Date : 8/05/2019 4:14:01 PM
From : "CAGNEY Justin"
To : "IRELAND Anne-Maree"
Subject : Abbot Point Coal Terminal - DRAFT EU
Attachment : EU Application.pdf;Notice to accept an EU APBC 100419.docx;eppr00577113.pdf;image001.png;image002.png;image003.jpg;

Hi Annie,

Please find attached for your review and advice please.

Thank you.

Regards,

Justin Cagney
Program Manager Compliance
Coal and Central Queensland Compliance
Department of Environment and Science

P 07 4837 3318

209 Bolsover Street Rockhampton 4700
PO Box 413 Rockhampton 4700

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Application form

Environmental Protection Act 1994

Enforceable Undertaking

This form must be used to submit a proposed enforceable undertaking to the Department of Environment and Science (the department) pursuant to Chapter 10, Part 5 of the Environmental Protection Act 1994 (the Act).

For further information please refer to the Enforceable Undertakings Statutory Guideline (ESR/2016/2272).

Once a decision on the application is made, the department will issue a notice informing the applicant if the enforceable undertaking is accepted or rejected. If the department decides to accept the enforceable undertaking, the decision notice will be issued with the enforceable undertaking in the approved form to be signed by the Applicant and the department. The contents of this application will be used to draft the enforceable undertaking.

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ENFORCEABLE UNDERTAKING

The objectives in this proposal for an undertaking are submitted to the department for consideration by: Abbot Point Bulkcoal Pty Ltd ACN 010 183 534 (the corporation).

COMMENCEMENT OF UNDERTAKING

An enforceable undertaking commences on the date that the department signs the corporation's enforceable undertaking. Upon the enforceable undertaking taking effect, the enforceable undertaking commences as a legally binding agreement between the department and the applicant.

SECTION 1: GENERAL INFORMATION

1. Details of the applicant proposing an enforceable undertaking

NAME – INDIVIDUAL OR AUTHORISED CONTACT PERSON (if applicant is a company) s.73 Abbot Point Bulkcoal Pty Ltd	
COMPANY NAME Abbot Point Bulkcoal Pty Ltd	ACN (if relevant) ACN 010 183 534
RESIDENTIAL OR REGISTERED COMPANY ADDRESS (not a post office box) Level 15, 10 Eagle Street, Brisbane Queensland 4000	PHONE +61 7 4786 0332 s.73

eleas

POSTAL ADDRESS (if different from above) As above	FACSIMILE N/A
EMAIL s.73 @adani.com.au	
ENVIRONMENTAL AUTHORITY PERMIT NUMBER (relevant to this enforceable undertaking, if applicable) EPPR00577113	SUITABLE OPERATOR NUMBER (if applicable) 401618
ENVIRONMENTAL AUTHORITY HOLDER'S NAME (relevant to this enforceable undertaking, if applicable) Abbot Point Bulkcoal Pty Ltd ACN 010 183 534	
ACTIVITY DETAILS (if no relevant environmental authority) N/A	

SECTION 2: ALLEGED CONTRAVENTION

2.1 Detail the alleged contravention (press 'enter' at the end of each statement to create a new row):

2.1.1 The complaint and summons filed by the Department in the Bowen Magistrates Court on 5 September 2018 alleges that the corporation "failed to comply with a condition of a temporary emissions licence, contrary to section 357I of the Environmental Protection Act 1994".

2.1.2 The particulars of the complaint and summons allege a failure to comply with condition TEL1 of the temporary emissions licence.

2.1.3 On 24 March 2017, the corporation applied for a temporary emissions licence in relation to its activities at the Abbot Point Coal Terminal (Terminal) due to predictions of a major rainfall event associated with Tropical Cyclone Debbie.

2.1.4 The Department issued a temporary emissions licence to the corporation on 27 March 2017, and the amended temporary emissions licence (TEL) to the corporation on 28 March 2017.

2.1.5 Relevantly, the TEL authorised a temporary increase of the EA quality criteria for total suspended solids to 100mg/L at discharge location W2.

2.1.6 Following Tropcial Cyclone Debbie, sampling results from the primary rising stage sample bottle at W2 indicated elevated suspended solids of 806mg/L.

