigation measures are employed so that the dust and particulate matter emissions generated by the mining activities do not cause exceedances of the following levels when measured at any sensitive or commercial place:
- a) Dust deposition of 120 milligrams per square metre per day, averaged over 1 month, when monitored in accordance with the most recent version of Australian Standard AS3580.10.1 Methods for sampling and analysis of ambient air – Determination of particulate matter – Deposited matter – Gravimetric method.
 - b) A concentration of particulate matter with an aerodynamic diameter of less than 10 micrometres (PM₁₀) suspended in the atmosphere of 50 micrograms per cubic metre over a 24 hour averaging time, for no more than 5 exceedances recorded each year, when monitored in accordance with the most recent version of either
 1. Australian Standard AS3580.9.6 Methods for sampling and analysis of ambient air Determination of suspended particulate matter – PM₁₀ high volume sampler with size-selective inlet – Gravimetric method; or
 2. Australian Standard AS3580.9.9 Methods for sampling and analysis of ambient air Determination of suspended particulate matter – PM₁₀ low volume sampler– Gravimetric method.
 - c) A concentration of particulate matter with an aerodynamic diameter of less than 2.5 micrometres (PM_{2.5}) suspended in the atmosphere of 25 micrograms per cubic metre over a 24 hour averaging time, when monitored in accordance with the most recent version of AS/NZS3580.9.10 Methods for sampling and analysis of ambient air - Determination of suspended particulate matter – PM (sub)_{2.5}(/sub) low volume sampler – Gravimetric method.
 - d) A concentration of particulate matter suspended in the atmosphere of 90 micrograms per cubic metre over a 1 year averaging time, when monitored in accordance with the most recent version of AS/NZS3580.9.3:2003 Methods for sampling and analysis of ambient air - Determination of suspended particulate matter – Total suspended particulate matter (TSP) – High volume sampler gravimetric method.

How do I comply?

Sources of PM_{2.5} are primarily from combustion sources and PM_{2.5} is unlikely to be elevated if significant combustion sources are not present. Condition B4 c) will therefore only be required if there is a significant source of air emissions from combustion sources.

The five exceedances allowed each year within in B4 b) are only permitted to allow for events that are known to occur, but which cannot be managed by the environmental authority holder. Such events could include emissions from bushfires, fuel reduction burning for fire management purposes or dust storms. More than five exceedances due to such events would not be considered to be in breach of B4 b) if the environmental authority holder can demonstrate that the exceedance was caused by such events outlined above.

Schedule C - Waste management

To achieve the outcomes of the waste management conditions section, the holder of this environmental authority should develop, implement and maintain a waste management program that should include:

- a) a description of the mining activities that may generate waste
- b) waste management control strategies including:
 - 1. the types and amounts of wastes generated by the mining activities
 - 2. segregation of the wastes
 - 3. storage of the wastes
 - 4. transport of the wastes
 - 5. monitoring and reporting matters concerning the waste
- c) the hazardous characteristics of the wastes generated including disposal procedures for hazardous wastes
- d) a program for reusing, recycling or disposing of all wastes
- e) how the waste will be dealt with in accordance with the waste management hierarchy, including a description of the types and amounts of waste that will be dealt with under each of the waste management practices in the waste management hierarchy (that is, avoidance, reuse, recycling, energy recovery, disposal)
- f) procedures for identifying and implementing opportunities to minimise the amount of waste generated, promote efficiency in the use of resources and improve the waste management practices employed
- g) procedures for dealing with accidents, spills and other incidents
- h) details of any accredited management system employed, or planned to be employed, to deal with waste
- i) how often the performance of the waste management program will be assessed
- j) the indicators or other criteria on which the performance of the waste management program will be assessed
- k) staff training and induction to the waste management program.

General waste deposited in the active waste disposal trench should be compacted and covered with a layer of inert material following placement of the waste into the trench.

Litter control methods should be implemented at the active waste disposal trench.

The active waste disposal trench should be constructed and operated to minimise the generation of leachate including a system of diversion drains or embankments to divert surface waters away from any area where contact with wastes or sources of contamination may occur.

Completed waste disposal trenches should be capped with a low permeability material and compacted and contoured to effectively minimise water infiltration.

The holder of this environmental authority should maintain a record of the location of trenches used for waste disposal. Notwithstanding any other condition of this authority, such records be maintained until the administering authority approves the surrender of this authority.

All general and regulated waste (other than for example, waste rock, scraps, rejects, tailings, construction and demolition waste, putrescibles and domestic wastes, minor quantities of regulated wastes incidental to and commingled with domestic waste, green wastes, tyres) must be removed from the site to a facility that is lawfully able to accept the waste under the EP Act.

Regulated waste, other than that authorised to be disposed of on site under this authority, must only be removed and transported from the site by a person who holds a current authority to transport such wastes to a facility that is lawfully able to accept the waste under the EP Act.

Regulated waste generated in the mining activity can be temporarily stored on site awaiting removal provided it is stored to ensure there is minimal risk of causing fire or contamination to land or waters.

Each container of regulated waste stored awaiting movement off-site must be clearly marked to identify the contents.

For the disposal and storage of scrap tyres, reference to Operational policy—Disposal and storage of scrap tyres at mine sites EM729 should be made on the administering authority's website at www.ehp.qld.gov.au.

C1 General waste must only be disposed of into the waste disposal trench facility of <insert tenement number> and identified in Schedule # Figure # – Site Map.

How do I comply?

No further guidance provided other than that outlined in the condition.

C2 Unless otherwise permitted by the conditions of this environmental authority or with prior approval from the administering authority and in accordance with a relevant standard operating procedure, waste must not be burnt.

How do I comply?

If it can be demonstrated that other possible options have been considered in accordance with the waste management hierarchy, burning may also be permitted for mining activities in addition to clearing for extraction activities.

