

From: 49-Sch4
Sent: Wednesday, 13 February 2013 3:11 PM
To: Dunlop Kylie
CC: McDougall, John
Subject: FW: Callide Mine Update
Attachments: 2013_02_13_DEHP Update Photosx.pdf

Good afternoon Kylie,

John McDougall has unexpectedly had to Section 78B(2) RTI Act this afternoon and will be returning on Thursday 14 February at about midday. In his absence, he has asked me to prepare and send on his behalf the following further information in response to your e.mail of Friday 8 February. I will be away on Thursday, so neither of us will be available on Thursday morning 14 February. However, if you have follow-up questions, please e.mail us both.

-
- Can you please provide an approximate anticipated time period in which the cease release is expected to occur at 73(2) and Dunn Creek?

As mentioned in Callide Mine's initial notifications of commencement of release, cessation of release is primarily dependent on further rainfall. At the time of this response, Callide Mine has continued to receive some rainfall over the last few days and the Bureau of Meteorology forecast is for further rainfall today and for the rest of this week. Forecasts for the Capricorn Region for the rest of the week are not specific to Biloela, but further rainfall is forecast for the region each day for the rest of the week, possibly including storms. If this is enough to impact on background flow, it could make sense to continue passive releases from 73(2) Irrelevant and Dunn Creek Dam during this week, but obviously we cannot be sure at this stage. The other factor which is now relevant to cessation of flow will be the ability to use the Trap Gully pipeline in compliance with our EA parameters, mentioned in our last update (on Monday 11 February). As we explained, physical access for this purpose was destroyed by ex-cyclone Oswald, but work is underway right now to restore safe access. We cannot be sure exactly when that work will be complete, to a stage where access is confirmed to be safe and pumping can commence, particularly depending on any storms or other rainfall this week which may interrupt the work, and bearing in mind that rainfall is in fact forecast for the coming week. It is only possible to say at this stage that this access is currently expected to be available shortly and at any rate, during this week.

The interim step we already have underway to address flow from Dunn Creek Dam is to pump water to a back-up storage known as 'East Dam' shown in our water management plan. We will update you about that once we have a progress update from the personnel undertaking the work.

- I note photo's have been taken in an attempt to demonstrate flow - can photo's or any relevant information relating to flow be provided to EHP to support the release data?

Please refer to the attached photos, demonstrating high background flow.

- Spatial figure/maps identifying all water storages/dams, discharge point, drainage and water systems including flow for entire mine.

Maps and figures identifying mine-affected water storages and authorized release points are in fact the figures that were supplied as part of the supporting information for our EA amendment application last year and which we have previously requested EHP to attach to our EA, through a correction by agreement. In your e.mail 12/02/2013, you mentioned that you would like some 'tweaking' to these figures and we received your e.mail today suggesting some contextual information to be included in the mapping, such as mining lease boundaries. We are happy to include the further contextual information in the figures, but in the meantime, of course, you do already have figures which show the key information.

Details of non-mine-affected storages and associated infrastructure are included in our existing water management plan, a

copy of which is already held by EHP. Please let us know if this has been mislaid, in which case, we can provide a further copy. Under condition W31 of our amended EA, Callide Mine will also be providing an updated water management plan to EHP within 3 months of the amendment, that is, by 14 March 2013. (This is expected to coincide with some EA amendments that we will be seeking at about that time to tidy up various minor changes to infrastructure that we would like to make.) There are also various maps of current and proposed sediment basins and associated infrastructure both in our current erosion and sediment control plan and the approved TEP for the Bluff mining lease.

Please let us know, after reviewing this material, if there is anything further that is relevant that we can assist with.

- Water balance/capacity for all of mine before and after recent rains in relation to each water storage facility

Callide Mine uses the OPSIM (operational simulation) software for site water balances.

(a) Preparation for the wet season – creation of adequate capacity

Callide Mine had created a very good level of freeboard in all mine-affected water storages in preparation for the current wet season, at least 1 month prior to the onset of ex-cyclone Oswald. Notably:

- Dunn Creek Dam was almost completely drained almost a month in advance of ex-cyclone Oswald, including by pumping water from Dunn Creek Dam to other water storages. The creation of maximum freeboard in Dunn Creek Dam was our pre-wet season priority because of its location above Callide Dam. Callide Mine kept SunWater in the loop about this pre-wet season preparation.

73(2)Irrelevant

- Beneficial use of water for dust suppression was a major feature of pre-wet season preparation, particularly dust suppression at Trap Gully.

Estimates of capacity before ex-cyclone Oswald are attached. These estimates were based on prior observations, but please note that these are only estimates. As you know, Callide Mine was affected by a catastrophic bushfire which had spread from a neighbouring grazing property, not long before the January flooding and it took time for safe access to be restored to areas affected by the bushfire.

(b) Current position

Water level observations were made after ex-cyclone Oswald and these are provided in the attached spreadsheet.

Note that additional water volumes for some of the mining pits are also included in the attached spreadsheet. These were calculated from aerial flyovers conducted before and after ex-cyclone Oswald.

Rainfall has been ongoing intermittently and further rainfall (including the possibility of storms) is currently forecast for the region.

Re: Bluff Mining Lease –

Thank you for your e.mail acknowledgement yesterday that our update about Bluff mining lease was not in fact about a sediment release but rather about sediment containment. However, we had still promised to provide you with photographs demonstrating the containment of the eroded material within the Bluff sediment dams and the drainage channel to sediment dam D. Photographs are attached.

Kind Regards

49-Sch4

Environmental Officer



E

49-Sch4

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A member of the Anglo American plc group

From: McDougall, John

Sent: Monday, 11 February 2013 5:47 PM

To: Dunlop Kylie; Manager.MiningCWR@ehp.qld.gov.au; Tarlinton Sam; Loveday Chris; Baker Tony

Cc: 49-Sch4 ; Hampson, Michael

Subject: Callide Mine Update

Hi Kylie

Thanks for your time this morning. Before responding to your questions, I should first clarify a few of the underlying assumptions, because in most cases there is an improved position that I can update you about, and on another of the topics below your questions appear to have been based on confusion or a miscommunication about the intent of one of our letters. Kylie, as communicated today we will respond to the rest of your email tomorrow, dependent on any changes you would like to make to the questions following this update.

1. Update on releases from Dunn Creek Dam and 73(2)Irrelevant

On 5 February, we discussed that we had a concern about how Callide Mine should manage ongoing passive flow from Dunn Creek Dam and 73(2) particularly once background flow was reduced and the option of a TEL was raised.

As you would be aware from our amended EA and the supporting material for that application, Callide Mine now actually has a much better option under our EA, in terms of minimizing impacts on the environment, by utilizing the Trap Gully pipeline. Obviously, this is particularly a better option than passive release from Dunn Creek Dam directly above Callide Dam when parameters for that release can no longer be met. Our main difficulty as at 5 February was that physical access was unavailable for the purpose of operating the alternative release point at that time, but physical access is being reconstructed now and should be available again very shortly.

The point is that we probably should not require a TEL or TEP, if we are able to discharge in accordance with the parameters of our EA, which we now believe we should be able to do, using the Trap Gully pipeline release point. This release point can also be controlled, contrasted with the other passive release points. Until the physical access is actually available, we cannot be 100% confident about this, but we just don't want to waste your time with an unnecessary TEL or TEP in the meantime, given that we should know the answer quite shortly and we will update you as soon as we do.

There are still two difficulties to address:

- (a) As mentioned in our previous e-mails, we think the PDF version of the EA issued to us was incorrect for Table W4, but the Word version was correct. We really need to clear up that discrepancy.
- (b) As discussed with John Frankish on 14 December, our EA amendment was issued at a time which did not allow us to install some parts of the relevant infrastructure before the commencement of the wet season and he noted at that time that this would need to be taken into consideration on an interim basis. For the Trap Gully pipeline, the pipeline was installed in time for the wet season, but a land access agreement still had to be negotiated for the monitoring

equipment. In accordance with our discussion with John Frankish in which he suggested that we propose suitable interim arrangements, what we would propose to do is have Bureau Veritas undertake grab samples until the continuous monitoring equipment is in place. We do now have a land access agreement ready to go, and we expect the land owner's execution of the agreement this week. It seems to us that it would probably be over-the-top to do a TEP for only a few weeks to cover a program of works for the installation of the monitoring equipment, given that this will be covered for all practical purposes by the BV grab sampling, but please let us know what you think.

2. Bluff mining lease

The purpose of our letters about erosion and sediment control at the Bluff mining lease was **not** to advise of a sediment release, but rather the opposite. The intention was to give EHP comfort that, although there had been erosion of the spoil dump escarpment, the material from that erosion was fully contained within sediment dams and the drain leading to sediment basin D within the mining lease that were built for that purpose.

Your question about 'potential environmental harm' seems to have assumed that we were instead advising that the material had not been fully contained. We can certainly provide photographs demonstrating that the material was contained, but this was not a notification of non-compliance. We have already provided an update about works underway to rectify the erosion area and also to prevent a similar incident. Please let me know if you did not receive this, in which case, we can send another copy. Could you please let me know if this clarification changes your questions on this topic. I will still shoot through some photos for clarification purposes.

Kind Regards

John

From: Dunlop Kylie [mailto:Kylie.Dunlop@ehp.qld.gov.au]
Sent: Friday, 8 February 2013 8:57 AM
To: McDougall, John
Cc: Manager MiningCWR; Loveday Chris; Tarlinton Sam; Baker Tony; I 49-Sch4 Hampson, Michael
Subject: FW: Callide Mine Update including notification of exceedances/non-compliances (as per Condition W15)
Importance: High

Hi John,

Thankyou for your email containing the event notifications for exceedances for release. Please note the following points / questions

- Please note as per my email dated 6 Feb 2013 (attached) that all notifications to the department including emergency notifications, commencement to release or cease release and applications for TEP or TEL's should be sent to - Manager.MiningCWR@ehp.qld.gov.au - (I will also receive notification through this means but feel free to include my email details for an immediate response)
- Can you please provide an approximate anticipated time period in which the cease release is expected to occur at 73(2) and Dunn Creek?
- I note photo's have been taken in an attempt to demonstrate flow - can photo's or any relevant information relating to flow be provided to EHP to support the release data?