2.1.7 The Department alleges a release to waters from release location W2 pursuant to section 357I of the Environmental Protection Act 1994, however, this Enforceable Undertaking does not constitute an admission of guilt on behalf of the corporation.

2.1.8 Neither the Department nor the corporation is aware of any environmental impacts arising as a result of the alleged contravention.

2.2 Detail the conduct or events surrounding the alleged contravention (press 'enter' at the end of each statement to create a new row):

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2.2.1 Please refer to Attachment 1.

2.2.2 <Enter details>

2.2.3 <Enter details>

2.3 Description of any land affected by the alleged contravention (including land on which the alleged contravention occurred and any impacted land):

LOCATION OF LAND (E.G. STREET ADDRESS OR GEOGRAPHICAL COORDINATES) Abbot Point Coal Terminal, Bowen, QLD	
LOT PLAN Lot 48 SP243721 and Lot 22 SP271830	WHOLE/PART Part
TENURES N/A	

2.4 Landowner/landholder details (if location of contravention is not a site owned or leased by the applicant or the person/company they are representing)

LANDOWNER/LANDHOLDER NAME(S) North Queensland Bulk Ports Corporation
CONTACT PERSON'S NAME Paul Crack, Commercial Manager

2.5 Detail the environmental harm (including potential harm) as a consequence of the alleged contravention detailed at section 2 (press 'enter' at the end of each statement to create a new row):

2.5.1 Please refer to Attachment 1.

2.5.2

2.6 Detail the consultation undertaken in relation to this proposed enforceable undertaking (press 'enter' at the end of each statement to create a new row):

2.6.1 Representatives from both the corporation and the Department have undertaken a consultative process in relation to this proposed enforceable undertaking.

2.6.2 Representatives of the corporation have also consulted with North Queensland Bulk Ports Corporation.

SECTION 3: ACKNOWLEDGMENTS AND STATEMENTS

3.1 Acknowledgement that an alleged contravention occurred, as detailed in section 2:

The corporation acknowledges that a contravention is alleged to have occurred, as detailed in section 2 and Attachment 1.

3.2 Statement of regret that the alleged contravention occurred:

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The circumstances described are regrettable and this is reflected by the range of improvement works that are being undertaken. This is also acknowledgement by the corporation that it operates in an important coastal environment, and it always strives to take active steps to protect it.

3.3 Statement of reasons why the person considers an enforceable undertaking is a more appropriate response to the alleged contravention than a court imposed sanction:

Please refer to Attachment 1.

3.4 Statement of commitment that the behaviour, activities and other factors which caused or led to the alleged contravention has ceased and will not reoccur:

Please refer to Attachment 1.

3.5 Statement of any action that has been undertaken to prevent the alleged contravention:

Please refer to Attachment 1.

3.6 Acknowledgment of the guideline published by the department for the acceptance of an enforceable undertaking:

I have read and understood:

Guideline: Enforceable undertakings under the Environmental Protection Act 1994 (ESR/2016/2272)

Dated: Version 2.0, dated 21 July 2016.

3.7 Acknowledgment that an enforceable undertaking will be published on the department's website and may be publicised elsewhere:

The corporation acknowledges that:

3.7.1 This undertaking will be published on the department's website and may be referred to or referenced in other ways (including in newspapers or media releases).

3.8 Acknowledgment that proceedings will be brought against the person for the contraventions of an enforceable undertaking:

The corporation acknowledges that:

3.8.1 As provided for in section 508(2) of the Act, the department's acceptance of an undertaking means that proceedings will not be brought by the department against the person for the contraventions alleged in section 2 of this proposal, as long as the person subject to the relevant enforceable undertaking is fully complying, or has fully complied, with the undertaking.

3.8.2 If the person withdraws an undertaking before it has been fulfilled, proceedings may be brought for the offences constituted by the contraventions alleged in section 2 of this proposal for an undertaking.

