

Clean-Up Notice



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Attention: The Proper Officer

Notice Number 3507919
Reference Number REG-4690
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Clean-up Notice

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 Rozelle Parklands located at Lot 24 DP 1194941 (Premises). 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

- The EPA has responsibility for the administration and enforcement of the *Protection of the Environment Operations Act 1997* (Act).
- 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.
- 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 Rozelle Parklands have been created as part of the M4-M8 motorway tunnel link and Rozelle Interchange project, which are parts of the WestConnex.
- E. TfNSW contracted John Holland Pty Ltd (John Holland)/CPB Joint Venture (JHCPB) to build the Rozelle Interchange.
- F. John Holland holds Environment Protection Licence No. 21278 for construction of the Rozelle Interchange.
- G. TfNSW notified the EPA on 10 January 2024 that mulch used for landscaping at the Premises has been found to contain fragments of material that contain asbestos.
- H. TfNSW has closed the Premises until further notice as a precaution.
- I. TfNSW and John Holland 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.
- J. The EPA, TfNSW and JHCPB are investigating the source of the contaminated material.
- K. The EPA understands TfNSW are taking steps to ensure the Premises is safe.
- L. The EPA understands that TfNSW are working with JHCPB to determine if the mulch used at the Premises has been used at any other locations.
- M. The EPA considers it is an emergency, meaning it can issue a clean-up notice even if it is not the appropriate regulatory authority with respect to the pollution incident.

Environment Protection Law

- N. Section 91 of the Act enables the EPA to issue a Clean-up Notice in respect of a pollution incident.
 - O. 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.
 - P. 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:
 - a. 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
 - b. 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.

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

R. 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.

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

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

- a. 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.

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

I. 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.

DIRECTION TO TAKE CLEAN-UP ACTION

1. The EPA directs TfNSW to take the following clean-up action:
2. By **5pm on Thursday 29 February 2024**, remove all mulch that has been transported to and applied to land at the Premises and dispose of it at a facility that can lawfully receive it.
3. By **5pm on Thursday 7 March 2024**, provide the EPA with evidence that the mulch has been disposed of a facility that can lawfully receive it.

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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.

Peter Bloem
Manager Regulatory Operations
(by Delegation)

WARNINGS AND INFORMATION ABOUT THIS CLEAN-UP NOTICE

- This notice is issued under section 91 of the Act.
- It is an offence against the Act not to comply with a clean-up notice unless you have a reasonable excuse.
- 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 91A(2) of the Act, issue a supplementary clean-up 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, clean-up 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.

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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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.