On the 05.02.13 at approximately 9.15am you advised that Callide would provide further information to support a potential application/request for a TEL to continue releasing (due to an approx. 5GL of water remaining in the main working/production pit). It was agreed that Callide would submit this information to the department and a telelink would be held to discuss and seek advice on options that Callide could undertake.

- Can you please advise where this process is at and what Callide's intentions are to manage the approx 5GL of water remaining in the working pit? including the following information -

- Spatial figure/maps identifying all water storages/dams, discharge point, drainage and water systems including flow for entire mine.
- Water balance/capacity for all of mine before and after recent rains in relation to each water storage facility

On the 29.01.13 Callide notified EHP that sediment has been released from the Bluff spoil dump. Can the following information/update please be provided to EHP -

- Extent of sediment release including quantity, proposed rectification works, risk assessment, outline of potential environmental harm and photo's

If you require any further clarification or wish to discuss this email please do not hesitate to contact me on 4837 3501.

Regards

Kylie Dunlop | Senior Environmental Officer
Environmental Services Mining, Central Region

Department of Environment & Heritage Protection

P 07 4837 3501 | F 07 4938 4011

Level 2 | 209 Bolsover Street | PO Box 1762 | Rockhampton QLD 4700

kylie.dunlop@ehp.qld.gov.au | www.ehp.qld.gov.au

From: McDougall, John [<mailto:john.mcdougall@angloamerican.com>]

Sent: Thursday, 7 February 2013 5:37 PM

To: Dunlop Kylie; Frankish John; Loveday Chris

Cc: 49-Sch4 ; Hampson, Michael

Subject: Callide Mine Update including notification of exceedances/non-compliances (as per Condition W15)

Kylie

As requested please find the Callide Mine Update including notification of exceedances/non-compliances (as per Condition W15)

Please let me know if you have any questions.

Regards

John

John McDougall
Environmental Superintendent

Anglo American

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RTI DL RELEASE - EHP

Callide Creek High Background Flow



Callide Dam bypass release

This photo shows the water being released to Callide Creek, through the bypass valve, from Callide Dam.
Photo taken: 06/02/13 11:41am



Callide Creek crossing (upstream view)

This photo is taken at Callide Creek crossing close to the new location for GS3 Callide Creek confluence.
Photo taken: 06/02/13 12:19pm



Callide Creek crossing

This photo is taken at Callide Creek crossing close to the new location for GS3 Callide Creek confluence.
Photo taken: 06/02/13 12:19pm



Callide Creek crossing (downstream view)

This photo is taken at Callide Creek crossing close to the new location for GS3 Callide Creek confluence.
Photo taken: 06/02/13 12:19pm

Bluff Escarpment – Outer Spoil Face	
	
Erosion of spoil dump escarpment Photo taken: 01/02/13 12:48pm	Bluff Drainage Channel Photo taken: 01/02/13 12:52pm
	
Bluff Sediment Basin A NB: demonstrates the sediment was contained within the channel and Sediment Basin A. Photo taken: 03/02/13 3:58pm	Bluff Sediment Basin C NB: demonstrates the sediment was contained within the channel and Sediment Basin C. Photo taken: 03/02/13 4:06pm
	
Bluff Sediment Basin D NB: demonstrates the sediment was contained within the channel and Sediment Basin D. Photo taken: 03/02/13 3:40pm	

Water Volume Estimates.

Note: Trap Gully is the only volume that includes as estimate of the total water to be pumped (inflow from spoil etc)

Callide Mine Water Volumes (in MI)

Area	Volume Prior to Rainfall Event	Additional Volume from Rainfall Event	Total Estimated Volume in Pit	Comment
BH Block 8	Unknown	80	80+	Volume prior to rain not known
BH Southern Pit	0	99	99	Empty before rain
CVN Western End	0	337	337	Empty before rain
CVS	0	133	133	Empty before rain
EHS - Northern Pit	0	92	92	Empty before rain
D Cut	1324	1109	2433	Includes D West estimate
A Cut	231	142	373	
Trap Gully	Not Known	Not Known	15000	Damien Perkins Estimate

From: 49-Sch4
Sent: Friday, 15 February 2013 4:43 PM
To: Dunlop Kylie; Manager MiningCWR; Loveday Chris
CC: McDougall, John; 49-Sch4
Subject: FW: Callide Mine Update about Dunn Creek Dam and Lake Gasteen Dam

My apologies, Kylie. There was a typo in my e.mail below. It was John who had to be in Brisbane yesterday and the day before, not myself. I was also away yesterday though.

Kind Regards

49-Sch4

From: 49-Sch4
Sent: Friday, 15 February 2013 4:37 PM
To: Manager.MiningCWR@ehp.ald.gov.au; Loveday Chris; Dunlop Kylie
Cc: McDougall, John; 49-Sch4
Subject: FW: Callide Mine Update about Dunn Creek Dam and 73(2)Irrelevant

Hi Kylie

John McDougall had to leave for the day and in his absence, he has asked me to prepare and send on his behalf the following further information in response to your e.mail of 12th February 2013.

In previous updates, Callide Mine has explained that, for the purpose of ceasing passive flow from Dunn Creek Dam and we had put in place a staged strategy. In more detail:

(a) Stage 1 (Interim)

- (i) Pump water from Dunn Creek Dam to a back-up storage known as East Dam; and
- (ii) 73(2)Irrelevant

Implementation of this Stage 1 pumping commenced on 1st February 2013, immediately reducing passive release. Passive flow had slowed to a trickle by 11th February 2013 and is currently expected to cease altogether in Dunn Creek by 20th February 2013 (assuming no storms over the weekend), 73(2)Irrelevant

My apologies for not having set your mind at rest about this earlier, but unfortunately I had to be in Brisbane unexpectedly yesterday and the day before for urgent family reasons.

73(2)Irrelevant

73(2)Irrelevant

Further details about the water management system for the alternative release arrangements to

73(2)

73(2)Irrelevant

RTI DL RELEASE - EHP

Kind Regards,

John McDougall

Kind Regards

49-Sch4

From: Dunlop Kylie [<mailto:Kylie.Dunlop@ehp.qld.gov.au>]

Sent: Tuesday, 12 February 2013 2:50 PM

To: McDougall, John; Manager MiningCWR; Tarlinton Sam; Loveday Chris; Baker Tony

file:///C:/DDrive/Kerrie%20Sniffer/2013%2002%2015%201643.htm[17/06/2013 2:21:50 PM]

Cc: 49-Sch4
Subject: RE: Callide Mine Update

Hampson, Michael

Hi John

Thanks for your email and update.

1. Proposed release from Trap Gully

Agreed if the proposed release from Trap Gully is within the parameters of Table W4- Part B Mine Affected Water Release during Flow Events and monitoring (through grab samples) and reporting is undertaken in accordance with the EA conditions a TEP would not be required.

- Would I be right to assume that it would be release under No/Low Flow provisions?
- Is it anticipated that release would meet Table W4 parameters?
- It was my understanding though that the working pit at Dunn Creek was the urgent need for release?
- Would you be proposing to pump from Dunn Creek Pit to Trap Gully?
- In relation to monitoring – now Callide has an access agreement would I be correct in stating that monitoring undertaken by Bureau Veritas will be undertaken at the proposed gauging station locations? Can you clarify the in more detail the proposed methodology and structure of the interim monitoring program.

2. Clarification on EA issued – specifically Table W4.

The signed PDF version of the EA is the final and valid EA. Any copies of the EA in word and without delegate signature is not a valid EA.

The word version provided to you on request for ease of administration and transfer into your documentation was not the most recent version. This was my clerical error. I can provide the final word document but it should be noted this is not a valid EA and will not include delegate signature.

I will address the issue of the table content in a later email relating to the EA amendment by agreement.

3. Bluff mining leas

It is noted that there has been no sediment released beyond the sediment dams.

If you have any questions regarding this email please do not hesitate to contact me.

Regards

Kylie Dunlop | Senior Environmental Officer
Environmental Services Mining, Central Region

Department of Environment & Heritage Protection

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From: 49-Sch4
Sent: Monday, 22 April 2013 8:55 AM
To: Manager MiningCWR; Dunlop Kylie
CC: 49-Sch4 ; McDougall, John; Hampson, Michael
Subject: Notification of cessation - Dunn Creek Dam 22.04.2013
Attachments: Attachment 1. Dunn Creek Dam WQ results.pdf; Notification of Cessation Dunn Creek Dam 22.04.13.pdf

Good morning Kylie,

Please find attached the notification of cessation of flow for Dunn Creek Dam and Attachment 1 Dunn Creek Dam Water Quality results.

If you have any questions please don't hesitate to contact John McDougall on 4990 1840.

Regards,

49-Sch4
Environmental Officer
logo_signature



49-Sch4

CALLIDE MINE
PO Box 144 Coal Road, Biloela, QLD, 4715

RTI DL RELEASE - EHP

Attachment 1. Dunn Creek Dam release water quality results

Analyte Name	Units	Trigger	Sample Date											
			18/02/2013	20/02/2013	21/02/2013	22/02/2013	23/02/2013	24/02/2013	25/02/2013	26/02/2013	27/02/2013	28/02/2013	10/03/2013	15/03/2013
pH	pH Units	6.5-9.0	7.1	6.6	7.7	7.4	7.4	7.8	7.8	7.8	7.4	7.7	7.6	7.8
EC @ 25 C	µS/cm	1400	1630	1280	1280	1300	1340	1340	1280	1170	1050	1040	1080	870
Turbidity	NTU	NA	4	180	37	36	11	64	64	94	150	48	190	360
TSS	mg/L	200	5	60	19	15	6	33	33	45	80	140	100	190
Sulphate, SO4	mg/L	400	280	250	270	270	280	250	250	240	200	200	200	150

Analyte Name	Units	Trigger	Sample Date											
			4/03/2013	5/03/2013	6/03/2013	7/03/2013	8/03/2013	9/03/2013	10/03/2013	11/03/2013	12/03/2013	13/03/2013	14/03/2013	15/03/2013
pH	pH Units	6.5-9.0	7.7	7.8	7.8	7.8	7.7	7.8	7.6	7.8	7.7	7.9	7.8	7.8
EC @ 25 C	µS/cm	1400	710	880	950	1030	1030	1040	1150	1110	1200	1200	1200	1200
Turbidity	NTU	NA	460	320	320	260	180	140	98	76	38	43	19	23
TSS	mg/L	200	210	180	130	84	76	54	50	37	27	26	25	23
Sulphate, SO4	mg/L	400	140	180	200	210	220	220	230	230	270	270	270	280