3.8.3 The department's acceptance of this proposal for an undertaking does not affect the department's power to:

3.8.3.1 bring proceedings against the person;

3.8.3.2 issue penalty infringement notices; or

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3.8.3.3 take any other enforcement action against the person;

in relation to any subsequent contravention or alleged contravention of the Act, that is not the subject of an undertaking. This is regardless of whether or not the subsequent contravention or alleged contravention involves a provision of the Act that is referred to in section 2 of this proposal.

3.9 Acknowledgment that this proposal for an undertaking does not derogate from other rights and remedies:

The corporation acknowledges that this proposal for an undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this proposal or arising from subsequent conduct.

3.10 Acknowledgment that an enforceable undertaking has been offered to the department:

The corporation acknowledges that:

3.10.1 They have offered an undertaking in the terms set out in this approved form.

3.10.2 This proposed undertaking does not take effect until the department gives the person who made the proposal for an undertaking notice of the decision to accept the proposal on terms satisfactory to the department. The person and the department acknowledge that the date of the undertaking is the date on which the notice of the decision to accept the undertaking is given.

3.11 Statement of the person's ability to comply with the terms of any undertaking and meet the projected costs of the activities:

3.11.1 The corporation has the financial ability to comply with the terms proposed for the undertaking and have provided evidence by way of confirmation provided in section 10 of Attachment 1 with this application to support this declaration.

3.11.2 In the event of impending liquidation or sale of the entity, the corporation will advise the department of the relevant circumstances and its capacity to comply with the outstanding terms of this undertaking.

3.11.3 In the event that the entity is sold, the corporation will advise any future owners or operators of the existence of this undertaking, and provide a copy of this correspondence to the department.

3.12 Statement of relationship with any corporations, officers, employees, contractors, proposed beneficiaries of donations or scholarship or other recipient of financial benefit contained in this proposal:

Note: If a financial benefit is to be given to a person any relationship between the applicant for the enforceable undertaking and the person receiving the financial benefit must be disclosed here.

3.13 Acknowledgment that communications regarding this enforceable undertaking must state that an enforceable undertaking is in effect:

The corporation acknowledges that any public communications regarding any of the actions contained within this undertaking must clearly link the actions to the undertaking and state that the undertaking was entered into as a result of a contravention or alleged contravention of the Act.

3.14 Acknowledgment that the person may be required to provide a statutory declaration:

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The department has requested a statutory declaration outlining details of any prior convictions or findings of guilt under the Environmental Protection Act 1994 or a corresponding law[1] whether in Queensland or elsewhere:

☐ YES ☒ NO

The statutory declaration is attached (if applicable):

☐ YES ☐ NO

3.15 Statement of commitment from the person to participate constructively in all compliance monitoring activities for this undertaking:

3.15.1 It is acknowledged that responsibility for demonstrating compliance with this undertaking rests with the person.

3.15.2 Evidence to demonstrate compliance with the terms will be provided to the department within two business days after the due date.

3.15.3 The evidence provided to demonstrate compliance with this undertaking will be retained by the person until advised by the department that this undertaking has been completely discharged.

3.15.4 It is acknowledged that any failure to meet the due date for a term will result in the matter being escalated and may lead to enforcement action.

3.15.5 It is acknowledged that the department may undertake other compliance monitoring activities to verify the evidence and compliance with a term, and the applicant agrees to cooperate with the department in any investigation or compliance activity in respect of the enforceable undertaking such as site access and provision of documents upon reasonable notice.

SECTION 4: KEY OBJECTIVES

4. This enforceable undertaking is a binding agreement that aims to (press 'enter' at the end of each statement to create a new row)**:**

4.1 Improve environmental monitoring at the Terminal;

4.2 Deliver benefits to the environment and local community; and

4.3 Promote the objects of the Act.

SECTION 5: TERMS

5.1 Please refer to Attachment 1 for the terms of this enforceable undertaking.

ACTIVITIES		COST	TIMEFRAME
5.2.1.1	Meet with representatives of NQPB to seek consent for the installation of an AWQS on lot 22 on SP271830	$-	Within six months of the date of this undertaking

[1] Corresponding law means under a law of the Commonwealth or another State that provides for the same or similar matters as the Environmental Protection Act 1994.

