

Prevention Notice



Transport for NSW
Trading as
76 236 371 088
477 PITT STREET
HAYMARKET NSW 2000

Attention: Tom Grosskopf

Notice Number 3503607
Reference Number REG-3150
Date 08-09-2022

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Why is the EPA writing to you?

The Environment Protection Authority (EPA) reasonably suspects that an activity has been or is being carried on in an environmentally unsatisfactory manner at the Tarago Railway Siding, Goulburn Street, Tarago NSW, 25800. The EPA has issued you with this Prevention Notice. Further information is set out in the notice below.

What are you required to do?

Please read this notice carefully and carry out the preventative action specified in this notice by the date required. If you have any queries about this matter, please contact Janine Goodwin on 02 6229 7002

BACKGROUND

- A. The EPA has responsibility for the administration and enforcement of the *Protection of the Environment Operations Act 1997* (Act).
- B. Transport for NSW (TfNSW) is responsible for the management of waste material and lands associated with elevated lead from the Tarago Rail corridor, present due to historic lead ore loading and transport. TfNSW has management and control of the Premises for the purposes of s 96(2)(a) of the Act.
- C. The EPA is the appropriate regulatory authority for contaminated land under s 60 of the Contaminated Land Management Act 1997 (CLM Act). The EPA is also the appropriate regulatory authority for activities undertaken by the State or a Public Authority.
- D. On 25 March 2020, the EPA declared Lot 22 DP1202608 (the Premises) as significantly contaminated under s 12 of the CLM Act, due to the presence of lead ore.

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- E. Following the declaration, TfNSW submitted a Voluntary Management Proposal for the Premises. Part of this VMP was the development and implementation of an Interim Action Plan to install and maintain pollution controls to prevent the movement of lead contaminated soil and ballast prior to commencing remediation works.
- F. On 5 September 2022 the EPA undertook a site inspection in conjunction with TfNSW and its contractor (UGL Regional Linx). The inspection included Lot 1 DP595856 and Lot 22 DP 1202608. The purpose of the inspection was to review interim site pollution control measures.
- G. During the inspection the EPA observed the following:
 - A. The interim containment cell (understood to be located on Lot 1 DP 595856) appeared to be lined with a geotextile layer, then overlaid with sand cement capping layer. The EPA observed that the integrity of this overlay capping was compromised in sections, and that the geotextile layer could be observed in some of these sections in varying condition.
 - B. The EPA understands a polymer or soil binding product was applied to the historic rail siding area in 2019. This soil binding medium was not evident during the inspection. While vegetated in sections, the EPA also observed sections of exposed soils. It was also apparent that vehicles had been driving on this area, potentially impacting the integrity of the polymer.
 - C. The EPA observed that recent maintenance works on sediment and erosion controls have been undertaken along the main drainage lines within the Premises. Erosion and surface water controls were not evident on the western edge of the containment cell prior to where the site discharges to the main drainage line to the north. The EPA expects that pollution controls would be in place to ensure potential contaminants are not remobilised to waters. Pollution controls were absent downstream of the compromised western edge of the containment cell.
 - D. It was unclear if the Action Plan's Inspection Program has the capacity to identify issues with the integrity of all pollution controls onsite. It was also unclear what triggers are in place when maintenance works are required.
 - E. With consideration of the inspection findings, the EPA believes there has been a failure to maintain pollution controls at the Premises.

Environment Protection Law

- H. Section 96 of the Act enables the EPA to issue a Prevention Notice where it reasonably suspects an activity has been or is being carried on in an environmentally unsatisfactory manner. Pursuant to s 95 of the Act and for the purposes of Part 4.3, an activity is carried on in an environmentally unsatisfactory manner if:
 - a. it is carried on in contravention of, or in a manner that is likely to lead to a contravention of, this Act, the regulations or a condition attached to an environment protection licence (including a condition of a surrender of a licence) or an exemption given under this Act or the regulations, or
 - b. it causes, or is likely to cause, a pollution incident, or
 - c. it is not carried on by such practicable means as may be necessary to prevent, control or minimise pollution, the emission of any noise or the generation of waste, or
 - d. it is not carried on in accordance with good environmental practice.