Analyte Name	Units	Trigger	Sample Date											
			17/03/2013	18/03/2013	19/03/2013	20/03/2013	21/03/2013	22/03/2013	23/03/2013	24/03/2013	25/03/2013	26/03/2013	27/03/2013	28/03/2013
pH	pH Units	6.5-9.0	7.8	7.7	7.7	7.8	7.6	7.7	7.7	7.9	7.7	7.7	7.6	7.5
EC @ 25 C	µS/cm	1400	1200	1200	1100	1100	1200	1200	1200	1200	1200	1200	1300	1200
Turbidity	NTU	NA	13	21	25	28	55	10	15	5.2	8.6	8.1	3.7	3.5
TSS	mg/L	200	23	18	22	24	35	9	8	<5	6	6	<5	<5
Sulphate, SO4	mg/L	400	280	270	250	270	290	290	280	290	290	280	280	290

Analyte Name	Units	Trigger	Sample Date											
			30/03/2013	31/03/2013	1/04/2013	2/04/2013	3/04/2013	4/04/2013	5/04/2013	6/04/2013	7/04/2013	8/04/2013	9/04/2013	10/04/2013
pH	pH Units	6.5-9.0	7.6	7.6	7.6	7.5	7.5	7.6	7.7	7.7	7.5	7.7	7.5	7.7
EC @ 25 C	µS/cm	1400	1200	1200	1100	1100	1100	1200	1200	1200	1200	1200	1200	1200
Turbidity	NTU	NA	8.5	7.9	57	15	15	15	6.1	8.8	7.9	4.7	6.9	6.9
TSS	mg/L	200	5	6	31	<5	8	12	8	7	6	<5	<5	<5
Sulphate, SO4	mg/L	400	290	290	280	280	280	280	290	290	280	280	290	300

METALLURGICAL COAL

**Anglo Coal (Callide Management)
Pty Ltd**

**CALLIDE MINE
Coal Road
PO Box 144
Biloela Q 4715 Australia**

Kylie Dunlop
Senior Environmental Officer
Department of Environmental and Resource Management
PO Box 5065
GLADSTONE QLD 4680

22 April 2013

Dear Kylie

W14 Notification of Cessation of Flow under EA MIN100507307 for Callide Mine

In accordance with *Environmental Authority EA MIN 100507307 Condition (W14)* this notice is to advise the administering authority of cessation of a release event from Dunn Creek Dam in accordance with *W14*.

a) Release cessation

- Date: 21st April 2013
- Time: 4:40am

Visual inspections were conducted throughout the weekend, as the release was expected to cease during this period. Visual inspections by sampling contractors on Sunday 21st April at 7:30am confirmed that the release was still occurring at a very small rate. Visual inspections by pumping supervisor confirmed the release had ceased at 9am. For purposes of reporting and consistency with monitoring station flow data, the release cessation time of 4:40am on 21st April will be used.

b) Natural Flow Volume in the receiving Water

The instantaneous flow rate in the receiving waters at time of release cessation was 3.24m³/s. The daily average for the 24hours prior to release cessation was 3.24m³/s.

c) Volume of water released

The calculated volume of water released is 270.8ML.

d) Details regarding the compliance of the release with the conditions of Agency Interests: Water of this environmental authority (i.e. contamination limits, natural flow, discharge volume)

This release commenced before the receiving flow trigger (1.5m³/s) had been reached. Receiving waters flow reached the release flow trigger three hours later and remained above the trigger level for the duration of the release.

Member of the Anglo American plc group

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ABN 75 009 668 200

e) All in-situ water quality monitoring results; and

Some of the finalised data has been provided by the sampling agencies Bureau Veritas and SGS Laboratories and is provided in Attachment 1. Once all the final data has been received, the information will be provided to DEHP. There was one EC spike on the day of commencement of release; otherwise release EC remained below the trigger level of 1400µs/cm. There was also a spike in TSS two weeks into the release over two days. Other than this spike, TSS remained below the trigger level of 200mg/L. Generally throughout the release, water quality was good.

f) Any other matters pertinent to the water release event

Callide Mine has provided a series of interim updates about the context and management steps taken in relation to this release.

That information will be consolidated in our 28 days report.

Callide Mine's 28 Day Report Due: 21/05/2013

If you have any questions in relation to this matter please contact **John McDougall** on 07 4990 1840.

Yours sincerely ...

49-Sch4

John McDougall
Environment Superintendent
T: (07) 4990 1840
E: john.mcdougall@angloamerican.com.au
www.angloamerican.com.au



Department of
Environment and
Heritage Protection

Reference MIN100507307

10 January 2013

Anglo Coal Pty Ltd
Level 11
201 Charlotte Street
Brisbane
QLD 4000

c/c Mr Sean Halliday
A/General Manager
Anglo Coal (Callide) Pty Ltd
PO Box 144
Biloela Qld 4715

Attention: Mr Sean Halliday,

RE: Environmental non compliances at Callide Coal Mine

Dear Mr Halliday

I am writing to you to express my concern over the environmental compliance history, and subsequent preventative measures being implemented at Anglo Coal Pty Ltd (Anglo) Callide Mine.

After a review of the recent compliance history, the data presented indicates numerous breaches of Environmental Authority (EA) MIN100507307 and Transitional Environmental Program (TEP) MAN11379, MAN11859, MAN12240, MAN12559 and MAN12560 conditions, ranging from unauthorised releases of mine affected water, to spoil failures and subsequent deposition of sediment in the Callide Dam.

Evidence collected as a result of these incidents, indicates a lack of preventative measures and reporting procedures in the commercial operations of Anglo at this site.

In addition, the quality and timeliness of reporting associated with these events has not been of a standard that I deem acceptable, and is not consistent with the Department of Environment and Heritage Protection (EHP) requirements.

EHP has an obligation to respond to any non-compliance with legislative requirements of the *Environmental Protection Act 1994* (the EP Act). In the event of non-compliance with the EP Act or the conditions of your EA, EHP has a number of enforcement tools available, including; warning notices, statutory orders, penalty infringement notices and in some cases prosecution.

I note that EHP has issued 4 warning letters and 7 penalty infringement notices to Anglo for various non compliances at Callide mine, over a period of approximately 2 years.

I have formed the view that Anglo has failed (and is failing) in its environmental obligations and requires substantial improvement to the current environmental management techniques to achieve appropriate environmental performance standards.

Should reoccurrences of a similar nature be identified at this site, stronger enforcement options will be considered under the provisions of the *Environmental Protection Act 1994*. I consider enforcement measures such as those undertaken by EHP to date would be inappropriate, given the lack of results (improvement) thus far.

As discussed with your Regional Environment Manager, Carl Grant we are committed in the Central Region to work with mining companies with respect to their legacy water issues. However this commitment is coupled with ensuring on-going environmental compliance. We will continue to focus on achieving good environmental outcomes across the CQ mining industry and look forward to the prompt resolution of issues at the Callide Mine.

Should you have any further enquiries in relation to this letter please contact Melissa Wells on (07) 4987 9320

Yours sincerely,

49-Sch4

Reuben Carlos
Executive Director
Environmental Services and Regulation
Department of Environment and Heritage Protection

Kylie Dunlop
Senior Environmental Officer
Department of Environmental and Resource Management
PO Box 5065
GLADSTONE QLD 4680

22 April 2013

Dear Kylie

W14 Notification of Cessation of Flow under EA MIN100507307 for Callide Mine

In accordance with *Environmental Authority EA MIN 100507307 Condition (W14)* this notice is to advise the administering authority of cessation of a release event from Dunn Creek Dam in accordance with *W14*.

a) Release cessation

- Date: 21st April 2013
- Time: 4:40am

Visual inspections were conducted throughout the weekend, as the release was expected to cease during this period. Visual inspections by sampling contractors on Sunday 21st April at 7:30am confirmed that the release was still occurring at a very small rate. Visual inspections by pumping supervisor confirmed the release had ceased at 9am. For purposes of reporting and consistency with monitoring station flow data, the release cessation time of 4:40am on 21st April will be used.

b) Natural Flow Volume in the receiving Water

The instantaneous flow rate in the receiving waters at time of release cessation was 3.24m³/s. The daily average for the 24hours prior to release cessation was 3.24m³/s.

c) Volume of water released

The calculated volume of water released is 270.8ML.

d) Details regarding the compliance of the release with the conditions of Agency Interests: Water of this environmental authority (i.e. contamination limits, natural flow, discharge volume)

This release commenced before the receiving flow trigger (1.5m³/s) had been reached. Receiving waters flow reached the release flow trigger three hours later and remained above the trigger level for the duration of the release.

Member of the Anglo American plc group

Anglo Coal (Callide Management) Pty Ltd.
Coal Road, Biloela 4715, Australia. PO Box 144, Biloela 4715, Australia T +61 (0)7 4990 1811. F +61 (0)7 4990 1887.

ABN 75 009 868 200

e) All in-situ water quality monitoring results; and

Some of the finalised data has been provided by the sampling agencies Bureau Veritas and SGS Laboratories and is provided in Attachment 1. Once all the final data has been received, the information will be provided to DEHP. There was one EC spike on the day of commencement of release; otherwise release EC remained below the trigger level of 1400µs/cm. There was also a spike in TSS two weeks into the release over two days. Other than this spike, TSS remained below the trigger level of 200mg/L. Generally throughout the release, water quality was good.

f) Any other matters pertinent to the water release event

Callide Mine has provided a series of interim updates about the context and management steps taken in relation to this release.

That information will be consolidated in our 28 days report.

Callide Mine's 28 Day Report Due: 21/05/2013

If you have any questions in relation to this matter please contact **John McDougall** on 07 4990 1840.

Yours sincerely

49-Sch4

John McDougall
Environment Superintendent
T: (07) 4990 1840
E: john.mcdougall@angloamerican.com.au
www.angloamerican.com.au

Guideline

Environmental Protection Act 1994

Transitional environmental program

This guideline has been prepared by the administering authority to provide information on the use of a transitional environmental program (TEP) under the Environmental Protection Act 1994. It is designed to assist applicants in preparing their TEPs, and sets out the way in which the administering authority will consider and decide whether or not to approve a draft TEP.