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5.2.1.2	Install an AWQS on lot 22 on SP271830 capable of recording the pH and flow of a release from the Terminal at discharge location W2. The AWQS will collect data in direct response to releases, and facilitate informed management and mitigation strategies where necessary, to secure compliance with the Act and enhance the protection of the Environment. The AWQS, which will provide for real time monitoring of water flows at the discharge location may include, for example: (i) hydrolab sonde with sensors and cable; (ii) level-pro sensor, tubing and bubbler; (iii) data logger and terminal strip; (iv) ISCO carousel autosampler including peristaltic pump; (v) modem, batteries, cabling, solar panel, frame and housing; and (vi) engineered concrete formwork and channelling. The corporation will be responsible for determining the final design of the AWQS	$100,000	Within six months of obtaining consent pursuant to section 5.2.1.1
5.2.1.3	Provide an interim progress report to the Department	$-	Within three months after the date of this undertaking
5.2.1.4	Provide a final compliance report to the Department	$-	Within one month of completion of all activities

(press tab at the end of the last row to create new rows)

Total estimated cost of benefits for the environment	$100,000

5.2 Please refer to Attachment 1 for the terms of this enforceable undertaking

ACTIVITIES		COST	TIMEFRAME
<<5.3.1.1>>	<<INSERT Activity>>	$<<INSERT Cost>>	<<INSERT Timeframe>>
<<5.3.1.2>>	<<INSERT Activity>>	$<<INSERT Cost>>	<<INSERT Timeframe>>
<<5.3.1.3>>	<<INSERT Activity>>	$<<INSERT Cost>>	<<INSERT Timeframe>>

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(press tab at the end of the last row to create new rows)

Total estimated cost of benefits for the environment	$<<INSERT Cost>>

5.3 Please refer to Attachment 1 for the terms of this enforceable undertaking

ACTIVITIES		COST	TIMEFRAME
<<5.4.1.1>>	<<INSERT Activity>>	$<<INSERT Cost>>	<<INSERT Timeframe>>
<<5.4.1.2>>	<<INSERT Activity>>	$<<INSERT Cost>>	<<INSERT Timeframe>>
<<5.4.1.3>>	<<INSERT Activity>>	$<<INSERT Cost>>	<<INSERT Timeframe>>

(press tab at the end of the last row to create new rows)

Total estimated cost of benefits for the environment	$<<INSERT Cost>>

5.4 Please refer to Attachment 1 for the terms of this enforceable undertaking

5.1.1 >

<INSERT person> agrees to pay the department's costs associated with this undertaking, as itemised below, and it is acknowledged that payment is due 30 days after receipt of the department's invoice:

- Administrative costs $-
- Legal costs $-
- Compliance monitoring costs $-
- Publication costs $-

Total recoverable costs $-

SECTION 6: CERTIFICATION

As per section 481 of the Act it is an offence to state anything to an authorised person that you know is false or misleading in a material particular or omit from a statement made to an authorised person anything without which the statement is, to your knowledge, misleading in a material particular.

I declare that the information provided is true and correct.

INDIVIDUAL OR ENTITY NAME:

Abbot Point Bulkcoal Pty Ltd ACN 010 183 534

NAME and POSITION TITLE (if applicant is company)

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s.73 Director

SIGNATURE

If signing on behalf of company, by signing this application form I declare I am authorised to sign on behalf of this company:

Abbot Point Bulkcoal Pty Ltd

DATE

24 April 2019

s.73

FURTHER INFORMATION

The latest version of the Enforceable Undertaking Guideline and other publications referenced in this document can be found at www.des.qld.gov.au using the relevant publication number (ESR/2016/2272) as a search term.

DEFINITIONS

Where there is inconsistency between the definition of terms here and the terms used in the Act, the terms in the Act apply.