C3 The holder of this environmental authority may burn vegetation cleared in the course of carrying out extraction activities provided the activity does not cause environmental harm at any sensitive place or commercial place.

How do I comply?

No further guidance provided to that outlined in the condition.

Tailing disposal

- C4** Tailings must be managed in accordance with procedures contained within the current plan of operations. These procedures must include provisions for:
- a) containment of tailings
 - b) the management of seepage and leachates both during operation and the foreseeable future
 - c) the control of fugitive emissions to air
 - d) a program of progressive sampling and characterisation to identify acid producing potential and metal concentrations of tailings
 - e) maintaining records of the relative locations of any other waste stored within the tailings
 - f) rehabilitation strategy
 - g) monitoring of rehabilitation, research and/or trials to verify the requirements and methods for decommissioning and final rehabilitation of tailings, including the prevention and management of acid mine drainage, erosion minimisation and establishment of vegetation cover.

How do I comply?

No further guidance provided to that outlined in the condition.

Acid sulfate soils

- C5** Treat and manage acid sulphate soils in accordance with the latest edition of the Queensland Acid Sulfate Soil Technical Manual.

How do I comply?

No further guidance provided to that outlined in the condition.

Schedule D- Noise

Noise limits

- D1** The holder of this environmental authority must ensure that noise generated by the mining activities does not cause the criteria in **Table D1 – Noise limits** to be exceeded at a sensitive place or commercial place.

Table D1 – Noise limits

How do I comply?

The definition of 'sensitive place' and 'commercial place' is based on Schedule 1 of EPP Noise. That is, a sensitive place is inside or outside on a dwelling, library & educational institution, childcare or kindergarten, school or playground, hospital, surgery or other medical institution, commercial and retail activity, protected area or an area identified under a conservation plan under *Nature Conservation Act 1992* as a critical habitat or an area of major interest, marine park under *Marine Parks Act 2004*, park or garden that is outside of the mining lease and open to the public for the use other than for sport or organised entertainment. A commercial place is inside or outside a commercial or retail activity.

A mining camp (i.e., accommodation and ancillary facilities for mine employees or contractors or both, associated with the mine the subject of the environmental authority) is not a sensitive place for that mine or mining project, whether or not the mining camp is located within a mining tenement that is part of the mining project the subject of the environmental authority. For example, the mining camp might be located on neighbouring land owned or leased by the same company as one of the holders of the environmental authority for the mining project, or a related company. However, accommodation for mine employees or contractors is a sensitive place, even if the land is held by a mining company or related company, if occupation is not restricted to the employees, contractors and their families for the particular mine or mines which are held by the same company or a related company.

For example, a township (occupied by the mine employees, contractors and their families for multiple mines that are held by different companies) would be a sensitive place, even if part or all of the township is constructed on land owned by one or more of the companies.

Where there are two or more potential noise sources, it can be difficult to differentiate between them to determine if the mining activity is in exceedance of its noise limits. In these circumstances a site specific condition and monitoring requirements may need to be developed.

Noise is not considered to be a nuisance if monitoring demonstrates that noise from the activity does not exceed the limits outlined in **Table D1 – Noise limits** or equivalent site specific noise limit condition. It is recommended that if model condition A1, authorising of environmental harm, does not form part of the approval, than a similar condition be included within the adopted noise conditions.

Airblast overpressure nuisance

D2 The holder of this environmental authority must ensure that blasting does not cause the limits for peak particle velocity and air blast overpressure in **Table D2 – Blasting noise limits** to be exceeded at a sensitive place or commercial place.

Table D2 – Blasting noise limits

How do I comply?

No further guidance provided other than that outlined in the condition.

Monitoring and reporting

- D3** Noise monitoring and recording must include the following descriptor characteristics and matters:
- a) LAN,T (where N equals the statistical levels of 1, 10 and 90 and T = 15 mins)
 - b) background noise LA90
 - c) the level and frequency of occurrence of impulsive or tonal noise and any adjustment and penalties to statistical levels
 - d) atmospheric conditions including temperature, relative humidity and wind speed and directions
 - e) effects due to any extraneous factors such as traffic noise
 - f) location, date and time of monitoring
 - g) if the complaint concerns low frequency noise, Max LpLIN,T and one third octave band measurements in dB(LIN) for centre frequencies in the 10 – 200 Hz range.

How do I comply?

The method of measurement and reporting of noise levels must comply with the latest edition of the administering authority's Noise Measurement Manual or the most recent version of AS1055 Acoustics – description and measurement of environmental noise. Where the conditions do not specify that noise limits are to be achieved at the boundary, monitoring can be undertaken at the noise sensitive place or the boundary. If the monitoring identifies exceedances of limits, monitoring at the noise sensitive place may however pose difficulties for the mining activity when trying to demonstrate that they are not the source of the noise when there are multiple noise sources.

Where the noise nuisance complaint relates to a sensitive place or commercial place that is less than five kilometres (5km) from the activity, monitoring will need to be undertaken for a period of at least three days.

For continuous/ongoing/multiple complaints originating at the same sensitive or commercial place, noise monitoring should be implemented such that exceedance of noise criteria outlined in **Table D1 – Noise limits** can be identified immediately. This may involve the implementation of real time directional noise monitoring stations. These monitoring stations should continuously monitor noise levels and the direction of that noise relative to the monitor. Procedures should be implemented such that the appropriate persons are notified immediately upon identification of noise limit exceedance.

- D4** The holder of this environmental authority must develop and implement a blast monitoring program to monitor compliance with **Table D2 – Blasting noise limits** for:
- a) at least <insert number>% of all blasts undertaken on this site in each <insert period e.g. month or year> at the nearest sensitive place or commercial place <at insert a place nominated in this authority>
 - b) all blasts conducted during any time period specified by the administering authority at the nearest sensitive place or commercial place.

How do I comply?

The method of measurement and reporting of vibration levels must comply with the most recent edition of the administering authority's guideline Noise and vibration from blasting guideline.

