



Clean-Up Notice

Transport for NSW
18 804 239 602
PO BOX K659
HAYMARKET NSW 1240

Attention: The Proper Officer

Notice Number 3508087
Reference Number SR-2072
Date 05-02-2024

NOTICE OF CLEAN-UP ACTION

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 Prospect Highway Upgrade as defined by the premises maps held on EPA electronic file EF19/17977 (Premises) and dated 24 February 2023. The EPA has issued Transport for NSW (TfNSW) 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. TfNSW is an owner or occupier of the Premises in that TfNSW is a person that has management and/or control of the Premises for the purposes of s 91(1)(a) of the Act.



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- D. The Prospect Highway Upgrade involves road construction between Reservoir Rd Prospect and St Martins Crescent Blacktown.
- E. TfNSW contracted Fulton Hogan Construction Pty Ltd (Fulton Hogan) to build the Prospect Highway Upgrade.
- F. Fulton Hogan holds Environment Protection Licence No. 21295 for construction of the Prospect Highway Upgrade.
- G. TfNSW notified the EPA on 29 January 2024 that mulch used for landscaping at the Premises has been found to contain fragments of material that contain asbestos.
- H. TfNSW and EPA have 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.
- I. The EPA is investigating the source of the contaminated material.
- J. The EPA understands TfNSW has taken steps to ensure the Premises is safe. The affected areas are fenced off and are not accessible to the public.

Environment Protection Law

- K. Section 91 of the Act enables the EPA to issue a Clean-up Notice in respect of a pollution incident.
- L. Under section 91(1)(a), the appropriate regulatory authority may direct an occupier of a premises, at which the authority reasonably suspects a pollution incident has occurred or is occurring, to take such clean-up action as specified in the notice and within the period specified in the notice.
- M. 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 land pollution.
 - c. "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:
 - i. 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
 - ii. 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.

- N. 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:
 - a. Hazardous waste,
 - b. Restricted solid waste,



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- c. More than 10 tonnes of asbestos waste,
- d. More than 5 tonnes of waste tyres or more than 500 waste tyres.

O. The Act defines “waste” to include:

- a. 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
- b. any discarded, rejected, unwanted, surplus or abandoned substance, or
- c. 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
- d. 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
- e. 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.

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

Q. In this Notice, ***Suitably Qualified Entity*** means an individual or organisation which holds at least one of the following certifications:

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

Reasonable suspicion of a land pollution incident

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

- A. the waste imported to and deposited at the Premises, within the area in Attachment A, contains asbestos and is asbestos waste as defined in the Act;
- B. More than 10 tonnes of asbestos waste has been applied to land at the Premises in the form of mulch containing asbestos, meeting the definition of land pollution under the Act.

S. The EPA is directing TfNSW to take clean-up action because TfNSW is an owner or occupier of the Premises.

T. Under section 91(2) of the Act the EPA may, if it considers that it is necessary to do so because of an emergency, give the clean-up notice even if it is not the appropriate regulatory authority with respect to the pollution incident.

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DIRECTION TO TAKE CLEAN-UP ACTION

The Environment Protection Authority (the EPA) directs Transport for NSW to take the following clean-up action:

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 on the Premises.
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;
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 5PM, 1 March 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', with a horizontal line extending to the right.

Peter Bloem
Manager Regulatory Operations
(by Delegation)

INFORMATION ABOUT THIS CLEAN-UP NOTICE

- This notice is issued under section 92 of the Protection of the Environment Operations Act 1997.



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Cost recovery from the person who caused the incident

- If you comply with this clean-up notice but you are not the person who caused the pollution incident to which the notice relates, you have a right to go to court to recover your costs of complying with the notice from the person who caused 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 and extension of time to pay the fee or for the fee to be waived should be made in writing to the EPA. The application should set out clearly why you think your application should be granted.

Other costs

- The POEO 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 going to be required to pay these costs and expenses you will later be sent a separate notice called a “Notice Requiring Payment of Reasonable Costs and Expenses”).

Continuing obligation

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

Variation of this notice

- This notice may only be varied by subsequent notices issued by the EPA.