Act means the Environmental Protection Act 1994

Administering authority is the Chief Executive of the Department of Environment and Science

Authorised person is generally an employee of the Department of Environment and Science who has been appointed as an authorised person under the Environmental Protection Act 1994

Company means the corporation proposing this enforceable undertaking

Department means the Department of Environment and Science

Local affected community means the residents of the impacted area the subject of this enforceable undertaking

Non-compliance /contravene means a breach or failure to comply with

Person means the individual/corporation (legal entity) proposing this enforceable undertaking

Proceedings means a legal or other action or proceeding

Undertaking means this enforceable undertaking made pursuant to Chapter 10, Part 5 of the Act

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Please return your completed enforceable undertaking to:

Post:

Courier or hand delivery:

Litigation Unit

Department of Environment and Science

GPO Box 2454, BRISBANE QLD 4001

Litigation Unit

Department of Environment and Science

Level 3, 400 George Street, BRISBANE QLD 4001

Hours: 8.30 am—5.00 pm business days

Enquiries:

Litigation Unit

Phone: 07 3330 5535

Email: litigation.unit@des.qld.gov.au

Privacy statement

The department is committed to protecting the privacy, accuracy and security of your personal information in accordance with the Information Privacy Act 2009. The department is collecting your personal information to determine whether to accept or reject your enforceable undertaking under section 507 of the Act. The information will only be accessed by authorised employees within the department and will not be given to any other person or agency unless you have given us permission or we are authorised or required by law. However, if your enforceable undertaking is accepted, the undertaking including your name, address and ABN/ACN will be publically available on the department's website. This disclosure is authorised by section 507(5) of the Act. Additionally, the information supplied on this form may be disclosed publicly in accordance with the Right to Information Act 2009 and Evidence Act 1977. For queries about privacy matters email: privacy@des.qld.gov.au or telephone: 13 QGOV (13 74 68).

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ATTACHMENT 1

Enforceable undertaking

Abbot Point Bulkcoal Pty Ltd

ACN 010 183 534

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2019

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THIS ENFORCEABLE UNDERTAKING is made on 24 April 2019

This enforceable undertaking is submitted to the Department of Environment and Science by Abbot Point Bulkcoal Pty Ltd ACN 010 183 534 of Level 15, 10 Eagle Street Brisbane, Queensland 4000.

1. DEFINITIONS

The following definitions apply in this document.

Act means the *Environmental Protection Act 1994* (Qld).

AWQS means automatic water quality station.

Corporation means Abbot Point Bulkcoal Pty Ltd ACN 010 183 534.

Department means the Department of Environment and Science.

EA means environmental authority EPPR00577113.

Guideline means the *Guideline – Enforceable undertakings under the Environmental Protection Act 1994* ESR/2016/2272 Version 2.00.

NQBP means North Queensland Bulk Ports Corporation.

PIN means penalty infringement notice No. 200000040442385 dated 20 July 2017.

Proceedings means the proceedings commenced by the Department against the corporation in the Bowen Magistrates Court by the complaint of Robert James Black dated 5 September 2018.

TEL means amended temporary emissions licence ENEL07198317 dated 28 March 2017.

Terminal means the Abbot Point Coal Terminal.

Undertaking means this enforceable undertaking made pursuant to Chapter 10, Part 5 of the Act.

2. BACKGROUND

(a) The corporation is the holder of the EA, which has been issued in relation to activities at the Terminal.

(b) The EA relevantly authorises discharges to waters from discharge location W2 if the discharges meet the specified quality criteria.

3. ALLEGED CONTRAVENTION

(a) The complaint and summons filed by the Department in the Bowen Magistrates Court on 5 September 2018 alleges that the corporation "failed to comply with a condition of a temporary emissions licence, contrary to section 357I of the *Environmental Protection Act 1994*".

(b) The particulars of the complaint and summons allege a failure to comply with condition TEL1 of the TEL.

4. CIRCUMSTANCES OF THE CONTRAVENTION

(a) On 24 March 2017, the corporation applied for a temporary emissions licence in relation to its activities at the Terminal, due to predictions of a major rainfall event associated with Tropical Cyclone Debbie.

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(b) The Department issued a temporary emissions licence to the corporation on 27 March 2017, and the TEL to the corporation on 28 March 2017.

(c) Relevantly, the TEL authorised a temporary increase of the EA quality criteria for total suspended solids to 100mg/L at discharge location W2.

(d) Following Tropical Cyclone Debbie, sampling results from the primary rising stage sample bottle at W2 indicated elevated suspended solids of 806mg/L.

