



Clean-Up Notice

Sydney Metro
12 354 063 515
PO BOX K659
HAYMARKET NSW 1240

Attention: The Proper Officer

Notice Number 3508042
Reference Number REG-4764
Date 02-02-2024

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Why is the EPA writing to you?

The Environment Protection Authority (EPA) reasonably suspects that a pollution incident has occurred or is occurring on land that forms part of the upgrade to the T3 Bankstown Line between Sydenham and Bankstown located in the areas outlined in Attachment A (Premises). The EPA has issued the State of NSW (Sydney Metro) ABN 12 354 063 515 (Sydney Metro) with this Clean-up Notice. The EPA has issued Sydney Metro with this Clean-up 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 clean-up action specified in this notice by the date required. If you have any queries about this matter, please contact Peter Bloem on (02) 4224 4117.

BACKGROUND

- A. The EPA has responsibility for the administration and enforcement of the *Protection of the Environment Operations Act 1997 (Act)*.
- B. Under section 91(1)(a) of the Act, the EPA reasonably suspects a pollution incident has occurred or is occurring at the Premises. The EPA reasonably suspects there is more than 10 tonnes of material containing asbestos, being asbestos waste, that has been applied to land in an area of the Premises and is causing land pollution.
- C. Sydney Metro is a statutory authority constituted by the *Transport Administration Act 1988 (NSW)*, which forms part of the transport cluster within the NSW Government and is delivering new metro rail services for Sydney.



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- D. Sydney Metro is delivering the Sydney Metro City & South West project (Project) which includes upgrades to tracks, stations, and signals.
- E. Sydney Metro notified the EPA on Tuesday 23rd of January 2024 that positive traces of bonded asbestos were identified in mulch at three traction substation locations at Dulwich Hill, Canterbury, and Campsie as part of the Project.
- F. The EPA has collected samples from across the Premises which have undergone laboratory analysis. The testing has confirmed the mulch contains construction and demolition waste and some samples include asbestos.
- G. The EPA and Sydney Metro are investigating the source of the contaminated material.
- H. The EPA understands Sydney Metro has taken steps to ensure the Premises is safe. The affected areas are fenced off and are not accessible to the public. All fragments found at the substation sites are bonded asbestos which is considered low risk.

Environment Protection Law

- I. Section 92(1) of the Act provides:

Directions to public authorities to take clean-up action: *If the EPA reasonably suspects that a pollution incident has occurred or is occurring, the EPA may, by notice in writing, direct a public authority to take such clean-up action as is specified in the notice. The public authority is authorised and required to take that action.*

- J. The Dictionary to the Act defines:

- “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.
- “Pollution” as including land pollution.
- “Land pollution” as 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:
 - That causes or 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, or
 - That is of a prescribed nature, description or class that does not comply with any standard prescribed in respect of that matter.

But does not include placing in or on, or otherwise introducing into or onto, land, any substance excluded from this definition by the regulations.

- K. Clause 133 of the *Protection of the Environment Operations (General) Regulation 2022* provides that the following matters are prescribed for the purposes of paragraph b) of the land pollution definition:

- Hazardous waste,
- Restricted solid waste,
- More than 10 tonnes of asbestos waste,



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- More than 5 tonnes of waste tyres or more than 500 waste tyres.

L. The Act defines “waste” to include:

- Any substance (whether solid liquid or gaseous) that is discarded, emitted or deposited in the environment in such volume, consistency or manner as to cause an alteration in the environment, or
- any discarded, rejected, unwanted, surplus or abandoned substance, or
- any otherwise discarded, rejected, unwanted, surplus or abandoned substance intended for sale or for recycling, processing, recovery or purification by a separate operations from that which produced the substance, or
- any processed, recycled or re-used or recovered substance produced wholly or partly from waste that is applied to land, or used as fuel, but only in the circumstances prescribed in the regulations, or
- any substance prescribed by the regulations to be waste

A substance is not precluded from being waste for the purposes of the Act merely because it is or may be processed, recycled, re-used or recovered.

M. *Asbestos waste* is defined in clause 50 of Schedule 1 of the Act to mean any waste that contains asbestos.

N. ***Suitably Qualified Entity*** means an individual or organisation which holds at least one of the following certifications:

- Contaminated Land Consultant certified under the Environment Institute of Australia and New Zealand’s “Certified Environmental Practitioner” (Site Contamination) scheme (CEnvP(SC)); or
- the Soil Science Australia “Certified Professional Soil Scientist Contaminated Site Assessment and Management (CPSS CSAM) scheme.

Reasonable suspicion of a land pollution incident

O. The EPA reasonably suspects that a pollution incident is occurring or is likely to occur at the Premises, namely:

- the waste imported to and deposited at the Premises, within the area outlined in Attachment A, contains asbestos and is asbestos waste as defined in the Act;
- more than 10 tonnes of asbestos waste, has been deposited at the Premises, and comprises land pollution of a prescribed nature, as a result of which land pollution has occurred, is occurring or is likely to occur;

DIRECTION TO TAKE CLEAN-UP ACTION

The EPA directs Sydney Metro to take the following clean-up action:

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1. Engage a suitably qualified entity to undertake a detailed site investigation and prepare a Report as per [Section 4.8, National Environment Protection \(Assessment of Site Contamination\) Measure 1999 \(NEPM\) Schedule B1, Volume 2](#), on the presence of asbestos in the areas outlined in Attachment A.
2. This Report must include as a minimum an assessment of the presence of asbestos in;
 1. Stockpiles of mulch;
 2. Areas of previous stockpiles of mulch ;
 3. Areas where application of mulch has occurred to land;where such stockpiling and application was carried out as part of the Sydney Metro City & South West project.
3. The report must include a detailed site management plan to ensure the land can be used for its intended purpose and protect human health and the environment. This may include any remediation measures and site verification where required.
4. The report to the EPA must be submitted by 5:00 PM 23 February 2024.
5. All documentation must be submitted to the EPA in writing by email to info@epa.nsw.gov.au

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.

A handwritten signature in blue ink, appearing to read 'Peter Bloem', is positioned above the printed name and title.

Peter Bloem
Manager Regulatory Operations
(by Delegation)

WARNINGS AND INFORMATION ABOUT THIS CLEAN-UP NOTICE

- This notice is issued under section 92 of the Act.
- It is an offence against the Act not to comply with a clean-up notice unless you have a reasonable excuse.



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- Details provided in this notice will be available on the Public Register in accordance with section 308 of the Act

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.

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.

Continuing obligation

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

Cost recovery from the person(s) who caused or contributed to the incident

- If you comply with this clean-up notice but you are not the person who caused, or solely caused, the pollution incident to which the notice relates, you have a right to go to court to recover your costs, or part of your costs, of complying with the notice from any person who caused or contributed to the incident.

Deadline for paying the fee

- The fee must be paid by **no later than 30 days after the date of this notice**, unless the EPA extends the time to pay the fee or waives the fee.

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 an 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 later be sent a separate notice called a "Notice Requiring Payment of Reasonable Costs and Expenses".

Variation of this notice

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

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ATTACHMENT A

Site	Location	Plan
Dulwich Hill Traction Substation Site	Located at end of street, next to resident at 20 Randall Street, Marrickville NSW	
Canterbury Traction Substation Site	Located across from park located at 22 Hutton Street, Hurlstone Park NSW	
Campsie Traction Substation Site	located across from residential building 48 Lilian Street, Campsie NSW	