

Clean-Up Notice



RANDWICK CITY COUNCIL
Trading as RANDWICK CITY COUNCIL
ABN 77 362 844 121
30 Frances Street
RANDWICK NSW 2031

Attention: Todd Clarke

Notice Number 1559630
File Number EF17/14159
Date 20-Dec-2017

Dear Mr Brownlee,

The Environment Protection Authority provided Randwick City Council with a draft Notice of Clean-Up Action for comment on 14 December 2017 in relation to the land application of waste at Lot 1 Section 3 in Deposited Plan 758649, Mistral Point, Marine Pde, Maroubra.

Comments were received from Randwick City Council on 19 December 2017.

The EPA considered your comments and has issued the Notice.

NOTICE OF CLEAN-UP ACTION

BACKGROUND

1. The Environment Protection Authority (**the EPA**) is responsible for the administration and enforcement of the *Protection of the Environment Operations Act 1997* (**the POEO Act**), including the processing, transport and disposal of waste.
2. Section 6 of the POEO Act provides that the EPA is the Appropriate Regulatory Authority (**ARA**) for activities carried on by a state or public authority.
3. Under section 91(1) of the POEO Act, the EPA as the ARA may direct a person that is reasonably suspected of causing or having caused a pollution incident to take clean-up action.
4. The POEO Act defines "waste" to include:
 - a. any substance (whether solid, liquid or gaseous) that is discharged, emitted or deposited in the environment in such volume, constituency or manner as to cause an alteration in the environment, or
 - b. any discarded, rejected, unwanted, surplus or abandoned substance, or

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- c. any otherwise discarded, rejected, unwanted, surplus or abandoned substance intended for sale or for recycling, processing, recovery or purification by a separate operation from that which produced the substance, or
- d. any processed, recycled, 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 by 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 POEO Act merely because it is or may be processed, recycled, re-used or recovered.

- 5. "Asbestos waste" is defined for the purposes of Schedule 1 of the POEO Act to mean any waste that contains asbestos. The EPA *Waste Classification Guidelines* provides that any waste that contains asbestos is "asbestos waste" and is classified as "special waste"
- 6. On 11 December 2017, EPA officers conducted an inspection (**the Inspection**) of Lot 1 of Section 3 in Deposited Plan 758649, Marine Parade, Maroubra NSW 2035 (**the Premises**). The specific area inspected by EPA officers is shown on Map 1 attached (**the Impacted Area**).
- 7. During the Inspection, EPA officers inspected the walking trails from the top of the Impacted Area to the bottom of the Impacted Area at the rock shelf. It appears that fill material was placed in the Impacted Area some time ago, and vegetation has grown over the fill material. It is likely that the fill material was contaminated and over time, contaminants from the fill have been liberated from the fill and have been transported downhill.
- 8. EPA officers observed suspected asbestos fragments along most of the walking trails in the Impacted Area; within some of the vegetation in the Impacted Area; and around and on top of the rock shelf. Some of the suspected asbestos fragments appeared quite weathered. Several larger pieces of suspected asbestos piping was also found in the Impacted Area. EPA officers also observed brick, concrete, tile and glass along the pathways and in some of the vegetation in the Impacted Area. Photos have been attached to this Notice for your information.
- 9. EPA officers obtained 19 samples of suspected asbestos fragments from the Impacted Area. The samples were analysed with the EPA's microPHAZIR and all returned a positive reading for chrysotile asbestos. The samples have been submitted for laboratory analysis.
- 10. The EPA notes that the Impacted Area at the Premises can be accessed easily by the public. The EPA is concerned about the presence of multiple asbestos fragments observed during the Inspection and its impact on human health and the environment.
- 11. The EPA reasonably suspects that the application of asbestos waste to land at the Premises has resulted in land pollution which has occurred or is occurring as it:
 - a) is causing or likely to cause the degradation of the land, and
 - b) has potential human health and environmental impacts caused by the asbestos waste.
- 12. Land pollution or pollution of land means 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, or
 - b) that is of a prescribed nature, description or class that does not comply with any standard prescribed in respect of that matter.

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13. The EPA reasonably suspects that a land pollution incident is occurring and has occurred at the Premises. The EPA reasonably suspects that land pollution has occurred from the application of asbestos waste to land.
14. The EPA understands that Council is the occupier of the Premises and has management control of the Premises.
15. The EPA requires Council to take the clean-up actions as set out below.

DIRECTION TO TAKE CLEAN-UP ACTION

The Environment Protection Authority (EPA) directs RANDWICK CITY COUNCIL to take the following clean-up action:

- A. **Immediately** secure the Impacted Area as identified in Map 1 at the Premises to prevent access to the Impacted Area by members of the public. Continue to prevent public access to the Impacted Area unless advised by the EPA.
- B. Do not import any material to the Premises.
- C. Do not export any material from the Premises, unless it has been classified in accordance with the EPA's *Waste Classification Guidelines*.
- D. By **5pm Friday 29 December 2017**, engage an occupational hygienist (that is registered with the Australian Institute of Occupational Hygienists Inc) to determine the extent of the asbestos contamination in the Impacted Area. Asbestos fragments on the surface of the Impacted Area
- E. By **5pm Friday 29 December 2017**, engage a suitably qualified expert to conduct a Waste Classification of the fill material that has been land applied in the Impacted Area at the Premises.
- F. By **5pm Wednesday 31 January 2018**, provide a copy of the Waste Classification of the fill material (as required above) to the EPA and advise the EPA as to Council's proposed actions in relation to the fill material and remediation of the Impacted Area.

FEE TO BE PAID

- You are required by law to pay a fee of \$535 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.

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A handwritten signature in black ink, appearing to read 'CF', with a long, flowing horizontal line extending to the right.

Celeste Forestal
Unit Head
Waste & Resource Recovery
(by Delegation)

INFORMATION ABOUT THIS CLEAN-UP NOTICE

- This notice is issued under section 91 of the Protection of the Environment Operations Act 1997.
- It is an offence against the Act not to comply with a clean-up notice unless you have a reasonable excuse.

Penalty for not complying with this notice

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

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.

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Other costs

- The Protection of the Environment Operations 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 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.

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MAP 1