(e) The Department alleges a release to waters from release location W2 pursuant to section 357I of the Act, however, this Undertaking does not constitute an admission of guilt on behalf of the Corporation.

(f) Neither the Department nor the Corporation is aware of any environmental impacts arising as a result of the alleged contravention.

5. **ACTIONS TAKEN TO PREVENT RECURRENCE OF THE ALLEGED CONTRAVENTION**

(a) As previously communicated to the Department, the corporation has continuously improved its water management infrastructure to further mitigate and manage water from high intensity and/or sustained rainfall events, including:

(i) improving sediment removal from primary and secondary settlement ponds to facilitate improved runoff capture and retention periods, allowing for more sediment to drop out of suspension;

(ii) reducing the catchment area surrounding the settlement ponds to the west and south west, by use of a clean water diversion to reduce the volume of clean water that reports to the settlement ponds (partially complete); and

(iii) upgrading the secondary settlement pond spillway.

(b) A further package of works to continue improving the corporation's water management infrastructure, and further manage water from high intensity and/or sustained intense rainfall events, is currently underway. The works include:

(i) significantly increasing the size of pumping capabilities, along with the sump and drainage system capacities in the surrounding surge bin areas;

(ii) reducing the catchment surrounding surge bin areas, by use of a clean water diversion to reduce the volume of clean water that reports to the water management infrastructure surrounding the surge bin;

(iii) increasing the capacity of the primary and secondary settlement ponds and western drain;

(iv) installing a diversion bund along the western lease boundary to:

(A) reduce the overall catchment size of the site;

(B) act as an all-weather access road to authorised discharge location W1; and

(v) installing an earth-fill finger bund extending out into the secondary sediment pond, to increase the flow path of water within the pond and allow greater opportunity for sediment to drop out of suspension.

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6. **OBJECTIVES**

The objectives of this Undertaking are to:

(a) improve environmental monitoring at the Terminal;

(b) deliver benefits to the environment and local community; and

(c) promote the objects of the Act.

7. **TERMS OF THE UNDERTAKING**

The corporation must:

(a) within six months of the date of this Undertaking, have met with representatives of NQBP to seek consent for the installation of an AWQS on lot 22 on SP271830; and

(b) within six months of obtaining consent pursuant to clause 7(a), install an AWQS on lot 22 on SP271830 capable of recording the pH and flow of a release from the Terminal at discharge location W2, at an approximate cost to the corporation of $100,000. The AWQS will collect data in direct response to releases, and facilitate informed management and mitigation strategies where necessary, to secure compliance with the Act and enhance the protection of the Environment. The AWQS, which will provide for real time monitoring of water flows at the discharge location may include, for example:

(i) hydrolab sonde with sensors and cable;

(ii) level-pro sensor, tubing and bubbler;

(iii) data logger and terminal strip;

(iv) ISCO carousel autosampler including peristaltic pump;

(v) modem, batteries, cabling, solar panel, frame and housing; and

(vi) engineered concrete formwork and channelling.

The corporation will be responsible for determining the final design of the AWQS;

(c) provide an interim progress report to the Department three months after the date of this Undertaking; and

(d) provide a final compliance report to the Department within one month of completion of all activities.

8. **WHY UNDERTAKING IS A MORE APPROPRIATE RESPONSE TO THE ALLEGED CONTRAVENTION THAN COURT PROCEEDING**

(a) The factors that led to the alleged contravention have ceased, and preventative actions have been, and are being taken as set out in clause 5.

(b) This Undertaking is a commitment by the corporation to take active steps to address the Department's concerns in respect of the alleged contravention, improve environmental monitoring and deliver benefits to the environment and local community.

(c) As such, this Undertaking will result in a net benefit to the environment and the community.

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(d) This is a better overall outcome than a court imposed sanction such as a fine, and in the corporation's submission better achieves the objects of the Act.

(e) This Undertaking is also a more efficient means of resolving the matter, as it will save the parties time and resources associated with resolving the matter in court.