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RTI DL RELEASE - EHP

1 Introduction

1.1 What is a TEP?

Section 330 of the *Environmental Protection Act 1994* (the Act) provides that a transitional environmental program (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 or code of environmental compliance
 - a development condition.

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

It is important to note that a TEP comes into effect once the administering authority has issued a written notice of approval (with or without conditions).

1.2 Who can enter into a TEP?

A person or public authority may enter into a TEP voluntarily, may give a program notice to the administering authority under s. 350 of the Act, or may be required to submit a draft TEP by the administering authority.

The term 'person' includes an individual, public authority or corporation.

1.3 When can a TEP be used?

TEPs are intended to be used where a significant change or changes are needed to be made by a person to achieve compliance with the requirements of the Act.

A TEP for a coal seam gas emergency release¹ that contains public health conditions² for the release may also meet the requirements for recycled water management under the *Water Supply (Safety and Reliability) Act 2008* (refer to ss. 329GA–329GC of the *Water Supply (Safety and Reliability) Act 2008*).

1.3.1 Requirement to submit a draft TEP

There are certain circumstances when the administering authority may require a person to prepare and submit a draft TEP for approval. These circumstances are set out in s. 332 of the Act.

1.3.2 Program notices

A person may give the administering authority a program notice under s. 350 of the Act about an act or omission (the relevant event). The program notice must declare the person's intention to prepare and submit a TEP for the activity. The administering authority must give a notice to the person, setting a day, not more than three months from the date on which the program notice is received, by which a draft TEP must be provided.

Further information about program notices can be found in Part 2.

¹ Refer to the dictionary in the *Water Supply (Safety and Reliability) Act 2008* for the definition of a coal seam gas emergency release.

² Refer to the dictionary in the *Water Supply (Safety and Reliability) Act 2008* for the definition of public health conditions.

1.3.3 Voluntary TEP

Section 333 of the Act provides that a person may also, at any time, submit a draft TEP to the administering authority for an activity the person is carrying out or proposes to carry out.

1.3.4 Fees associated with TEPs

A fee is payable to the administering authority for:

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

The amount of the fees is set in the department's operational policy 'Transitional Environmental Program Fees' (EM335³). Fees are generally charged at an hourly rate for time spent after the first two hours.

Departmental staff should use the form 'Time Recording Form- Fees charged for transitional environmental programs' (EM277) to record time spent in relation to TEPs.

1.4 Structure of this guideline

This guideline is in three parts based on the following steps:

- issuing a notice requiring a draft TEP under the provisions of chapter 7, part 3 of the Act (Part 1)
- dealing with and assessing a program notice given to the administering authority under s. 350 of the Act (Part 2)
- critically evaluating the content of a draft TEP and assessing whether or not the proposed objectives and actions meet the legislative requirements in order to consider and make a decision about a draft TEP (Part 3).

The parts of this document that are applied will depend on the method by which a draft TEP is undertaken.

2 Part 1 – Notice requiring a draft TEP

Part 1 sets out how the administering authority will issue a notice requiring a draft TEP under the provisions of chapter 7, part 3 of the Act.

2.1 Steps in issuing a notice requiring a draft TEP

Before completing the notice requiring a draft TEP, an assessment report must be completed to document the administering authority's decision to issue the notice.

2.2 Step 1 – Complete the assessment report

The assessment report sets out the facts and circumstances relating to the matter and documents the decision-making process of the administering authority in determining whether or not to issue the notice.

The following sections provide a guide to completing an assessment report. The assessment report captures the matters considered by the administering authority in making a decision.

³ This is the publication number. The publication number can be used as a search term to find the latest version of a publication at <www.ehp.qld.gov.au>.

2.2.1 Brief history of the matter

Any historical information relevant to the decision should be briefly described in chronological dot points including how the administering authority became aware of the issues that led it to consider issuing a notice requiring a draft TEP.

2.2.2 Grounds for issuing a notice requiring a draft TEP

The legislation provides in s. 332 that the administering authority may require the submission of a draft TEP:

- as a condition of an environmental authority
- as a development condition of a development approval.

The administering authority may also require the preparation and submission of a draft TEP if it is satisfied that:

- an activity carried out, or proposed to be carried out by the person or authority is causing, or may cause unlawful environmental harm
- it is not practicable for the person to comply with an environmental protection policy or regulation on its commencement
- a condition of an environmental authority held by the person is, or has been, contravened
- a standard environmental condition of a code of environmental compliance for a chapter 4 activity is, or has been, contravened by the person
- a development condition of a development approval is, or has been, contravened and the person is:
 - an owner of the land for which the approval is granted
 - another person in whom the benefit of the approval vests.

These are the grounds on which the administering authority can act. This section of the assessment report must identify the relevant grounds upon which the decision to issue the notice requiring a draft TEP will be based.

2.2.3 Expand upon the grounds

The purpose of this section of the assessment report is to clearly identify the elements, or what the administering authority must 'prove' before deciding to use this notice, and should be used to expand upon the grounds that have previously been identified.

This can include identifying the specific offence or breach under investigation or any statutory requirements listed in the legislation which must be met by the administering authority prior to issuing the notice.

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

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

2.2.4 Detail the matters considered

The table in the assessment report is used to link the elements of the breach to the evidence gathered and the conclusions formed. This is achieved by identifying:

- the elements of any specific breach or allegation
- the evidence that has been considered for each element

- the conclusion that has been reached by the administering authority after considering the information sourced.

When documenting the evidence, relevant information can include (but is not limited to):

- notes recorded in an officer's official notebook
- samples collected for analysis and any subsequent lab reports
- photographs and copies of documents
- any observed actions and direct testimony received from individuals.

The final component of the assessment report sets out the relevant facts and circumstances. The administering authority will consider the accuracy and relevance of all available evidence, the historical details, the professional expertise and the weight attributed to any direct testimony provided in deciding whether to require a draft TEP to be prepared.

After consideration of the details, evidence, facts and circumstances, the assessment report sets out what the administering authority would require a draft TEP to deal with in order to address the issues of concern.

2.2.5 Provide for natural justice

Prior to the administering authority making a decision which may adversely impact on a person it must:

- **Notify**—notify the person that the administering authority is considering issuing a notice requiring a draft TEP
- **Respond**—provide the individual with an opportunity to respond to the proposal to issue a notice
- **Consider**—consider any representations made by the affected person before finalising its decision.

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, discretion is used in determining how to best ensure natural justice is afforded and the amount of time provided to an affected person for making a response. In some circumstances it will be appropriate for administering authority staff to discuss the above information with the affected person during a site inspection or a telephone interview and make a contemporaneous record of the conversation. In more serious circumstances a formal 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 an affected person is to be documented. A summary of how natural justice was provided to an affected person as well as any responses given is to be included in the assessment report.

2.2.6 Proposed requirements of the TEP

The following items (amongst other items as set out in s. 332(4)) are included in the notice requiring a draft TEP:

- the matters to be addressed by the program
- the period over which the program is to be carried out
- the day (at least a reasonable period after the notice is given) by which the program must be prepared and submitted to the administering authority
- the review or appeal details.

In instances where it is proposed that the notice contain specific requirements that are to be addressed in the draft TEP, the proposed requirements are to be developed for consideration by the delegate. As affected

persons are able to seek a review of the administering authority's decision to require the submission of a draft TEP, justification must be provided for the inclusion of any requirements.

Requirements must be drafted in a way that makes them specific, measureable, achievable, relevant to the activity and time-specific.

2.2.7 Recommendation

The assessment report will contain a recommendation to the administering authority's delegate based on the grounds identified in the report.

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 an event occurred that warrants the issuing of a notice requiring the submission of a draft TEP.

In making a recommendation to require a person to submit a draft TEP, consideration will also be given to alternative actions/tools that could be used, the administering authority's Enforcement Guidelines, details of any consultations, including site visit details and discussions with the environmentally relevant activity's contact officer (if applicable), prior to making the recommendation. The reasonableness of proposed timeframes for the completion and submission of the draft TEP, and the period over which the TEP is to be carried out, are to be taken into account. For example, if the location is geographically isolated, or there is an impending wet season, the administering authority may consider allowing additional time for the recipient of the notice to prepare and submit the draft TEP.

2.2.8 Approval

The assessment report will be approved by the delegated officer of the administering authority.

2.3 Step 2 – Complete the notice requiring a draft TEP

A requirement to prepare and submit a draft TEP must be made by written notice, which must 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 administering authority
- the review or appeal details.

Both the notice and the assessment report will be signed by the decision-maker.

2.4 Service of a notice requiring a draft TEP

A notice requiring a draft TEP will be served on the party who is responsible for actioning the notice. The most appropriate form of service will be used, having regard to the circumstances of the person to whom the notice is being given. Methods of service are provided for in ss. 39 and 39A of the *Acts Interpretation Act 1954*.

A notice requiring a draft TEP may be served:

- on a person:
 - by delivering it to the person personally
 - by leaving at, or by sending it by post, facsimile or similar facility (e.g. email) to the person's last known place of residence or business

- on a body corporate—by leaving it at, or sending it by post, facsimile or similar facility (e.g. email) to the head office, a registered office or a principal office of the body corporate.

The date, time and method of service is to be documented by contemporaneous notes in an officer's official note book, a file note, receipts arising from the postage of the documents, any facsimile transmission reports, and email 'read' receipts.

2.5 What follow-up action will occur?

It is important that the matter is appropriately followed up to make sure that the person to whom the notice requiring a draft TEP is issued complies with its requirements.

Once a notice has been issued, dates for the submission of the draft TEP and the review and appeal periods should be diarised and monitored. If the draft TEP is not submitted by the due date, follow-up action will be carried out by way of a site visit or telephone call. The recipient will be reminded that the timeframe has expired and that non-compliance with the notice may lead to action for a breach of the law.

The recipient of the notice requiring a draft TEP may, during the period of the notice, contact the administering authority and provide legitimate reasons for not being able to comply with the relevant time frame. In such circumstances the administering authority may consider granting an extension of time. However, it is essential that a person to whom a notice has been given communicate any issues with timeframes prior to their expiry. To do otherwise, may indicate an attitude on the part of the recipient of the notice that they are not willing to acknowledge and abide by the lawful requirements of the administering authority. For further information regarding amendments to an issued notice requiring a draft TEP, refer to section 2.7.