Where blast monitoring detects non-compliance with **Table D2 – Blasting noise limits** the holder of this environmental authority should:

- a) take steps to ensure compliance is achieved by subsequent blasts
- b) continue to monitor all consecutive blasts until at least three successive blasts comply with **Table D2 – Blasting noise limits**.

Schedule E - Groundwater

Contaminant release

E1 The holder of this environmental authority must not release contaminants to groundwater.

How do I comply?

This condition is only to be used when it has been identified that no release of contaminants to groundwater is to occur as a result of mining activities. The definition of a 'contaminant' is set out in Section 11 of the EP Act and relevantly includes any 'gas, liquid or solid', not just hazardous contaminants. For example, it would include the replenishment of aquifers with water of the same quality or higher quality than the aquifers. The term 'release' is defined in Schedule 4 of the EP Act and relevantly, it should be noted that this includes passive releases and not merely controlled releases. Accordingly, if it is likely that the activity will lead to the passive replenishment of aquifers, even with good quality water, this condition should not be used.

OR

E1 The holder of this environmental authority is authorised to release contaminants at the release points and at the release frequencies specified in **Table E1 - Groundwater release points, frequency** and comply with the release limits specified in **Table E2 - Groundwater release quality**.

Table E1 - Groundwater release points, frequency

Table E2 - Groundwater release quality

How do I comply?

This condition is only to be used when it has been identified that release of contaminants to groundwater is authorised to occur as a result of mining activities.

Section 63 of the Environmental Protection Regulation 2008 addresses the topic of the release of 'waste' to groundwater. The term 'waste' is defined in Section 13 of the EP Act. Section 63 of the EP Regulation requires the administering authority to refuse an application if:

- (a) the waste is not being, or may not be, released entirely within a confined aquifer (except for petroleum activities), or
- (b) the release of the waste is affecting adversely, or may affect adversely, a surface ecological system, or
- (c) the waste is likely to result in a deterioration in the environmental values of the receiving groundwater.

Paragraph (b) is not intended to apply to a surface ecological system which is authorised to be cleared for the purpose of the mining activities. Paragraphs (b) and (c) are not intended to apply to trivial impacts.

Where contaminants are proposed to be released to groundwater the limits set out in the condition must not be exceeded at the release point. All the potential contaminants generated as part of the mining activity that have a release limit will be included in this table. The limit type and value will need to be determined in consultation with the administering authority.

Monitoring and reporting

E2 All determinations of groundwater quality and biological monitoring must be performed by an appropriately qualified person.

How do I comply?

Monitoring methods should be in accordance with the latest edition of the Queensland Monitoring and Sampling Manual, AS/NZS 5667:11 1998 Water Sampling Guidelines – Part 11 Guidance on groundwater, and the Australian Governments Groundwater Sampling and Analysis – A Field Guide (2009:27 GeoCat#6890.1). Analyses should be carried out on representative samples, at a laboratory accredited (for example, NATA) for the method of analysis being used.

E3 Groundwater quality and levels must be monitored at the locations and frequencies defined in **Table E3 - Groundwater monitoring locations and frequency** and **Schedule # – Figure #** (Groundwater Bore Monitoring Locations) for the quality characteristics identified in **Table E4 - Groundwater quality triggers and limits**.

Table E3 - Groundwater monitoring locations and frequency

Table E4 - Groundwater quality triggers and limits

How do I comply?

Monitoring locations must be suitably positioned to detect any impacts caused by the activity and ensure compliance with the conditions of the environmental authority.

Monitoring methods should be in accordance with the latest edition of the Queensland Monitoring and Sampling Manual, AS/NZS 5667:11 1998 Water Sampling Guidelines – Part 11 Guidance on groundwater, and the Australian Governments Groundwater Sampling and Analysis – A Field Guide (2009:27 GeoCat#6890.1)

Generic parameters and associated triggers and limits have not been provided given they would vary from site to site. This does not suggest though that any and every parameter should be included within this table. Only parameters that are relevant to groundwater quality associated with the activity should be included.

E4 Groundwater levels when measured at the monitoring locations specified in **Table E3 - Groundwater monitoring locations and frequency** must not exceed the groundwater level trigger change thresholds specified in **Table E5 - Groundwater level monitoring** below.

Table E5 - Groundwater level monitoring

How do I comply?

The level trigger thresholds will be site specific and dependent upon what type of aquifer is present. A 5 metre reduction in water level for consolidated aquifers such as sandstone or a two metre reduction in water level for unconsolidated aquifers such as shallow aquifers may be appropriate.

Depending upon site specifics, it could be possible that the level trigger threshold can be based on a percentage of annual average change of the aquifer rather than the five metre or two metre outline above.

Where there are localities that have known external influences on the fluctuation of groundwater levels, these should also be taken into account when setting the trigger level thresholds. This will avoid unnecessary investigations into exceedances being required by condition E6.

Exceedance investigation

E5 If quality characteristics of groundwater from compliance bores identified in **Table E3 - Groundwater monitoring locations and frequency** exceed any of the trigger levels stated in **Table E4 - Groundwater quality triggers and limits** or exceed any of the groundwater level trigger threshold stated in **Table E5 - Groundwater level monitoring**, the holder of this environmental authority must compare the compliance monitoring bore results to the reference bore results and complete an investigation in accordance with the ANZECC and ARMCANZ 2000

How do I comply:

If the level of contaminants at the compliance monitoring bore does not exceed the reference bore results, then no action is to be taken. If however the level of contaminants at the compliance monitoring bore is greater than the reference bore results, an investigation is to be completed in accordance with the ANZECC and ARMCANZ 2000 into the potential for environmental harm and a written report is to be provided to the administering authority within three months, outlining:

- a) details of the investigations carried out
- b) details of environmental impacts observed
- c) actions taken to prevent environmental harm.