9. **ACKNOWLEDGEMENTS**

(a) The corporation acknowledges that:

(i) it has read and understood the Guideline;

(ii) this Undertaking will be published on the Department's website and may be referred to or referenced in other ways;

(iii) the Department's acceptance of this Undertaking means that the Department:

(A) must take all reasonable steps to have the Proceedings discontinued as soon as practicable; and

(B) will not recommence proceedings against the corporation for the alleged contravention described in clause 3 as long as the corporation is fully complying, or has fully complied, with the Undertaking;

(iv) the Department's acceptance of this Undertaking does not affect the Department's power to:

(A) bring proceedings against the person;

(B) issue penalty infringement notices; or

(C) take any other enforcement action against the person;

in relation to any subsequent contravention or alleged contravention of the Act, that is not the subject of an undertaking;

(v) this Undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this proposal or arising from subsequent conduct;

(vi) it has offered an undertaking in the terms set out in this approved form;

(vii) the Undertaking does not take effect until the Department gives the corporation notice of the decision to accept the Undertaking.

(b) The corporation and the Department acknowledge that the date of the Undertaking is the date on which the notice of the decision to accept the Undertaking is given.

10. **ABILITY TO COMPLY WITH THE UNDERTAKING**

(a) The corporation has the financial ability to comply with the terms of this Undertaking.

(b) In the event of impeding liquidation or sale of the corporation, the corporation will advise the Department of the relevant circumstances and its capacity to comply with the outstanding terms of this Undertaking.

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(c) In the event the corporation is sold, the corporation will advise any future owners or operators of the existence of this Undertaking, and provide a copy of this correspondence to the Department.

11. **CONTACT DETAILS**

(a) Any written notification to the Department pursuant to this Undertaking is to be provided to:

Melissa Wells
Executive Director, Coal and Central Qld Compliance, Department of Environment and Science
GPO Box 2454
BRISBANE QLD 4001

Email: melissa.wells@des.qld.gov.au

(b) Any written notification to the corporation pursuant to this Undertaking is to be provided to:

s.73
Director, Abbot Point Bulkcoal Pty Ltd
Level 15, 10 Eagle Street
BRISBANE QLD 4000

Email: s.73 @adani.com.au

12. **EXECUTION**

SIGNED by **ABBOT POINT BULKCOAL PTY LTD** in the presence of:

s.73

Signature of party

s.73

Signature of witness

s.73

Name

ACCEPTED by **DEPARTMENT OF ENVIRONMENT AND SCIENCE** in the presence of:

Signature of party

Signature of witness

Name

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Release

Abbot Point Bulkcoal Pty Ltd ACN 010 183 534
Level 15, 10 Eagle Street
BRISBANE QLD 4000

Your reference:

Our reference: CR78081

10 May 2019

Take notice: that under the provisions of the *Environmental Protection Act 1994* (the Act) this notice advising of the decision to accept an Enforceable Undertaking is issued to Abbot Point Bulkcoal Pty Ltd ACN 010 183 534 (you) by the administering authority. The administering authority is the Chief Executive of the Department of Environment and Science (the department).

This notice is issued with respect to your activities at the following locations:

- on land described as Lot 48 on SP243721 and Lot 22 on SP271830, situated at the Abbot Point Coal Terminal in Bowen, Queensland;
- at the location of stormwater release from discharge location W2 to waters.~~;~~

A. Application details

On 26 April 2019, the department received an emailed Enforceable Undertaking Application (the application) from you.

Commented [IA1]: They served a hard copy (maybe as well, I'm not sure)

The application included the Application form – Enforceable Undertaking and Attachment 1 being ~~the~~ a proposed Enforceable Undertaking.

The objectives of the Enforceable Undertaking are stated to be~~is for the undertaking~~ to:

- Improve environmental monitoring at the site;
- Deliver benefits to the environment and the local community;
- Promote the object of the Act.~~;~~

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B. Material considered by the department in making the decision

In making the decision, the department had before it:

- *Environmental Protection Act 1994;*
- Environmental Authority EPPR00577113;
- Guideline: Enforceable Undertakings under the *Environmental Protection Act 1994;*
- Completed Application form dated 24 April 2019;
- Attachment 1 dated 24 April 2019;
- Complaint and Summons filed with the Bowen Magistrates Court on 5 September 2018;
- Enforcement Guidelines.

