

Prevention Notice



SOUTH COAST EQUIPMENT PTY LTD
ACN 000 526 769
PO BOX 220
WOLLONGONG EAST NSW 2520

Attention: The Proper Officer

Notice Number 3507961
Reference Number REG-4746
Date 13-02-2024

Prevention Notice

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 Lot 1 Shellharbour Road, PORT KEMBLA NSW 2505, being Lot 1 DP 25910 and Lot 2 DP 561366 (**Premises**) by South Coast Equipment Pty Ltd (**SCE**). 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 Freya Leach on (02) 9995 5268.

BACKGROUND

- A. The EPA has responsibility for the administration and enforcement of the *Protection of the Environment Operations Act 1997* (**Act**).
- B. SCE is the occupier of the Premises at which resource recovery is occurring, in that SCE has management and control of the Premises for the purposes of section 96(2)(a) of the Act.
- C. The EPA is the appropriate regulatory authority for the Premises as per section 6 of the Act, as activities undertaken at the Premises are carried out under environment protection licence 1265 (**Licence**).
- D. The Licence authorises the carrying out of the scheduled activity resource recovery as set out in condition A1.1.
- E. The EPA understands that SCE produce recovered fines material at the Premises and supply this material for land application under the 'continuous process' recovered fines order 2014.

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- F. On 23 November 2023, the EPA inspected the Premises and took ten samples of recovered fines material produced and stored at the Premises. All ten samples were from within the stockpile bay where the recovered fines were stored.
- G. Analysis of the ten samples at a National Association of Testing Authorities (NATA) accredited laboratory identified the presence of asbestos in one of the recovered fines samples.
- H. On 14 December 2023, the EPA advised SCE of the presence of asbestos within the stockpile.
- I. On 20 December 2023, SCE advised the EPA that an additional 600 to 700 tonnes of recovered fines material had been added to the front of the stockpile.
- J. The Licence does not authorise the receipt, processing or storage of asbestos waste.
- K. "Asbestos waste" is defined under schedule 1 of the Act as any waste that contains asbestos.
- L. The EPA reasonable believes that asbestos waste was received, processed and stored at the Premises, in contravention of sections 48, 64 and 144AAB of the Act.

Environment Protection Law

- M. Section 96 of the Act enables the appropriate regulatory authority issue a prevention notice where it reasonably suspects that an activity has been or is being carried on in an environmentally unsatisfactory manner at any premises or by any person (otherwise than at premises).
- N. SCE is issued the Licence which authorises the carrying out of the scheduled activity resource recovery at the Premises. The EPA is the appropriate regulatory authority for the Premises pursuant to section 6(2)(b) in the Act .
- O. Pursuant to section 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.
- P. Section 48 of the Act makes it an offence if a person who is the occupier of any premises at which a scheduled activity is carried on, unless the person is, at the time that the activity is carried on, the holder of a licence that authorises that activity to be carried on at those premises.
- Q. Condition A1.1 in the Licence authorises the carrying out of the scheduled activity resource recovery.
- R. Under clause 42(3)(a)(iii) in Schedule 1 of the Act, waste storage is declared to be a scheduled activity if more than 5 tonnes of special waste is stored on the premises at any time. The licence does not authorise the scheduled activity waste storage.
- S. Clause 49 in Schedule 1 of the Act defines special waste as asbestos waste.
- T. Clause 50 in Schedule 1 of the Act defines asbestos waste as any waste that contains asbestos.
- U. The EPA reasonable suspects that the storage of asbestos waste at the Premises is in contravention of section 48 of the Act.
- V. Section 64 in the Act makes it an offence to contravene any environment protection licence condition.