Where an exceedance of a trigger level has occurred and is being investigated, then no further reporting is required for subsequent trigger events for that quality characteristic within the three month investigation period.

E6 Results of monitoring of groundwater from compliance bores identified in **Table E3 - Groundwater monitoring locations and frequency**, must not exceed any of the limits defined in **Table E4 - Groundwater quality triggers and limits**.

How do I comply:

No further guidance provided other than that outlined in the condition.

Bore construction and maintenance and decommissioning.

E7 The construction, maintenance and management of groundwater bores (including groundwater monitoring bores) must be undertaken in a manner that prevents or minimises impacts to the environment and ensures the integrity of the bores to obtain accurate monitoring

How do I comply?

As a minimum, groundwater bores (including groundwater monitoring bores) must be constructed, maintained and decommissioned in accordance with methods prescribed in the latest edition of the National Uniform Drillers Licensing Committee manual titled Minimum Construction Requirements for Water Bores in Australia.

Oil-based drilling fluids, oil-based additives, synthetic based drilling fluids or synthetic based additives must not be used in the construction of groundwater bores.

Current Material Safety Data Sheets for all substances used for the drilling of groundwater bores must be made available to the administering authority promptly upon request.

Corrective measures must be taken immediately if the holder of this environmental authority becomes aware that bore construction, maintenance or decommissioning have resulted in a change in groundwater quality or groundwater levels or have caused interconnection of aquifers.

Schedule F – Water (Fitzroy model conditions)

Contaminant Release

F1 Contaminants that will, or have the potential to cause environmental harm must not be released directly or indirectly to any waters as a result of the authorised mining activities, except as permitted under the conditions of this environmental authority.

F2 Unless otherwise permitted under the conditions of this environmental authority, the release of mine affected water to waters must only occur from the release points specified in **Table F1 - Mine affected water release points, sources and receiving waters** and depicted in Figure 1 attached to this environmental authority.

F3 The release of mine affected water to internal water management infrastructure installed and operated in accordance with a water management plan that complies with condition F28 is permitted.

How do I comply?

No further guidance to that outlined in the conditions and associated explanatory notes.

Table F1 - Mine affected water release points, sources and receiving waters

F4 The release of mine affected water to waters in accordance with condition F2 must not exceed the release limits stated in **Table F2 - Mine affected water release limits** when measured at the monitoring points specified in **Table F1 - Mine affected water release points, sources and receiving waters** for each quality characteristic.

Table F2 - Mine affected water release limits

F5 The release of mine affected water to waters from the release points must be monitored at the locations specified in **Table F1 - Mine affected water release points, sources and receiving waters** for each quality characteristic and at the frequency specified in **Table F2 - Mine affected water release limits** and **Table F3 - Release contaminant trigger investigation levels, potential contaminants**.

Note: the administering authority will take into consideration any extenuating circumstances prior to determining an appropriate enforcement response in the event condition F5 is contravened due to a temporary lack of safe or practical access. The administering authority expects the environmental authority holder to take all reasonable and practicable measures to maintain safe and practical access to designated monitoring locations.

Table F3 - Release contaminant trigger investigation levels, potential contaminants

How do I comply?

No further guidance to that outlined in the conditions and associated explanatory notes.

F6 If quality characteristics of the release exceed any of the trigger levels specified in **Table F3 - Release contaminant trigger investigation levels, potential contaminants** during a release event, the environmental authority holder must compare the down-stream results in the receiving waters to the trigger values specified in **Table F3 - Release contaminant trigger investigation levels, potential contaminants** and:

- a) where the trigger values are not exceeded then no action is to be taken; or
- b) where the down-stream results exceed the trigger values specified **Table F3 - Release contaminant trigger investigation levels, potential contaminants** for any quality characteristic, compare the results of the down-stream site to the data from background monitoring sites
 - 1. if the result is less than the background monitoring site data, then no action is to be taken; or
 - 2. if the result is greater than the background monitoring site data, complete an investigation into the potential for environmental harm and provide a written report to the administering authority within 90 days of receiving the result, outlining
 - i. details of the investigations carried out
 - ii. actions taken to prevent environmental harm.

Note: Where an exceedance of a trigger level has occurred and is being investigated, in accordance with F6 b (2) of this condition, no further reporting is required for subsequent trigger events for that quality characteristic.

F7 If an exceedance in accordance with condition F6 b (2) is identified, the holder of the environmental authority must notify the administering authority in writing within 24 hours of receiving the result.

How do I comply?

No further guidance provided to that outlined in the condition.

Mine affected water release events

F8 The holder must ensure a stream flow gauging station/s is installed, operated and maintained to determine and record stream flows at the locations and flow recording frequency specified in **Table F3 - Release contaminant trigger investigation levels, potential contaminants**.

F9 Notwithstanding any other condition of this environmental authority, the release of mine affected water to waters in accordance with condition F2 must only take place during periods of natural flow in accordance with the receiving water flow criteria for discharge specified in **Table F4 - Mine affected water release during flow events** for the release point(s) specified in **Table F1 - Mine affected water release points, sources and receiving waters**.

F10 The release of mine affected water to waters in accordance with condition F2 must not exceed the Maximum Release Rate (for all combined release point flows) for each receiving water flow criterion for discharge specified in **Table F4 - Mine affected water release during flow events** when measured at the monitoring points specified in **Table F1 - Mine affected water release points, sources and receiving waters**.

or

F11 The 80th percentile of electrical conductivity (EC) values recorded at the downstream monitoring points listed in **Table F4 - Mine affected water release during flow events** must not exceed XXXuS/cm over the duration of the release influence period and have a maximum value of no greater than 20 per cent of XXXuS/cm. The 80th percentile must be calculated using all EC values recorded by the monitoring station during the release influence period.

Table F4 - Mine affected water release during flow events

How do I comply?

No further guidance to that outlined in the conditions and associated explanatory notes.

F12 The daily quantity of mine affected water released from each release point must be measured and recorded.