2.6 What records must be kept?

The administering authority is required to keep detailed records relating to incidents and the decisions it takes. This includes creating a complaint report, uploading copies of any relevant documents, updating the commentary on actions taken in its electronic records system, and recording any decisions taken (including a decision to take no further action). Hard copies of any relevant documents are filed.

2.7 Amendments to an issued notice requiring a draft TEP

If minor changes to the notice requiring a draft TEP or an extension of time to respond are required, the recipient of the notice will be notified by letter.

If significant changes are required, in order to avoid confusion, the original notice will be repealed (revoked), and a new one issued on the same grounds with the necessary changes.

The repeal and issue of a new notice requiring a draft TEP is carried out in the same way, and subject to the same conditions, as the issuing of the original notice. A new assessment report will be completed and approved by the delegate of the administering authority.

If it is not possible for the decision to repeal an existing notice and issue a new notice to be made by the original decision-maker, the decision will be made by a delegate who holds a position equal to or more senior than that of the original decision-maker.

Any changes and the decision to repeal an existing notice and issue a new notice are to be recorded in the administering authority's electronic records system and hard copies of any documents filed.

2.8 Review of decisions and appeals

The provisions regarding review of decisions and appeals are to be found in chapter 11, part 3 of the Act.

The Act specifies that a person who is dissatisfied by a decision made by the administering authority in respect to a notice requiring a draft TEP may apply for a review of an original decision. A person must submit an

application on the approved form Review of Original Decision (publication number EM709) to the administering authority:

- within 10 business days after the day on which the person received notice of the original decision or the administering authority is taken to have made the decision (the review date)
- if there are special circumstances, whatever longer period the administering authority allows.

A person who has made an application for review of an original decision may immediately apply to the Planning and Environment Court for a stay of the decision.

If a person is dissatisfied with the review decision, the person may appeal against that decision to the Planning and Environment Court by filing written notice of appeal with the registrar of the Court within 22 business days after the day the person receives notice of the decision or the decision is taken to have been made, unless the Court extends the period for filing the notice of appeal.

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

Further information about the review of decisions and appeals is available in the information sheet Internal Review, and Appeal to Planning and Environment Court (publication number EM1866).

2.9 Non-compliance with a notice requiring a draft TEP

The administering authority 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 are documented. Confirmation of these details will be provided in writing to the person to whom the notice was given.
- **Other tools**—consideration will be given as to whether another compliance 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 alleged failure to comply with the notice, and for any alleged environmental harm being caused.

2.10 What penalties exist for non-compliance with a notice requiring a draft TEP?

A person must comply with a notice requiring a draft TEP, unless the person has a reasonable excuse (s. 332(5)).

Maximum penalty for non-compliance with a notice requiring a TEP:

- for an individual—100 penalty units (\$11 000)
- for a corporation—500 penalty units (\$55 000).

2.11 What happens when the draft TEP is submitted?

When a draft TEP is submitted by a person voluntarily, because of a requirement of the administering authority, or after giving the administering authority a program notice, the process outlined in Part 3 will be followed.

3 Part 2 – Program notice

This part sets out what a program notice is, when it can be used and how the administering authority will issue a notice requiring a draft TEP to be submitted within a particular time frame.

3.1 What is a program notice?

A person carrying out of an activity that is lawful apart from this Act may give notice (a program notice) to the administering authority about an act or omission on their part that has caused or threatened environmental harm. A program notice informs the administering authority of the act or omission and the person's intention to prepare and submit a draft TEP.

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

3.2 When can a program notice be given?

A program notice may be given by a person to the administering authority about an act or omission (the relevant event) that:

- has caused or threatened environmental harm while the person was carrying out an activity
- is lawful apart from the Act.

In other words, a program notice is submitted because an activity has caused or threatened to cause environmental harm by a person doing something or failing to do something. The act or omission must not breach any laws, apart from the provisions of this Act.

3.3 What must a program notice contain?

A program notice must be in the approved form, Program Notice of Relevant Event (EM668), and must:

- contain full details of the relevant event
- contain a declaration of the person's intention to prepare a draft TEP for the activity and submit it to the administering authority
- state the other information prescribed by regulation.

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

3.4 Program notice privileged

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

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

However, this does not prevent the administering authority obtaining other evidence as a result of the information contained in the program notice and any documents submitted with the notice, from being admitted in any legal proceeding against the person.

3.5 Administering authority to act on a program notice

Within 10 business days after receiving a program notice, the administering authority will give the person a written notice:

- acknowledging receipt of the notice using the Receipt of Program Notice
- advising the day by which the person must submit a draft TEP dealing with the activity to the administering authority.

The date by which the draft TEP must be submitted must not be more than three months after the date the administering authority received the program notice.

When choosing the day by which the draft TEP must be submitted, the administering authority considers how complex the matter raised in the program notice is, how urgent it is for a draft TEP to be submitted and what would be a reasonable time for the person to prepare the draft TEP.

These requirements are subject to the provisions of s. 355 of the Act, which allow the administering authority to apply to the Court for an order setting aside the effect of the program notice under s. 353.

3.6 What is the effect of a program notice?

When the administering authority receives a program notice, the person giving the notice must not be prosecuted for a continuation of the original offence that occurs after the administering authority receives the notice. This remains the case until any one of the following things happens:

- the person receives an approval of a TEP from the administering authority
- the person receives a notice of refusal to approve a draft TEP from the administering authority
- if the person does not submit a draft environmental program for the activity to the administering authority by the day stated in the notice given to the person under s. 352(1)—the end of the stated day.

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

It is important to note that the administering authority may take other compliance action against the person, 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.

3.7 Setting aside the effect of a program notice with respect to prosecution

The administering authority is able to apply to the Planning and Environment Court for an order setting aside the effect of a program notice. 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. The administering authority 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.

3.8 What actions will be taken when a program notice is received?

3.8.1 Inform relevant senior officers of the administering authority

Receipt of a program notice will be escalated to relevant senior officers of the administering authority, and advice will be accompanied by a copy of the notice and any accompanying documents. The rapid assessment of a program notice is necessary to provide the administering authority with as much time as possible to consider its options under the Act.

3.8.2 Record-keeping

Details of the program notice will be entered into the administering authority's records (see Part 1).

3.9 Does the program notice meet the legal requirements?

The program notice will be assessed to determine whether it meets the requirements of the Act.

In relation to the relevant event (an act or omission), the details must be provided in full. An event that happens to a person or site is not enough by itself to be an act or omission that has caused or threatened environmental harm for the purposes of a program notice.

For example, heavy rain that has caused a dam containing contaminants to overtop is not an act or omission by the person. However, failing to adequately manage stormwater leading to overtopping of the dam is an omission by the person that has caused or threatened to cause environmental harm, and is the kind of detail required by the Act for a program notice.

A program notice must be submitted in the approved form and satisfy other requirements under s. 350.

3.10 What happens when the draft TEP is submitted?

When a draft TEP is submitted by a person who has given the administering authority a program notice, the process outlined in Part 3 will be followed.

4 Part 3 – Considering and making a decision about a draft TEP

This part sets out how the administering authority will evaluate the content of a draft TEP and assess whether or not the proposed objectives and actions meet the legislative requirements in order to decide whether to refuse or approve (with or without conditions) the draft TEP.

4.1 Consideration of a draft TEP submitted by a person

If a person submits a draft TEP to the administering authority, the administering authority is required to consider the draft TEP and make a decision whether to approve or refuse the draft TEP, or to approve it with conditions.

Section 337 of the Act provides that the administering authority must make its decision within 20 business days after:

- if a public notice is required under s. 335—the day stated in the notice as the day by which public submissions may be made to the administering authority
- otherwise—the application date.

4.1.1 Application date

The application date is important because many actions in relation to a draft TEP must be made within a certain number of days from the application date. Subsection 552(2) of the Act states that the application date relating to a draft TEP is 10 business days after the day it has been submitted to the administering authority.

However, if the administering authority requires additional information about the draft TEP within eight business days after the day it has been submitted, the application date is the day the administering authority states in a written notice to the applicant as being the application date (s. 552(3)). This day must not be earlier than two business days after the person has received the written notice (s. 552(6)).

If, within eight business days after a person submits a draft TEP, the administering authority advises the person who made the submission that the TEP (or proposed amended TEP) does not contain or provide for a matter mentioned in s. 331 (content of a program), and the person is required by the administering authority to amend the submission so that the TEP (or proposed amended TEP) is compliant with s. 331 and to resubmit the submission to the administering authority, the application date is the day that is 10 business days after the day the amended TEP is submitted (s. 552(5)).

Or, if the administering authority requires additional information about the amended TEP within eight business days after the day the amended TEP is submitted to the administering authority, the application date is the day the administering authority states in a written notice to the applicant as being the application date (s. 552(5)). This day must not be earlier than two business days after the person has received the written notice (s. 552(6)).

4.2 What must be included in the content of a draft TEP?

Section 331 of the Act requires that a draft TEP must, for the activity to which it relates:

- a) state the objectives to be achieved and maintained under the TEP for the activity
- b) state the particular actions required to achieve the objectives, and the day by which each action must be carried out, taking into account:
 - i) the best practice environmental management for the activity
 - ii) the risks of environmental harm being caused by the activity
- c) 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
- d) if the activity is to transition to an environmental standard, state:
 - i) details of the standard
 - ii) how the activity is to transition to the standard before the TEP ends
- e) if the activity is to transition to comply with a condition of an environmental authority or code of environmental compliance, or a development condition, state:
 - i) details of the condition and how the activity does not comply with it
 - ii) how compliance with the condition will be achieved before the TEP ends
- f) state the period over which the TEP is to be carried out
- g) state appropriate performance indicators at intervals of not more than six months
- h) provide for monitoring and reporting on compliance with the TEP.

Best practice environmental management is a phrase that is defined in s. 21 of the Act. In deciding what is best practice environmental management, a person must consider cost effective measures that have regard to measures that are currently used nationally and internationally for achieving the ongoing minimisation of environmental harm from an activity.