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- I. The Dictionary to the Act defines:
 - a. "Pollution incident" as an incident or set of circumstances during or as a consequence of which there is or is likely to be a leak, spill or other escape or deposit of a substance, as a result of which pollution has occurred, is occurring or is likely to occur. It includes an incident or set of circumstances in which a substance has been placed or disposed of on premises, but it does not include an incident or set of circumstances involving only the emission of any noise.
 - b. "Pollution" as including water pollution.
 - a. "Water Pollution" as placing in or on, or otherwise introducing into or onto, the waters (whether through an act or omission) any refuse, litter, debris or other matter, whether solid or liquid or gaseous, so that the change in the condition of the waters or the refuse, litter, debris or other matter, either alone or together with any other refuse, litter, debris or matter present in the waters makes, or is likely to make, the waters unclean, noxious, poisonous or impure, detrimental to the health, safety, welfare or property of persons, undrinkable for farm animals, poisonous or harmful to aquatic life, animals, birds or fish in or around the waters or unsuitable for use in irrigation, or obstructs or interferes with, or is likely to obstruct or interfere with persons in the exercise or enjoyment of any right in relation to the waters
 - c. "Pollution" as including land pollution.
 - a. "Land Pollution" as including placing in or on, or otherwise introducing into or onto, the land (whether through an act or omission) any matter, whether solid, liquid or gaseous: (a) that causes or is likely to cause degradation of the land, resulting in actual or potential harm to the health or safety of human beings, animals or other terrestrial life or ecosystems, or actual or potential loss or property damage, that is not trivial.
 - d. "Environmentally unsatisfactory manner"

For the purposes of this Part an activity is carried on in an environmentally unsatisfactory manner if;

 - a. it is carried on in contravention of, or in a manner that is likely to lead to a contravention of, this Act, the regulations or a condition attached to an environment protection licence (including a condition of a surrender of a licence) or an exemption given under this Act or the regulations, or
 - b. it causes, or is likely to cause, a pollution incident, or
 - c. it is not carried on by such practicable means as may be necessary to prevent, control or minimise pollution, the emission of any noise or the generation of waste, or
 - d. it is not carried on in accordance with good environmental practice.
- J. The EPA reasonably suspects that an activity has been or is being carried on in an environmentally unsatisfactory manner in that:
 - a. The current condition of the interim containment cell is not in accordance with good environmental practice. It requires maintenance and repairs to the overlay layer to protect the integrity of the geotextile membrane.
 - b. The condition of some sections of the polymer application layer do not appear to have capacity to prevent, control or minimise pollution.
 - c. The Inspection Program appears to have failed to identify deterioration of some of the pollution controls and trigger required rectification works.

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- d. Some surface water controls are not in accordance with good environmental practice, flows from the west of the interim containment cell do not appear to have management measures in place.

K. The EPA is directing you to take action specified in this notice because you are the person carrying on the remediation activities

DIRECTION TO TAKE PREVENTIVE ACTION

1. The EPA directs Transport for NSW to take the following preventative action:

Interim containment cell

2. By 12 September 2022, undertake a detailed inspection of the integrity of the encapsulation layers of the interim containment cell.
3. Where deficiencies are identified, undertake all necessary works to reinstate the encapsulation layer to prevent surface or air pollution by 30 September 2022 (or such further time as may be agreed by the EPA having regard to the nature of the work required).
4. Undertake an assessment of the adequacy and efficiency of surface water controls at the Premises and implement any required works or measures to ensure contamination is not remobilised to waters. This assessment, and any associated works must be completed by 30 September 2022 (or such further time as may be agreed by the EPA having regard to the nature of the work required).