F13 Releases to waters must be undertaken so as not to cause erosion of the bed and banks of the receiving waters, or cause a material build-up of sediment in such waters.

How do I comply?

No further guidance provided to that outlined in the condition.

Notification of release event

F14 The environmental authority holder must notify the administering authority as soon as practicable and no later than 24 hours after commencing to release mine affected water to the receiving environment. Notification must include the submission of written advice to the administering authority of the following information:

- a) release commencement date/time
- b) details regarding the compliance of the release with the conditions of Department Interest: Water of this environmental authority (that is, contaminant limits, natural flow, discharge volume)
- c) release point/s
- d) release rate
- e) release salinity
- f) receiving water/s including the natural flow rate.

Note: Notification to the administering authority must be addressed to the Manager and Project Manager of the local Administering Authority via email or facsimile.

F15 The environmental authority holder must notify the administering authority as soon as practicable and nominally no later than 24 hours after cessation of a release event of the cessation, of a release notified under Condition F14 and within 28 days provide the following information in writing:

- a) release cessation date/time
- b) natural flow rate in receiving water
- c) volume of water released
- d) details regarding the compliance of the release with the conditions of Department Interest: Water of this environmental authority (that is, contaminant limits, natural flow, discharge volume)
- e) all in-situ water quality monitoring results
- f) any other matters pertinent to the water release event.

Note: Successive or intermittent releases occurring within 24 hours of the cessation of any individual release can be considered part of a single release event and do not require individual notification for the purpose of compliance with conditions F14 and F15, provided the relevant details of the release are included within the notification provided in accordance with conditions F14 and F15.

How do I comply?

The administering authority will take into consideration any extenuating circumstances prior to determining an appropriate enforcement response, in the event condition F14 is contravened due to extenuating circumstances, such as in emergencies which prevent communications, applicable monitoring equipment has been destroyed as a result of the emergency or access is prevented. The administering authority expects the environmental authority holder though to take all reasonable and practicable measures to maintain safe and practical access to designated monitoring locations.

Notification of release event exceedance

F16 If the release limits defined in **Table F2 - Mine affected water release limits** are exceeded, the holder of the environmental authority must notify the administering authority within 24 hours of receiving the results.

How do I comply?

It should be noted however that a release which has exceeded release limits is no longer compliant and should cease. Any release that continues when limits in **Table F2 - Mine affected water release limits** have been breached will be subject to compliance action by the administering authority.

F17 The environmental authority holder must, within 28 days of a release that is not compliant with the conditions of this environmental authority, provide a report to the administering authority detailing:

- a) the reason for the release
- b) the location of the release
- c) the total volume of the release and which (if any) part of this volume was non-compliant
- d) the total duration of the release and which (if any) part of this period was non-compliant
- e) all water quality monitoring results (including all laboratory analyses)
- f) identification of any environmental harm as a result of the non-compliance
- g) all calculations
- h) any other matters pertinent to the water release event.

Receiving environment monitoring and contaminant trigger levels

F18 The quality of the receiving waters must be monitored at the locations specified in **Table F6 - Receiving water upstream background sites and downstream monitoring points** for each quality characteristic and at the monitoring frequency stated in **Table F5 - Receiving waters contaminant trigger levels**.

Table F5 - Receiving waters contaminant trigger levels

Table F6 - Receiving water upstream background sites and downstream monitoring points

How do I comply?

The intent is that that each discharge point has both an upstream and downstream monitoring point associated with it. These monitoring points should be located as close as practicable to the release point and the distances should be defined in the footnotes in **Table F6 - Receiving water upstream background sites and downstream monitoring points**. The location of flow monitoring points should also be considered in selecting upstream monitoring points. Other considerations include accessibility, particularly during wet weather conditions.

F19 If quality characteristics of the receiving water at the downstream monitoring points exceed any of the trigger levels specified in **Table F5 - Receiving waters contaminant trigger levels** during a release event the environmental authority holder must compare the downstream results to the upstream results in the receiving waters and:

- a) where the downstream result is the same or a lower value than the upstream value for the quality characteristic then no action is to be taken; or
- b) where the downstream results exceed the upstream results complete an investigation into the potential for environmental harm and provide a written report to the administering authority in the next annual return, outlining
 1. details of the investigations carried out
 2. actions taken to prevent environmental harm.

Note: Where an exceedance of a trigger level has occurred and is being investigated, in accordance with F19 b) of this condition, no further reporting is required for subsequent trigger events for that quality characteristic.

Release

F20 All determinations of water quality and biological monitoring must be performed by an appropriately qualified person.

How do I comply?

All determinations of water quality and biological monitoring should be made in accordance with methods prescribed in the latest edition of the Department of Environment and Heritage Protection (or its successor) Monitoring and Sampling Manual. Samples should be collected from monitoring locations identified within this environmental authority. Analyses should be carried out on representative samples, at a laboratory accredited (for example, NATA) for the method of analysis being used.

Receiving environment monitoring program (REMP)

F21 The environmental authority holder must develop and implement a Receiving Environment Monitoring Program (REMP) to monitor, identify and describe any adverse impacts to surface water environmental values, quality and flows due to the authorised mining activity. This must include monitoring the effects of the mine on the receiving environment periodically (under natural flow conditions) and while mine affected water is being discharged from the site. For the purposes of the REMP, the receiving environment is the waters of the XX and connected or surrounding waterways within XX (for example, Xkm) downstream of the release. The REMP should encompass any sensitive receiving waters or environmental values downstream of the authorised mining activity that will potentially be directly affected by an authorised release of mine affected water.

F22 A REMP Design Document that addresses the requirements of the REMP must be prepared and made available to the administering authority upon request.

F23 A report outlining the findings of the REMP, including all monitoring results and interpretations must be prepared annually and made available on request to the administering authority. This must include an assessment of background reference water quality, the condition of downstream water quality compared against water quality objectives, and the suitability of current discharge limits to protect downstream environmental values.