4.3 Is public notice required?

Public notice is required where the person submits a draft TEP for approval that states the TEP is to be carried out over a period of longer than three years. Within two business days after the application date, the person must give public notice of the submission by:

- an advertisement published in a newspaper circulating generally in the area in which the activity to which the draft program relates is, or is proposed to be, carried out
- if the program relates to premises, a notice must also be placed on the premises and served on the occupiers of all adjoining premises.

The notice must be in the approved form, invite submissions on the draft TEP and state the day (at least 10 business days after the advertisement and service of the notice) nominated by the administering authority as the day by which submissions may be made to it.

4.4 In what circumstances may the administering authority call a conference?

The administering authority may invite the person that has submitted a draft TEP, and another person that has made a submission under s. 335 about the TEP, to a conference to help it decide whether or not to approve the draft TEP. See s. 336 of the Act for details of notice and other requirements regarding conferences.

4.5 Other consultation and considerations

Depending on the content of the draft TEP, the administering authority may need to consult with various other parties in order to ensure that the risks from, and effects of, the draft TEP have been fully understood. For example, if the draft TEP involves releases of water, Queensland Health, local governments and water users may be consulted. Similarly, a draft TEP that proposes a discharge of coal seam gas waters to a drinking water supply of a drinking water provider will require approval of conditions consistent with the provisions of the *Water Supply (Safety and Reliability) Act 2008*. A draft TEP that proposes releases to air may require consultation with Queensland Health. The administering authority has wide powers under s. 556 of the Act to seek advice, comment or information when deciding a draft TEP, and may do so by public notice whether or not the draft program is for a period shorter than three years.

4.6 Consideration of draft TEPs

The administering authority must, within 20 business days after the application date, decide whether to refuse or approve (with or without conditions) a draft TEP. Or, if a public notice is required under s. 335, the administering authority must make a decision 20 business days after the day stated in the notice as the day by which submissions may be made to it. If public notice of the submission of the draft TEP is required to be given, the administering authority must be satisfied that public notice has been properly given before making a decision (s. 337(2)).

If the administering authority fails to decide whether to approve or refuse a TEP in the time within which it is required to make a decision, the failure is, at the end of the time, taken to be a decision by the administering authority to refuse to approve the program (s. 343).

4.7 What must be taken into consideration in assessing a draft TEP?

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

- must comply with any relevant regulatory requirement
- subject to the above, must also consider the following:
 - 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 development approval, the administering authority may approve the draft TEP only if it is not inconsistent with other conditions of the approval.

4.8 Decision about draft TEP

Section 339 of the Act provides that the administering authority may:

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

If the administering authority approves the draft TEP it may impose:

- any conditions the administering authority must impose under a regulatory requirement
- any other conditions considered appropriate by the administering authority.

If the draft TEP is approved, the approval remains in force for the period stated in the notice of the approval given pursuant to s. 340 of the Act.

4.9 How does the administering authority consider and make a decision about a draft TEP?

The administering authority completes an assessment report to document the decision about whether to accept the draft TEP (with or without conditions), to require amendments to the draft TEP or to reject the draft TEP. If the draft TEP is accepted (with or without conditions) or rejected, a notice of decision must be issued under s. 340 of the Act.

4.10 Step 1 – Complete the assessment report

Before issuing a notice of decision under s. 340 of the Act, an assessment report will be completed which sets out the facts and circumstances relating to the matter, and documents the decision-making process used in determining whether to approve or refuse the draft TEP (with or without conditions).

The assessment report will list all the matters that must be considered by the administering authority during the decision-making process. This includes the criteria against which the draft TEP is assessed, the matters that must be addressed by the draft TEP and the matters that must be considered when making a decision about a draft TEP. Refer to the appendices in section 6.1 for more information about how the administering authority will complete an assessment report.

4.11 Step 2 – Complete the notice of decision

Section 340 of the Act provides that within eight business days of making a decision under s. 339, the administering authority must give the person that submitted a draft TEP a written notice of the decision (the notice of decision).

If the delegate approves the draft TEP, the notice of decision must:

- identify the documents forming the approved TEP, including any amendments under s. 339(1)(a)(ii)
- state any conditions imposed on the approval by the administering authority
- state the day the approval ends.

If the draft TEP is approved, the TEP remains in force for the period stated in the notice of decision (s. 339(3)).

4.11.1 Content of approved program

An approved TEP consists of the following:

- the draft program submitted under ss. 332 or 333, as amended at the request, or with the agreement of the administering authority
- any conditions imposed on the program by the administering authority.

4.11.2 Information notice

If the administering authority refuses to approve a draft TEP, or approves it with conditions, the notice of decision given to the person that submitted the program must be an information notice⁴ (s. 340(3)).

An invoice must also be issued for the fees for consideration of the draft TEP (see the operational policy Transitional Environmental Program Fees (EM335)), to the person that has submitted the draft TEP for approval at the time when the notice stating the administering authority's decision is issued.

⁴ An *information notice* means a written notice stating: the decision; the reasons for the decision; and the review and appeal details

4.12 What is the effect of compliance with the approved TEP?

An approved TEP protects the holder, or a person acting under the approval, from enforcement action for non-compliance with the relevant:

- regulation
- environment protection policy (EPP)
- condition of an environmental authority (EA) held by the holder
- development condition of a development approval (DA)
- standard environmental condition of a code of environmental compliance for a chapter 4 activity
- accredited environmental risk management plan.

4.13 What follow-up is required?

It is an offence for the holder of an approved TEP to contravene the program. The administering authority will ensure that all performance indicator requirements listed in the program or conditions are monitored for compliance and completed in a timely manner.

4.14 Review of decisions and appeals

See relevant section in Part 1.

4.15 What penalties exist for a contravention of a requirement of a TEP?

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

Maximum penalty—1665 penalty units (\$183 150) or two years imprisonment.

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

Maximum penalty—835 penalty units (\$91 850).

The maximum penalty for a corporation is five times the penalty for an individual.

4.16 What penalties exist for contravention of a condition of approval?

A person must not, without reasonable excuse, contravene a condition of an approval of a TEP.

Maximum penalty—835 penalty units (\$91 850).

The maximum penalty for a corporation is five times the penalty for an individual.

5 Further information

The latest version of this publication can be found at <www.ehp.qld.gov.au> using the publication number EM287 as a search term.

Disclaimer

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6 Appendices

6.1 Complete the assessment report

As referenced in section 4.10 of this guideline, the following is a guide to how the administering authority will complete an assessment report.

6.1.1 Brief history of the matter

Any historical information relevant to this decision is to be briefly outlined. This information is presented in succinct, chronological dot points and includes the reasons why a draft TEP is now being considered, for example, as a result of a program notice, its voluntary submission or in response to a notice requesting the submission of a draft TEP.

6.1.2 Matters that must be considered when making a decision about the draft TEP

By approving a draft TEP, the administering authority is authorising everything it permits. Accordingly, consideration for each of the assessment criteria is an integral part of the decision-making process. Firstly, the assessment criteria establish the critical objectives that the draft TEP must achieve and how the content of the draft TEP will deliver on these objectives. Secondly, from the view of compliance and enforceability, and to establish that the draft TEP passes the SMART test (that is the requirements must be specific, measureable, achievable, relevant and time-specific). These are vital considerations given that, in future, the administering authority may have to establish beyond a reasonable doubt that an approved TEP has not been complied with. For this reason, the contents of the draft TEP must be clearly drafted, unambiguous and easily auditable.

6.1.2.1 Achieving compliance with the Act

A draft TEP must, for the activity to which it relates, achieve compliance with the Act by doing one or more of the following things:

- reducing environmental harm caused by the activity
- detailing the transition of the activity to an environmental standard⁵
- detailing the transition of the activity to comply with:
 - a condition, including a standard environmental condition, of an environmental authority or code of environmental compliance
 - a development condition.

A standard environmental condition for an environmental authority or code of environmental compliance means a standard environmental condition approved by the Minister pursuant to s. 549 of the Act.

A development condition of a development approval means a condition of the approval imposed by, or because of a requirement of, the administering authority if it is the assessment manager or concurrence agency for the application for the approval.

⁵ The term 'environmental standard' is defined as being:

- an environmental standard (however called) set out, or otherwise provided for, in a regulation under the Act
- an outcome or objective that is directed at protecting or enhancing environmental values set out in an environmental protection policy.

The draft TEP must set out how the activity is currently in non-compliance with the Act and how the person proposes to make the activity compliant. If it is not clear from the information provided in the draft TEP that by doing one or more of these things compliance with the Act will be achieved by the end of the operative period of the TEP, the draft TEP cannot be approved.

6.1.2.2 Content of the TEP

A draft TEP must clearly set out what it is trying to achieve and how it will achieve its objectives. It must include the following:

(a) Objectives to be achieved and maintained under the TEP

The objectives should be as specific and clear as possible so that, if a draft TEP is approved, the administering authority can assess whether the objectives have been met.

(b) Particular actions

A draft TEP must set out the actions that the person will carry out in order to achieve the objectives. It is important that the actions are definite, specific and stated as clearly as possible. Each action must have a due date by which it will be completed, and must comply with the SMART principles (that is the actions must be specific, measureable, achievable, relevant and time-specific).

Progress reporting dates and final reporting dates are to be included for each of the actions.

In stating the particular actions required to achieve the objectives, a draft TEP must take into account best practice environmental management. Best practice environmental management is a phrase that is defined in s. 21 of the Act. In deciding what is best practice environmental management a person must consider cost effective measures that have regard to measures that are currently used nationally and internationally for achieving the ongoing minimisation of environmental harm from an activity.

(c) Prevention and minimisation of environmental harm

The risks of environmental harm being caused by the activity should also be taken into account. A draft TEP must 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.

(d) Transition to an environmental standard

If the objective of a draft TEP is to transition to meet an environmental standard, the draft TEP must provide details of the standard and set out how the activity is to transition to the standard before the term of the TEP comes to an end. See 'Achieving compliance with the Act' above for a definition of environmental standard.

(e) Transition to comply with a condition of an environmental authority or code of environmental compliance, or a development condition

If the objective of a draft TEP is for an activity to transition to comply with a condition of an environmental authority or code of environmental compliance, or a development condition, the draft TEP must set out each condition and detail how the activity does not comply with the condition. A draft TEP must state how compliance with the condition will be achieved before the end of the term of the TEP.