Polymer application area

5. By 12 September 2022:
 - undertake an inspection of the polymer application area on the historic rail siding to identify any defects or deficiencies with the polymer layer:
 - identify any other areas that require controls implemented to prevent the movement of soil by surface water or dust.
6. By 30 September 2022 (or such further time as may be agreed by the EPA having regard to the nature of the work required) undertake all necessary works to reinstate suitable material/s and/or controls to restrict the movement of surface water and dust impacted by lead.

Inspection program

7. By 30 September 2022 (or such further time as may be agreed by the EPA having regard to the nature of the work required), undertake a review the monitoring/inspection programs capacity to identify emerging issues with the integrity of the premises pollution controls and ensure that rectification works are undertaken to resolve any identified issues in a timely manner.

Report to the EPA

8. By 7 October 2022 (or such further time as may be agreed by the EPA having regard to any agreed variation to the timeframes specified in Directions 3,4,6 or 7) TfNSW must submit a report to the EPA

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detailing the findings of above inspections, associated works completed, and findings/outcomes of the inspection program review.

FEE TO BE PAID

- You are required by law to pay a fee for the administrative costs of issuing this notice. An invoice for the fee has been attached to this notice.
- It is an offence not to pay this fee. However you can apply for an extension of time to pay the fee or for the fee to be waived. At the end of this notice there is information about how and when to pay the fee and how to apply for an extension or a waiver of the fee.

APPROVER SIGNATURE AND DETAILS WILL BE INSERTED HERE

Janine Goodwin

Unit Head

(by Delegation)

WARNINGS AND INFORMATION ABOUT THIS PREVENTION NOTICE

- This notice is issued under section 96 of the Act.
- It is an offence against the Act not to comply with this notice.
- Details provided in this notice will be available on the Public Register in accordance with section 308 of the Act.
- If this notice is issued to a corporation and the notice is not complied with by the date specified, the EPA may, under s 96A(2) of the Act, issue a supplementary prevention notice to a current or former director or manager, or a related body corporate, directing them to carry out, or ensure the carrying out of, preventative action specified in the supplementary notice.

Penalty for not complying with this notice

- The maximum penalty that a court may impose for a corporation is \$1,000,000 and a further \$120,000 for each day the offence continues. The maximum penalty that a court may impose for an individual is \$250,000 and a further \$60,000 for each day the offence continues.

Appeals against this notice

- You can appeal to the Land and Environment Court against this notice. The deadline for lodging your appeal is 21 days after you were served with the notice.

When this notice begins to operate

- This notice operates from the day the notice is given, unless a later date is specified in the notice.

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- If an appeal is made against the notice, and the Land and Environment Court directs that the notice is stayed, the notice does not operate until the stay ceases to have effect, or the Land and Environment confirms the notice, or the appeal is withdrawn (whichever occurs first).

Continuing obligation

- Under section 319A of the Act, your obligations to comply with this notice continue until the notice is complied with in full, even if the due date for compliance has passed.

Occupier's duty

- If you are given this notice as the occupier of the Premises but you are not the person carrying on the activity giving rise to this notice, this notice is taken to require you to take all available steps to cause the action to be taken.

Deadline for paying fee

- The fee must be paid by **no later than 30 days after the date of this notice unless you appeal** to a court against the notice, or unless the EPA extends the time for payment of the fee or waives the fee. If you do appeal this notice the fee does not have to be paid unless and until the court confirms the notice.

How to pay the fee

- Possible methods of payment are listed on the last page of the attached invoice/statement.
- Please include the payment slip from the attached invoice/statement with your payment.

How to apply for extension of time to pay/waive the fee

- Any application for an extension of time to pay the fee, or for the fee to be waived must be made in writing to the EPA. The application should set out clearly why you think your application should be granted.

Other costs

- The Act allows the EPA to recover from you reasonable costs and expenses it incurs in monitoring action taken under this notice, ensuring the notice is complied with and associated matters.
- If you are required to pay these other costs and expenses you will be sent a separate notice called a "Notice Requiring Payment of Reasonable Costs and Expenses".

Variation or revocation of this notice

- The requirements of this notice may only be varied or revoked by written notice issued by the EPA.