How do I comply?

The Receiving Environment Monitoring Program (REMP) should be used to assess the local receiving waters for the specified discharge locations. The monitoring should not be specifically designed to assess compliance of the release – this is covered by other conditions. The key purpose of the REMP is to assess the overall condition of the local receiving waters and assessment should be against water quality objectives and relevant guidelines.

Note that in some cases where discharge occurs to ephemeral streams, there may be a need to include downstream sensitive receiving waters or environmental values outside of the specified REMP area. An example of this would be where there are no semi-permanent/permanent waterholes in the specific area but 1 is located further downstream prior to the confluence with the next major waterway. For further guidance on what to include in a REMP, please refer to the Draft EHP REMP Document for Fitzroy Coal Mines and Additional Information. There is a potential for beneficial linkages of REMP monitoring to regional waterway monitoring programs, such as the Fitzroy Partnership monitoring program. For example EHP intends to maintain monitoring information compiled through individual REMP programs through an internal database under development. Industry has indicated its willingness to see this data shared with the Fitzroy Partnership for the purpose of a regional water monitoring program. Likewise it is possible for environmental authority holders to utilise relevant and available water monitoring information collected by other parties, such as the Fitzroy Partnership, as reference data for the purposes of the REMP required by this section.

The REMP should:

- a) assess the condition or state of receiving waters, including upstream conditions, spatially within the REMP area, considering background water quality characteristics based on accurate and reliable monitoring data that takes into consideration temporal variation (for example, seasonality)
- b) be designed to facilitate assessment against water quality objectives for the relevant environmental values that need to be protected
- c) include monitoring from background reference sites (for example, upstream or background) and downstream sites from the release (as a minimum, the locations specified in Table 6)
- d) specify the frequency and timing of sampling required in order to reliably assess ambient conditions and to provide sufficient data to derive site specific background reference values in accordance with the *Queensland Water Quality Guidelines 2006*. This should include monitoring during periods of natural flow irrespective of mine or other discharges
- e) include monitoring and assessment of dissolved oxygen saturation, temperature and all water quality parameters listed in Table 2 and 3)
- f) include, where appropriate, monitoring of metals/metalloids in sediments (in accordance with ANZECC & ARMCANZ 2000, BATLEY and/or the most recent version of *AS5667.1 Guidance on Sampling of Bottom Sediments*)
- g) include, where appropriate, monitoring of macroinvertebrates in accordance with the AusRivas methodology
- h) apply procedures and/or guidelines from ANZECC & ARMCANZ 2000 and other relevant guideline documents
- i) describe sampling and analysis methods and quality assurance and control
- j) incorporate stream flow and hydrological information in the interpretations of water quality and biological data.

Water reuse

F24 Mine affected water may be piped or trucked or transferred by some other means that does not contravene the conditions of this environmental authority and deposited into artificial water storage structures, such as farm dams or tanks, or used directly at properties owned by the environmental authority holder or a third party (with the consent of the third party).

Release

How do I comply?

Note that the definition of 'wastewater' under the *Water Supply (Safety and Reliability) Act 2008* specifically exempts spent or used water generated from mining activities. In addition, there is an exemption from water service provider registration requirements if there is no charge for the water supply. Mines are encouraged to provide water to their neighbours and communities. Previous versions of these model water conditions specified terms to be included in agreements with those third parties, but current policy is that the commercial terms of these agreements, including the purposes for which the third parties require the water, are a matter for direct negotiation between the parties.

The provision of re-use water to artificial water storage structures, or direct application to land for purposes such as dust suppression in road maintenance and construction work, constitutes an authorised 'release' which does not need to be addressed under condition F2. However, as part of the annual review of water management plans, an outline should be included about beneficial re-use arrangements, for water balance purposes.

Annual water monitoring reporting

- F25** The following information must be recorded in relation to all water monitoring required under the conditions of this environmental authority and submitted to the administering authority in the specified format:
- a) the date on which the sample was taken
 - b) the time at which the sample was taken
 - c) the monitoring point at which the sample was taken
 - d) the measured or estimated daily quantity of mine affected water released from all release points
 - e) the release flow rate at the time of sampling for each release point
 - f) the results of all monitoring and details of any exceedances of the conditions of this environmental authority
 - g) water quality monitoring data must be provided to the administering authority in the specified electronic format upon request.

How do I comply?

No further guidance provided to that outlined in the condition.

Temporary interference with waterways

- F26** Destroying native vegetation, excavating, or placing fill in a watercourse, lake or spring necessary for and associated with mining operations must be undertaken in accordance with Department of Natural Resources and Mines (or its successor) Guideline – Activities in a Watercourse, Lake or Spring associated with Mining Activities.

How do I comply?

No further guidance provided to that outlined in the condition.

Water management plan

F27 A Water Management Plan must be developed by an appropriately qualified person and implemented.

How do I comply?

The Water Management Plan should be developed in accordance with Department of Environment and Resource Management guideline *Preparation of water management plans for mining activities* and include:

- a) a study of the source of contaminants
- b) a water balance model for the site
- c) a water management system for the site
- d) measures to manage and prevent saline drainage
- e) measures to manage and prevent acid rock drainage
- f) contingency procedures for emergencies
- g) a program for monitoring and review of the effectiveness of the water management plan.

The Water Management Plan should be reviewed annually to assess the adequacy of the plan, ensure actual and potential environmental impacts are managed, and identify any necessary amendments to the plan.

Stormwater and water sediment controls

F28 An Erosion and Sediment Control Plan must be developed by an appropriately qualified person and implemented for all stages of the mining activities on the site to minimise erosion and the release of sediment to receiving waters and contamination of stormwater.

F29 Stormwater, other than mine affected water, is permitted to be released to waters from:

- a) erosion and sediment control structures that are installed and operated in accordance with the Erosion and Sediment Control Plan required by condition F28
- b) water management infrastructure that is installed and operated, in accordance with a Water Management Plan that complies with condition F27 for the purpose of ensuring water does not become mine affected water.