(f) Period over which the TEP is to be carried out

To be approved, a draft TEP must state the period or term over which the draft TEP is to be carried out. If the person has submitted for approval a draft TEP that states it will be carried out over a period longer

than three years, the person must, in accordance with s. 335 of the Act, give public notice of the submission within two business days after the application date.

(g) Performance indicators

A draft TEP must state appropriate performance indicators at intervals of not more than six months. The performance indicators must show how the applicant will make and demonstrate progress in achieving the objectives of the draft TEP. The indicators must be capable of being measured and be sufficiently specific to enable the administering authority to assess with certainty whether or not they have been met. The date on which each performance indicator will be met must be set out in the draft TEP.

(h) Monitoring and reporting

A draft TEP must provide for sufficient monitoring and reporting on compliance with the program. It should provide for the person to monitor and report on:

- the carrying out of the actions
- whether or not the objectives are being achieved
- whether or not the required timeframes are being met
- any environmental and scientific testing.

A draft TEP must also provide for the person to:

- report on progress with the implementation of the draft TEP, including any failure to carry out prescribed actions by the stipulated dates
- report on any environmental monitoring requirements (including interpretation)
- make a final report to the administering authority demonstrating that compliance with the Act has been achieved.

6.1.2.3 Views expressed at a conference

If a conference has been held as part of a public notice process, the views expressed at that conference in relation to the draft TEP must be considered and the reasons for having regard to, or not having regard to, those views must be recorded as part of the assessment.

6.1.2.4 Consistency with development conditions of a development approval

If a draft TEP is prepared because of a development condition of a development approval, the administering authority must not approve the draft TEP unless it is consistent with the other conditions of the development approval.

6.1.2.5 Public notice of submission of draft TEP and substantial compliance with the Act

If public notice is required, before approving a draft TEP, the administering authority must ensure that the person submitting the draft TEP has properly given public notice and complied with the requirements of s. 335 of the Act.

The administering authority will need to be satisfied that the public notice has been properly given before making a decision (s. 337 of the Act). If the administering authority is not satisfied that public notice has been properly given, it may decide to approve the draft program if it is satisfied there has been substantial compliance (s. 342) with the public notice requirements of the Act.

See 'Is public notice required?' above for further information regarding public notice.

6.1.2.6 Satisfaction that the draft TEP meets the requirements of the Act

Having considered all of the above matters when completing the assessment report, the administering authority must decide whether it is satisfied that the draft TEP adequately deals with all of the relevant issues. Where certain issues have not been satisfied, the information in section 6.1.3 'Request for further information and/or amendments to the draft TEP' will apply. In all other circumstances section 6.1.4 'Approval of the draft TEP' applies.

6.1.3 Request for further information and/or amendments to the draft TEP

In some cases a draft TEP may substantially address the required matters, but cannot be approved because some matters have not been adequately addressed. In this situation, the administering authority may ask for further information to be provided or that particular amendments be made to the draft TEP. It is important to recognise that if there are major problems with the draft TEP, or a large number of matters that have not been addressed by the draft TEP, the administering authority will likely decide that it not be approved rather than conduct extensive negotiations to try and get the submitted document corrected. A notice of decision will be sent to the person that submitted the draft TEP advising of such a decision.

However, if it is likely that a draft TEP could be approved if further information was provided or some changes were made to the document, the administering authority will write to the person submitting the draft TEP and request that further information be provided and/or amendments made, rather than approve the draft TEP subject to conditions, or decide to refuse the draft TEP. See section 6.1.4.1 'Key considerations regarding conditions' for further information.

The administering authority will then consider whether to request further information or amendments to the draft TEP, and the formulation of the amendments required to be made (if any). A request for amendments to a draft TEP will be made in writing. If the draft TEP is approved after is amended, the amended draft TEP (with any conditions of approval) forms the approved TEP.

A request for amendments made within eight business days after the draft TEP is submitted to the administering authority means that the application date will then be 10 business days after the date that the amended draft TEP is submitted.

6.1.3.1 Timeframes

For information regarding a change in timeframes if further information is sought or the administering authority requests amendments to the draft TEP, see section 4.1.1 'Application date' for further information.

6.1.3.2 Minor amendments and/or further information

If only very minor amendments are necessary, the administering authority will provide the opportunity to the person submitting a draft TEP to make the requested amendments. If the requested amendments are made, the assessment report can then be completed to reflect the amendments.

6.1.3.3 More significant amendments

If the amendments required are more significant or complicated, the required amendments will be documented in the assessment report and the administering authority will formally ask the person submitting a draft TEP to provide the information or make the amendments and resubmit the draft TEP.

6.1.4 Approval of the draft TEP

The assessment report covers all of the matters that will be considered by the administering authority during the decision-making process, and a draft TEP will only be decided once the assessment report is completed.

6.1.4.1 Key considerations regarding conditions

The Act makes provision for an approval of a draft TEP to be subject to conditions the administering authority considers appropriate. Approval conditions for a draft TEP will be kept to specific matters that do not go to the fundamentals of the ability of the program to be implemented and the objectives to be achieved. These fundamentals must be detailed in the draft TEP. Approval conditions will relate to specific aspects of performance requirements, such as reinforcing a date of performance. If a draft TEP is not satisfactory, it must be refused or the applicant must be asked to provide additional information or amend the draft TEP. Conditions in a notice of decision will not be used to alter the terms of the TEP itself, as a quasi-development approval, or to alter or amend the TEP to meet the requirements of the Act.

6.1.4.2 Financial assurance condition

Under s. 364 of the Act, the administering authority may, by condition of an approval of a TEP, require the holder of the approval to give the administering authority financial assurance as security for:

- compliance with the TEP
- costs or expenses, or likely costs or expenses, that the administering authority incurs, or might reasonably incur, in taking action to:
 - prevent or minimise environmental harm or rehabilitate or restore the environment, in relation to the carrying out of an activity under a TEP approval
 - secure compliance with the TEP, or any conditions of the TEP, for which financial assurance has been given.

However, under s. 364(2) the administering authority may impose a condition requiring a financial assurance to be given only if it is satisfied that the condition is justified, having regard to:

- the degree of risk of environmental harm being caused, or that might reasonably be expected to be caused, by the activity carried out, or to be carried out, under the program
- the likelihood of action being required to rehabilitate or restore and protect the environment because of environmental harm being caused by the activity
- the environmental record of the holder.

Section 365 of the Act provides that before approving a draft TEP subject to a condition that financial assurance be given, the administering authority must give the person who submitted the draft TEP a written notice that must :

- state the grounds for the condition
- state the form and extent of the financial assurance
- invite the person to make representations to the administering authority to show why the approval of the draft TEP should not be subject to the condition
- state the period (at least 22 business days after the notice is given to the person) within which the representations may be made.

The representations must be made in writing (s. 365(3)).

Within 20 business days after the end of the period stated in the notice (s. 365(4)), the administering authority must:

- consider the representations properly made by the person

- If the administering authority gives the approval subject to the condition that the holder of the approval give financial assurance—give written notice to the person giving reasons for imposing the condition.

6.1.5 Refusal to approve a draft TEP

A draft TEP cannot be approved unless an assessment report has been completed. If the deficiencies in a draft TEP cannot be addressed by a request for further information and/or amendments to the document, then the administering authority will refuse to approve the draft TEP.

6.1.6 Provide for natural justice

The administering authority must ensure that decisions are made in a fair and consistent manner. This includes ensuring that an affected individual is provided with 'natural justice' (that they are given an opportunity to make their case for why the decision should be made in a particular way) and that people involved in making the decision are free from bias or the perception of bias.

Any submissions made by the applicant will be considered in the assessment process and that consideration will be documented as part of the assessment report.

6.1.7 Recommendation

The assessment report will contain a recommendation to the administering authority's delegate about whether a draft TEP should be approved (with or without conditions) or refused.

6.1.8 Approval

The delegate will consider the contents of the assessment report and the recommendation and make a decision about whether to approve (with or without conditions) or to refuse to approve the draft TEP.

6.1.8.1 Regulatory requirements

An 'environmental management decision' is a decision under the Act for which the administering authority is required to comply with regulatory requirements. Sections 46–64 of the Environmental Protection Regulation 2008 specify the matters that must be considered when the administering authority is making environmental management decisions, including the following matters in s. 51:

- each of the following under any relevant environmental protection policies:
 - (i) the management hierarchy
 - (ii) environmental values
 - (iii) quality objective
 - (iv) the management intent
 - (v) environmental values declared under this regulation.
- the characteristics of the contaminants or materials released from carrying out the activity
- the nature and management of, including the use and availability of technology relating to, the processes being, or to be, used in carrying out the activity
- the impact of the release of contaminants or materials from carrying out the activity on the receiving environment, including the cumulative impact of the release with other known releases of contaminants, materials or wastes
- the characteristics of the receiving environment and the potential impact on it from carrying out the activity

- for each affected person for the activity—the order of occupancy or use between the person carrying out the activity and the affected person
- the remaining capacity of the receiving environment to accept contaminants or wastes released from future activities while protecting the environmental values
- the quantity and type of greenhouse gases released, and the measures proposed to demonstrate the release is minimised using best practice methods that include strategies for continuous improvement.

All matters relevant to the draft TEP must be considered when making a decision about it.

6.1.8.2 Standard criteria

The administering authority must consider the standard criteria, set out below, before deciding whether or not to approve a draft TEP. When considering the standard criteria, officers should bear in mind that not all criteria will be relevant to every draft TEP. In particular, many of the principles of ecologically sustainable development will not usually apply to the activities covered by a draft TEP. Where criteria do not apply, officers should make a note to this effect in the assessment report.

Considering the standard criteria is a balancing act. A draft TEP that is inconsistent with one or more criteria should not be automatically refused. Instead, consider whether the inconsistency is outweighed by the environmental, social and economic benefits that would come from approving the draft TEP (or seeking its amendment to address the inconsistency). Is the inconsistency (for example, a negative impact on an environmental value during the life of the TEP) able to be managed, or outweighed by the benefits of addressing the non-compliance that is the subject of the draft TEP.

- **The principles of ecologically sustainable development as set out in the 'National Strategy for Ecologically Sustainable Development (ESD)'**

As noted above, many of the principles of ESD will not be relevant to decisions about draft TEPs. As a general rule, the more intensive the activity the subject of the draft TEP, the larger the scale of operations and the more serious the possible environmental impacts, the more likely it is that the principles of ESD will apply. This is because many of the principles relate to the global, long-term aspects of environmental issues and may not be applicable at a smaller, more local scale.