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- W. Condition L2.1 in the Licence sets out what wastes are permitted to be received at the Premises. The Licence does not permit the receipt of asbestos waste at the Premises.
- X. The EPA reasonably suspects asbestos waste has been received at the Premises in contravention of section 64 of the Act.
- Y. Section 144AAB of the Act makes it an offence if a person causes or permits asbestos waste in any form to be re-used or recycled.
- Z. The EPA reasonably believes that asbestos waste has been recycled resulting in recovered fines containing asbestos, and that those recovered fines have been transported from the Premises and not disposed of as asbestos waste.
- AA. The EPA reasonably suspects that an activity has been or is being carried on in an environmentally unsatisfactory manner by SCE, in that:
- the scheduled activity of waste storage, being more than 5 tonnes of special waste, has occurred at the Premises in an alleged contravention of section 48 of the Act;
 - asbestos waste was received at the Premises in an alleged contravention of Licence condition L2.1 and in an alleged contravention of section 64 of the Act; and
 - asbestos waste has been re-used or recycled at the Premises in an alleged contravention of section 144AAB of the Act.
- AB. Section 96(3) in the Act sets out examples of preventative action that may (without limitation) be taken, being:
- installing, repairing, altering, replacing, maintaining or operating control equipment or other plant,
 - modifying, or carrying out any work on, plant,
 - ceasing to use plant or altering the way plant is used,
 - ceasing to carry on or not commencing to carry on an activity,
 - carrying on an activity in a particular manner,
 - carrying on an activity only during particular times,
 - monitoring, sampling or analysing any pollution or otherwise ascertaining the nature and extent of pollution or the risk of pollution,
 - action with respect to the transportation, collection, reception, re-use, recovery, recycling, processing, storage or disposal of any waste or other substance,
 - preparing and carrying out a plan of action to control, prevent or minimise pollution or waste,
 - reviewing the carrying out of an activity.
- AC. On 2 February 2024, the EPA sent draft Prevention Notice REG-4746 to SCE for comment.
- AD. On 12 February 2024, Craig Ford, SCE, had a phone conversation with an EPA Officer and said the Prevention Notice could be issued.

DIRECTION TO TAKE PREVENTIVE ACTION

- The EPA directs SCE to take the following preventative action by **5:00pm on Friday 8 March 2024**:
 - All recovered fines produced at the Premises must be produced and tested under the 'batch process' recovered fines order 2014.

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- b. For all batches of recovered fines produced at the Premises ensure that:
 - i. Each batch is less than 50 cubic metres.
 - ii. A minimum of 10 representative samples are collected from each batch of recovered fines
 - iii. For each sample:
 - 1. Collect a minimum of 1 kilogram of the recovered fines into a see-through plastic bag capable of holding a minimum of 1 kilogram,
 - 2. Take a close-up digital photograph of the sample collected with labelling of the sample that includes sample ID, time, date, location and person who took the sample,
 - 3. Take a close-up digital photograph of the sample location where the sample was collected from.
- c. For each batch of samples taken under direction 1.b.ii:
 - i. Take a digital photograph of the overall batch stockpile whilst leaving the samples collected in-situ on the batch stockpile to demonstrate samples were collected representatively,
 - ii. Fill out a chain-of-custody form obtained from the testing laboratory and provide all details required on the chain-of-custody form and select all 10 samples for asbestos analysis.
 - iii. Analyse the samples for asbestos using the asbestos gravimetric method in NEPM and AS 4964-2004. The analysis must be undertaken by a laboratory that holds an accreditation from NATA to undertake testing using AS 4964-2004 method.
 - iv. Instruct the laboratory to take a close-up digital photograph of each sample submitted by SCE prior to analysis. The sample must be removed from the plastic bag for photographing.
- d. Each batch of recovered fines produced must be segregated and stored until the results for the sampling are received and reviewed to confirm whether it meets the 'batch process' recovered fines order 2014.
- e. After the first 10 batches have been produced, tested and the required information provided to the EPA, the EPA will review the results and will reassess the requirements of this notice.
- f. All documents, reports and information required by this notice must be send to:

Email: EPA.Complianceinvestigations@epa.nsw.gov.au (Att. Campaigns Unit – Notice 3507961)

Cc Freya.leach@epa.nsw.gov.au

or

Mail NSW Environment Protection Authority
Director Priority Compliance and Investigations (Att. Campaigns Unit – Notice 3507961)
Locked Bag 5022
PARRAMATTA NSW 2124

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.

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- 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.

A handwritten signature in black ink, appearing to read 'Zach McIntosh'.

Zach McIntosh

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 section 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.
- 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.



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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.