How do I comply?

Stormwater, other than mine affected water, is permitted to be released to waters from erosion and sediment control structures that are installed and operated in accordance with the Erosion and Sediment Control Plan required by condition F28. Stormwater is permitted to be released from water management infrastructure that is installed and operated in accordance with a Water Management Plan required by condition F27, for the purpose of ensuring water does not become mine affected.

The maintenance and cleaning of any vehicles, plant or equipment must not be carried out in areas from which contaminants can be released into any receiving waters.

Any spillage of wastes, contaminants or other materials must be cleaned up as quickly as practicable to minimise the release of wastes, contaminants or materials to any stormwater drainage system or receiving waters.

Schedule G- Sewage treatment

G1 The only contaminant permitted to be released to land is treated sewage effluent in compliance with the release limits stated in **Table G1 - contaminant release limits to land**.

Table G1 - Contaminant release limits to land

How do I comply?

F1 may need amendment if other contaminants are permitted to be released to land. Monthly monitoring of E coli may be revised based on location/remoteness of mine site.

G2 Treated sewage effluent may only be released to land in accordance with the conditions of this approval:

- a) within the nominated area(s) identified in [Schedule ## – Figure ##](#) (Sewage Treatment Plant and Effluent Disposal)
- b) on other land for the purpose of dust suppression and/or fire fighting.

How do I comply?

No further guidance provided to that outlined in the condition.

G3 The application of treated effluent to land must be carried out in a manner such that:

- a) vegetation is not damaged
- b) there is no surface ponding of effluent
- c) there is no run-off of effluent.

How do I comply?

No further guidance provided to that outlined in the condition.

G4 If areas irrigated with effluent are accessible to employees or the general public, prominent signage must be provided advising that effluent is present and care should be taken to avoid consuming or otherwise coming into unprotected contact with the effluent.

How do I comply?

No further guidance provided to that outlined in the condition.

G5 All sewage effluent released to land must be monitored at the frequency and for the parameters specified in **Table G1 - contaminant release limits to land**.

How do I comply?

No further guidance provided to that outlined in the condition.

G6 The daily volume of effluent release to land must be measured and records kept of the volumes of effluent released.

How do I comply?

No further guidance provided to that outlined in the condition.

G7 When circumstances prevent the irrigation or beneficial reuse of treated sewage effluent such as during or following rain events, waters must be directed to a wet weather storage or alternative measures must be taken to store/lawfully dispose of effluent.

How do I comply?

No further guidance provided to that outlined in the condition.

G8 A minimum area of <<insert area>> of land, excluding any necessary buffer zones, must be utilised for the irrigation and/or beneficial reuse of treated sewage effluent.

How do I comply?

No further guidance provided to that outlined in the condition.

G9 Treated sewage effluent must only be supplied to another person or organisation that has a written plan detailing how the user of the treated sewage effluent will comply with their general environmental duty under section 319 of the Act whilst using the treated sewage effluent.

How do I comply?

The supply of treated wastewater for re-use is regulated under the *Water Supply (Safety and Reliability) Act 2008*.

Schedule H – Land and rehabilitation

H1 Land disturbed by mining must be rehabilitated in accordance with **Table H1 - Rehabilitation requirements**.

Table H1 - Rehabilitation requirements

How do I comply:

In addition to the criteria listed above, holders should be aware that section 276 of the *Mineral Resources Act 1989* includes a requirement that it is a condition of mining leases that: ‘the holder, prior to the termination of the mining lease for whatever cause, shall remove any building or structure purported to be erected under the authority of the mining lease and all mining equipment and plant, on or in the area of the mining lease unless otherwise approved by the Minister.’

There are occasions when the post-mining landholder wishes to retain specified mine infrastructure, such as roads, clean water dams, amenities and the like. It is not unusual for the mining lease holder to submit a copy of a written agreement with the landholder about these issues for the consent of the Minister administering the *Mineral Resources Act 1989*.

H2 Rehabilitation must commence progressively in accordance with the plan of operations.

How do I comply:

Rehabilitation must commence progressively as soon as areas become available and in accordance with the plan of operations. For more information, please refer to the most recent edition of the administering authority’s guideline rehabilitation requirements for mining projects (EM1122).

Release

Contaminated land

H3 Before applying for surrender of a mining lease, the holder must (if applicable) provide to the administering authority a site investigation report under the Act, in relation to any part of the mining lease

which has been used for notifiable activities or which the holder is aware is likely to be contaminated land, and also carry out any further work that is required as a result of that report to ensure that the land is suitable for its final land use under condition H1.

H4 Before applying for progressive rehabilitation certification for an area, the holder must (if applicable) provide to the administering authority a site investigation report under the Act, in relation to any part of the area the subject of the application which has been used for notifiable activities or which the holder is aware is likely to be contaminated land, and also carry out any further work that is required as a result of that report to ensure that the land is suitable for its final land use under condition H1.

How do I comply?

For more information, please refer to the most recent edition of the administering authority's guideline surrender applications and progressive rehabilitation.

H5 Minimise the potential for contamination of land by hazardous contaminants.

How do I comply?

The following activities have a risk of releasing dust fallout which can accumulate and be a source of contamination if not managed adequately, so care should be taken to manage these accordingly:

- a) crusher
- b) concentrate handling, storage and transport
- c) dry tailings
- d) transport of ore.

All explosives, hazardous chemicals, corrosive substances, toxic substances, gases, flammable or combustible liquids and dangerous goods should be stored and handled in accordance with the current, relevant Australian Standard where such is applicable.