For example, a draft TEP to allow the operator of a small abattoir to address its odour issues is less likely to trigger consideration of the precautionary principle or the global dimensions of environmental impacts than a draft TEP for a large mine (where global issues may be relevant).

When considering how the standard criteria relate to a decision about a draft TEP, have regard to the following discussions about each principle of ESD:

- *Has the decision effectively integrated long and short-term economic, environmental, social, and equity considerations?* The decision about the draft TEP should balance or integrate the economic needs of the applicant with the need to manage the environmental impacts from the activity, and the need to take account of any social impacts. Social impacts might include consequences to workers at the site if the site cannot continue to operate, or consequences to the local community from the environmental impacts that will occur during the duration of the draft TEP. Depending on the nature of the activity, short and/or long-term considerations may be relevant.
- Consideration needs to be given to the links between these areas and associated future impacts. Does the draft TEP meet environmental concerns whilst meeting the economic requirements of the operator? Does the draft TEP ensure minimal risk to the environment whilst allowing the site to return to full operational capacity? How do the social impacts of the proposed TEP balance against the environmental and economic considerations.

- *Has due regard been given to the precautionary principle?* In other words, where there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. If the draft TEP is to address actual or potential serious environmental harm, it should propose actions to prevent or minimise that harm even though there may not be full scientific certainty about the scale or causes of the harm.
- *Does the decision have due regard to the global dimensions of environmental impacts and policies?* This principle is unlikely to be relevant to a draft TEP, unless the scale of the activity or its possible impacts is of global significance. If it is relevant, consider whether the draft TEP recognises the global implications of the development whilst acting locally to mitigate these implications. For example, does the draft TEP provide protection for migratory species and their habitat from impacts associated with the proposed scope of works outlined in the draft TEP.
- *Does the decision assist in the development of a strong, growing and diversified economy, which can enhance the capacity for environmental protection?* There is a benefit in a strong economy that allows scope for progress and innovation in measures to protect the environment. How will a decision about the draft TEP contribute to growing such an economy? This principle may not be relevant for many draft TEPs, and considerations about economic growth versus environmental impact will have been considered under other standard criteria.
- *Has the need to maintain and enhance international competitiveness in an environmentally sound manner been considered?* This principle is most likely to apply to activities that produce products that compete in an international market (such as resource commodities). The need for the operator to maintain its competitiveness in an international market should not come at the expense of environmental standards that meet the expectations of the Queensland community. Conversely, environmental measures in a draft TEP should not hinder international competitiveness where other options exist that achieve the same level of environmental outcome.
- *Have cost effective and flexible policy instruments been adopted?* This principle will not apply to draft TEPs. However with respect to cost effectiveness, consider whether the actions proposed to achieve the objectives of the draft TEP are the most cost effective way to achieve compliance with a development condition, reducing environmental harm and/or to transition to an environmental standard? Refer also to the *financial implications of the requirements* criterion for cost effectiveness requirements.
- *Does the decision/action allow for broad community involvement on issues which affect them?* This principle will only be relevant where the draft TEP proposes actions that will have a significant impact on the local (or wider) community. Are there actions and decisions outlined in the draft TEP that provide opportunities for the community to be informed about those impacts and to have an appropriate level of involvement in their management? Refer also to the *public interest* criterion.
- **Any applicable environmental protection policies (EPPs)**
 - The proposals in the draft TEP must be assessed against the environmental values and objectives in any relevant EPP. Consider whether implementing the draft TEP will assist in achieving the objectives. If it will, then that is a reason in favour of approving it. If it will not, balance the impact on the environmental values and objectives against the environmental and economic benefits implementing the TEP. If implementing the TEP will produce better environmental outcomes than not implementing it, despite the impact on environmental, then it may be appropriate to approve it. Also consider whether an amendment to the draft TEP could be made that would achieve the objectives of the TEP while not harming environmental values.
- **Any applicable Commonwealth, State or local government plans, standards, agreements or requirements**

- Examples of such documents include but not limited to the Queensland Coastal Plan, Regional Plans (i.e. Central Queensland Regional Plan), planning schemes, Australian Standards, State Planning Policies, Port Land Use Plans, National Health and Medical Research Council (NHMRC), Australian and New Zealand Environment and Conservation Council (ANZECC) Guidelines and Queensland Water Quality Guidelines.
- Consider whether there are any documents that are relevant to the draft TEP. If they are relevant, how do the objectives and actions outlined in the draft TEP compare to any objectives or recommendations in the documents? If the draft TEP is not consistent with the documents, consider whether the inconsistency is significant enough to warrant an amendment of the draft TEP or its refusal.
- **Any applicable environmental impact study, assessment or report**
 - Any findings or recommendations that are relevant to the draft TEP are to be considered. It is recommended that a review of the findings and/or recommendations of applicable environmental impact study, assessment or report relevant to the subject site be undertaken to ensure that they are considered. Do the objectives and actions of the draft TEP align with the findings and recommendations of these reports? Are they relevant to the situation at hand and should the draft TEP be amended to incorporate them?
 - Relevant reports are those reports addressed or prepared for the original application and/or subsequent applications, if applicable. Other relevant reports may be current reports on the local ecosystem or river system health. For example, does the draft TEP avoid impacts on endangered flora and fauna identified in a report prepared for the environmental authority?
- **The character, resilience and values of the receiving environment**
 - In what ways does the draft TEP have regard to the environmental values of the receiving environment? Ensure that the draft TEP has considered the site specific aspects of the receiving environment. Reference should be made to the documents identified as part of the above standard criteria.
 - Does the draft TEP include monitoring of the receiving environment to ensure the actions are achieving the objectives outlined in the draft TEP? Is monitoring proposed to be undertaken on an adequate timeframe? i.e. sampling at time of discharge. Are there processes in place to report the findings of the monitoring to the administering authority? If this is not the case, can the draft TEP be amended to include the required monitoring regime?
 - What is the impact on the values of the actions contained in the draft TEP? Given the nature of the receiving environment, is it appropriate to approve the draft TEP, and therefore authorise a certain level of impact on those values? Does the impact on the values outweigh the benefits from completing the TEP? For example, a minor impact on water quality in the short term may be acceptable if the TEP significantly reduces the risk of a catastrophic environmental incident.
- **All submissions made by the applicant and submitters**
 - As defined in s. 335 of the Act, public notice is only required for a draft TEP when the program is to be carried out in excess of three years. Further to this a conference may be called to aid in the decision process for the draft TEP, as per s.336 of the Act. Any properly made submission about the draft TEP are to be considered in the decision processes.
 - When considering submissions the amount of weight to be given to a submission will be determined by factors such as the extent to which the submission is based on credible evidence and the relevance of the submission to the matters covered in the draft TEP. No further action is required issues raised in the submission have been adequately addressed in the draft TEP. If the submission raises a legitimate

issue that has not been considered previously, it will need to be determined if it is a relevant issue to the draft TEP and has a sound basis. If so, consider whether the draft TEP should be amended or refused as a result of the submission.

- **Best practice environmental management for the activity to which the draft TEP relates**

- How is the activity going to be managed such that the activity's environmental harm will be minimised through the most current cost-effective nationally and internationally recognised measures? Have alternative measures been considered? Does the draft TEP suggest best practice solutions? If not, does it demonstrate that the applicant is adopting the most effective acceptable solution that is cost-effective for its operations? If the draft TEP does not do either of these things, it may be appropriate to seek amendments to the draft TEP. Best practice environmental management is defined in s21 of the EP Act.

- **The financial implications of the requirements**

- The financial implications for the client in complying with the TEP must be considered. Are they reasonable in the circumstances having regard to the costs of the action and the capacity of the enterprise to manage the costs? If the cost of one action is double that of another to reduce environmental harm but only achieves only a marginally better outcome, that marginal gain may not justify the additional expense.

- **The public interest**

- Is it in the interest of the community that the draft TEP be approved? Does the draft TEP benefit or be to the advantage of the whole community. Is it in the long term interest to allow environmental harm in the short term whilst a solution to rectify the cause of the environmental harm is being constructed? For example by stopping the discharge from a treatment plant that is failing to meet its discharge limits until mitigation measures are in place could potentially cause more harm than good.
- Public interest should not be confused with the public being interested in the issue or that there having been media coverage about the issue.

- **Any applicable site management plan**

- If there is a site management plan for contaminated land (approved under chapter 7, part 8 of the Act), is the draft TEP consistent with the site management plan? If not, is the inconsistency necessary to address the matters in the draft TEP? How will any inconsistency be reconciled? Consultation is to be conducted with the Contaminated Land Unit of EHP as early as possible when there are any contaminated land issues.

- **Any relevant integrated environmental management system or proposed integrated environmental management system (IEMS)**

- Is the draft TEP consistent with any relevant IEMS? Note, 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. If not, is the inconsistency necessary to address the matters in the draft TEP? How will any inconsistency be reconciled to transition toward compliance?

- **Any other matter prescribed by a regulation**

- See 'regulatory requirements' above.

6.1.8.3 Additional information

The administering authority must consider any additional information given in relation to the draft TEP.

Has all supporting information provided by the applicant been considered? Having considered the draft TEP and any supporting information, is it clear that the draft TEP achieves compliance with the Act?

The additional information provided by the applicant should include the following documents where relevant:

- up-to-date sampling analysis (National Association of Testing Authorities (NATA)-accredited laboratory) from on-site storages and downstream and upstream in potentially affected watercourses
- a list of identified impacted persons and/or businesses and how they are expected to be impacted
- a communication strategy for keeping potentially impacted persons informed about matters that might impact them
- copies of plans, engineering designs and synopses on new technology proposed to be implemented as part of the TEP and their implications for achieving the TEP objectives
- demonstration of the assimilative capacity of waters or the air shed to receive any potentially contaminated waters or airs without negatively impacting quality objectives
- indication of cumulative impacts through the identification of other releasers in the area
- Global Positioning System (GPS) points for sampling locations and release points
- identified environmental values that may be affected
- maps and or plans at an appropriate scale showing the site and the proposed activity
- the names of the people or organisational positions responsible for implementing each nominated action.