C. Application of legislation to the decision

Section 507 of the *Environmental Protection Act 1994* provides that:

- The administering authority may accept a written undertaking (Enforceable Undertaking) made by a person in relation to a contravention or alleged contravention by the person of the *Environmental Protection Act 1994* , other than an indictable offence; and
- The administering authority must give the person written notice of the administering authority's decision to accept or reject the Enforceable Undertaking, and the reasons for the decision.
- If the administering authority decides to accept the enforceable undertaking, the administering authority must publish a copy of the undertaking on the administering authority's website.

D. Decision

The department has decided to accept your application for an Enforceable Undertaking. The approved Enforceable Undertaking is attached to this decision notice.

E. Reasons for the decision

1. The alleged contravention the subject of the Enforceable Undertaking is not an indictable offence.
2. The alleged contravention is the subject of a complaint before the Bowen Magistrates Court. Whilst the prosecution proceedings are at an advanced stage, proceedings have not yet ended and the likely outcome of the prosecution proceedings (if successful) would not better achieve the objects of the *Environmental Protection Act 1994*.
3. You promptly notified the department about the incident.
4. The incident was not part of a course of conduct or a history of non-compliance in Queensland.
5. You had no motivation or intention to obtain a financial or material benefit from the incident and no known environmental harm was caused from the release.
6. You are committed to preventing further incidents in relation to releases of stormwater from the site including by the commissioning of a number of improvements to the site's water management infrastructure to mitigate and manage water from high intensity and sustained rainfall events.

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Commented [IA2]: See phase 3 of s4 to satisfy yourself. The likely outcome of finding of guilt would be a fine, there is one comparative case for breach of TEL – that concerned two charges where the defendant company had not ceased releasing upon knowledge of limits being exceeded. Fine of $65,000 imposed. I would expect the range of this matter to be $20,000 to $40,000.

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5.7. You have demonstrated your ability to make and deliver on your commitments through ~~the~~ improvements already made to ~~the~~ water management infrastructure at the site. You have committed to completing additional works to further improve the water management infrastructure at the site.

6.8. The cost to you for the improvements to the site's water management infrastructure has been significant and demonstrates the seriousness within which you have treated the incident and your commitment to prevent future releases.

7.9. You have given an undertaking to install an automatic water quality station (AWQS) for real-time recording of any future stormwater releases from the site at discharge location W2.

8.10. Operation of a AWQS at discharge location W2 will provide for collection of data in direct response to stormwater releases and will facilitate informed management and mitigation strategies where necessary, to secure compliance with the Act and enhance protection of the environment.

9.11. In the circumstances including the~~, given~~ prompt notification to the department, the cause of the incident, actions taken since the incident, public interest considerations and benefits to the environment, the application by you to enter into an Enforceable Undertaking has been accepted.

Commented [IA3]: Consider what you mean – lack of prevention or cyclone, perhaps delete

Commented [IA4]: Please satisfy yourself of what you mean

F. Additional information

Obligations under the Act

In addition to the requirements of the Enforceable Undertaking and the conditions imposed, you must also meet your obligations under the *Environmental Protection Act 1994*, and associated regulations. For example:

- you must comply with the following provisions of the Act:
  - general environmental duty (section 319); and
  - duty to notify of environmental harm (sections 320 - 320G);
- you must also ensure that you do not commit offences in relation to the *Environmental Protection Act 1994,* including but not limited to, the following:
  - causing serious or material environmental harm (sections 437 - 439);
  - causing environmental nuisance (section 440);
  - depositing prescribed water contaminants in waters and related matters (section 440ZG); and
  - placing a contaminant where environmental harm or nuisance may be caused (section 443).

Should you have any queries in relation to this notice, please contact Alisha Stewart, Compliance Delivery Manager (Mackay) of the department, on telephone number (07) 4999 6885 or email Alisha.stewart@des.qld.gov.au.

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	10 May 2019
Signature	Date

Justin Cagney
Program Manager Compliance
Delegate of the Chief Executive
Department of Environment and Science
Environmental Protection Act 1994

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