Notwithstanding the requirements of any applicable Australian Standard, any liquids stored on licensed place that have the potential to cause environmental harm should be stored and serviced by an effective containment system that is impervious to the materials stored and managed to prevent the release of liquids to waters or land. The following could be applied:

- a) storage tanks must be bunded such that the capacity and construction of the bund is sufficient to contain at least 110% of a single storage tank or 100% of the largest storage tank plus 10% of the second largest storage tank in multiple storage areas
- b) drum storages must be bunded such that the capacity and construction of the bund is sufficient to contain at least 25% of the maximum design storage volume within the bund.

All containment systems should be designed to minimise rainfall collection within the system.

Any spillage of hazardous contaminants should be cleaned up promptly. Dry methods of clean up are generally preferable to minimise the risk of release to land.

Prescribed environmental matters

H6 Significant residual impacts to prescribed environmental matters <<other than if the impacts were authorised by an existing authority issued before the commencement of the *Environmental Offsets Act 2014*>>, are not authorised under this environmental authority or the *Environmental Offsets Act 2014* <<unless the impact(s) is specified in Table H2 - Significant residual impacts to prescribed environmental matters>>.

How do I comply?

The EA holder will be required to self-assess the cumulative extent and duration of all proposed impacts to prescribed environmental matters well before any impacts occur. If it becomes apparent that the cumulative impacts to a prescribed environmental matter, after all reasonable avoidance and reasonable on-site mitigation measures have been factored in, will exceed a relevant significant residual impact threshold (i.e., as specified in the [Queensland Environmental Offsets Policy – Significant Residual Impact Guideline](#)), then EA amendment applications will be required to seek the authorisation for the impact. Similarly, where minimal ground-surveys have been conducted prior to the EA being applied for, ongoing amendments to the EA may be required as the project develops and further details of the expected impacts become available.

Compliance with condition H6 will require an EA holder to limit its significant residual impacts to prescribed environmental matters to what is specified in Table H2.

H7 Records demonstrating that each impact to a prescribed environmental matter <<not listed in [Table H2 - Significant residual impacts to prescribed environmental matters](#)>> did not, or is not likely to, result in a significant residual impact to that matter must be:

- a) completed by an appropriately qualified person; and
- b) kept for the life of the environmental authority.

How do I comply?

The holder must, at its own cost, arrange for an appropriately qualified person to determine whether an impact to a prescribed environmental matter is likely to be significant, based on the [Queensland Environmental Offsets Policy](#), and the [Queensland Environmental Offsets Policy – Significant Residual Impact Guideline that is relevant to the *Environmental Protection Act 1994*](#). The EA holder must document this determination and retain documents. The appropriately qualified person may be employed by the EA holder, or may be a third party.

H8 An environmental offset made in accordance with the *Environmental Offsets Act 2014* and Queensland Environmental Offsets Policy, as amended from time to time, must be undertaken for the maximum extent of impact to each prescribed environmental matter authorised in **Table H2 - Significant residual impacts to prescribed environmental matters**, unless a lesser extent of the impact has been approved in accordance with condition H11 [for staged offsets] OR condition H15 [for non-staged offsets].

How do I comply?

The procedure required to be followed when making an offset proposal is contained within the EO Act and the Queensland Environmental Offsets Policy.

Staged impacts

H9 The significant residual impacts to a prescribed environmental matter authorised in condition H6 for which an environmental offset is required by condition H8 may be carried out in stages. An environmental offset can be delivered for each stage of the impacts to prescribed environmental matters.

How do I comply?

Compliance with condition H9 will require an EA holder to forward plan its project in stages, and to ensure that any environmental offsets required for a particular stage are recorded in an agreed delivery arrangement prior to the occurrence of any of the staged impacts.

H10 Prior to the commencement of each stage, a report completed by an appropriately qualified person, that includes an analysis of the following must be provided to the administering authority:

- a) for the forthcoming stage—the estimated significant residual impacts to each prescribed environmental matter; and
- b) for the previous stage, if applicable—the actual significant residual impacts to each prescribed environmental matter, to date.

H11 The report required by condition H10 must be approved by the administering authority before a notice of election for the forthcoming stage, if applicable, is given to the administering authority.

H12 A notice of election for the staged environmental offset referred to in condition H11, if applicable, must be provided to the administering authority no less than three months before the proposed commencement of that stage, unless a lesser timeframe has been agreed to by the administering authority.

H13 Within six months from the completion of the final stage of the project, a report completed by an appropriately qualified person, that includes the following matters must be provided to the administering authority:

- a) an analysis of the actual impacts on prescribed environmental matters resulting from the final stage; and
- b) if applicable, a notice of election to address any outstanding offset debits for the authorised impacts.

How do I comply?

Additional guidance on how to comply with conditions H10 to H13 is contained within the [Queensland Environmental Offsets Policy](#) and the [Queensland Environmental Offsets Policy – General guide](#).

Non-staged impacts

H14 Prior to the commencement of any impacts to a prescribed environmental matter for which an environmental offset is required by condition H8, a report completed by an appropriately qualified person that contains an analysis of the estimated maximum extent of impact to each prescribed environmental matter must be provided to the administering authority.

Release

H15 The report required by condition H14 must be approved by the administering authority before the notice of election, if applicable, is given to the administering authority.

H16 The notice of election for the environmental offset required by condition H15, if applicable, must be provided to the administering authority no less than three months before the proposed commencement of the significant residual impacts for which the environmental offset is required.

How do I comply?

Additional guidance on how to comply with conditions H14 to H16 is contained within the [Queensland Environmental Offsets Policy](#) and the [Queensland Environmental Offsets Policy – General guide](#).

Schedule I- Watercourse diversions

How do I comply?

For all watercourse diversions conditions (I1 to I6), refer to the Queensland Department of Natural Resources and Mines Guideline – *Works that interfere with water in a watercourse: watercourse diversions* for guidance. This guideline includes information for proponents and certifiers that includes technical information about the planning, design, operation and monitoring of watercourse diversions for resource related activities.

Published on EHP Disclosure Log
RTI Act 2009