

Notice

Environmental Protection Act 1994

Direction Notice

This direction notice is issued by an authorised person pursuant to section 363B of the Environmental Protection Act 1994 (the Act).

Orica Australia Pty Ltd
Level 3, 1 Nicholson Street
EAST MELBOURNE VIC 3002

Your reference: CR78089

Our reference: CR78089, STAT1143

22 May 2017

Take notice: that under the *Environmental Protection Act 1994* (the Act) a direction notice is issued to Orica Australia Pty Ltd ACN 004 117 828 (you) by an authorised person under section 363B of the Act.

The direction notice is issued with respect to the activities of Orica Australia Pty Ltd ACN 004 117 828 at Fisherman's Landing caustic facility, Yarwun, on land described as Lot 502 on SP252988 and at the Gladstone Ports Corporation earthen drain.

A. Grounds

The direction notice is issued on the grounds that the authorised person reasonably believes that:

- you have contravened a prescribed provision, being section 440ZG of the Act: Depositing prescribed water contaminants in waters and related matters, which states, in part;

"440ZG Depositing prescribed water contaminants in waters and related matters

A person must not –

(a) unlawfully deposit a prescribed water contaminant –

- (i) in waters; or
 - (ii) in a roadside gutter or stormwater drainage; or
 - (iii) at another place, and in a way so that the contaminant could reasonably be expected to wash, blow, fall or otherwise move into waters, a roadside gutter or stormwater drainage."
- and
- it is likely that the contravention will be repeated if no action is taken to remedy the matter; and
- the matter relating to the contravention can be remedied and it is appropriate to give you an opportunity to remedy the matter.

The facts and circumstances forming the basis for these grounds are:

- On 4 May 2017, the Department of Environment and Heritage Protection (the department) issued a direction notice to you in relation to a release of caustic material in March 2017, and required certain works on site, and reporting to EHP.
- On 12 May 2017 you submitted to the department an application for a review of the decision to issue the direction notice. The application was made on three grounds:
 - **Ground 1** - Details included in the Notice regarding an ammonia spill on 23 September 2016 are not relevant to the grounds or steps required by the Notice;
 - **Ground 2** - Some facts in the Notice are incorrect; your example being that you disagree that 330 kilograms of concentrated ammonia was released to the drain;
 - **Ground 3** - The department should agree to some capability to amend the due dates in the Notice, where unavoidable technical issues prevent achievement of those compliance dates.
- I am a duly authorised person with delegation to undertake a review of original decisions pursuant to section 521 of the Act.
- I have not varied the Notice in relation to ground 1. The circumstances of the release on 26 September 2016, while not crucial to the requirements of the Notice, were a relevant consideration in the delegate's original decision.
- I have not varied the Notice in relation to ground 2. Insufficient information was provided to enable consideration of alleged errors, including the nature of your concern with the wording of the given example. The lack of information in this respect was not, however, sufficient to invalidate the application for review *in toto*.
- I have varied the Notice, herein, to reflect your request (ground 3) to enable final due dates to be altered where unavoidable technical issues arise.
- You hold Environmental Authority EPPR00872013 for ERA 50-(2) Bulk material handling, ERA 8-(1) Chemical storage >50t class 1 or 2 and ERA 8-(5) Chemical storage >200m3 liquids, and operate a caustic facility at Fisherman's Landing, Yarwun.
- On 23 September 2016, the department was notified by you that ammonia was released from your Fisherman's Landing flare vent. The ammonia gas mixed with knockdown water to form aqua ammonia.
- Due to the failure of a stormwater isolation valve approximately 330 kilograms of concentrated ammonia was released to the Gladstone Ports Corporation earthen drain (the earthen drain).
- Ammonia is a chemical and so it is a prescribed water contaminant under item 7, Schedule 9, *Environmental Protection Regulation 2008*.
- The earthen drain discharges into the Gladstone Harbour.
- As a result, an authorised person has formed the view that a prescribed water contaminant (namely the ammonia) has been deposited, or caused to move, to a roadside gutter or stormwater drainage.
- At approximately 11.30am on Thursday 30 March 2017 the department was verbally notified by you that as a result of ex-tropical cyclone Debbie a return pipe at your caustic facility at Fisherman's Landing was damaged, resulting in the release of sodium hydroxide to the surrounding area. The sodium hydroxide was released into the area outside of the bund that surrounds the caustic bladder. The released sodium hydroxide mixed with ponded rainwater and discharged into the earthen drain.

- Sodium hydroxide has a pH of >12 and so it is a prescribed water contaminant under item 7, Schedule 9, *Environmental Protection Regulation 2008*.
- The soil and vegetation in the drain has become contaminated with sodium hydroxide. The depth and extent of the contamination is unknown.
- In the event that more rain enters the earthen drain, it will mobilise the sodium hydroxide.
- The earthen drain discharges into the Gladstone Harbour.
- As a result, an authorised person has formed the view that a prescribed water contaminant (namely the sodium hydroxide) has been deposited, or caused to move, to a roadside gutter or stormwater drainage.
- You have no lawful authority to deposit prescribed water contaminants in a roadside gutter or stormwater drainage.
- Accordingly, the authorised person believes that you have contravened section 440ZG of the Act: Depositing prescribed water contaminants in waters on 23 September 2016 and 30 March 2017 and it is likely that the contravention will be repeated if no action is taken to remedy the matter.

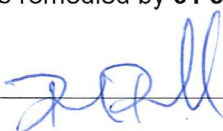
B. Reasonable steps

The authorised person considers that the following requirements are necessary to remedy the contravention of the prescribed provision:

1. By **10 May 2017** you must install and maintain appropriate temporary containment measures to prevent the release of contaminated water from the earthen drain to the Gladstone Harbour.
2. The temporary containment measures installed in accordance with requirement 1 must remain in place until you submit the report to the department in accordance with requirement 6 of this notice.
3. By **2 June 2017**, or such later time as agreed by the department in writing, you must treat and/or remove all contaminated material resulting from the release from the Orica caustic facility on 30 March 2017, from within the earthen drain and associated impacted areas. This may include the release of water within a pH range of 6.5 – 9 used in treatment to Gladstone Harbour.
4. If contaminated material is removed it must be transported to a site that has the authority to accept this material, or another site as approved by the department.
5. Upon completion of the mitigation works but no later than **9 June 2017**, or such later time as agreed by the department in writing, you must submit a report to the department summarising the activities taken to satisfy requirement 3 and an assessment of the effectiveness in ensuring the pH range of water that is likely to discharge from the earthen drain is between 6.5 and 9.
6. By **31 July 2017**, or such later time as agreed by the department in writing, you must submit to the department an assessment of the area of the drainage system between containment measures installed in accordance with requirement 1 and treated in accordance with requirement 3 which demonstrates that remediation has been effective so as to ensure that the pH range for water that is likely to discharge from the earthen drain is between 6.5 and 9.

Take notice:

- The contravention must be remedied by **31 July 2017**, or such later time as agreed by the department in writing.



- The requirements of the direction notice take effect immediately upon service of the notice.
- This notice remains in force until further notice from the department.

C. Reviews and appeals

The provisions regarding reviews of decisions and appeals are found in sections 519 to 539 of the Act.

A person, who is dissatisfied with certain decisions of the department, may be able to apply to have the department review that original decision.

Generally, a request to have a decision reviewed must be made:

- within 10 business days of the decision being notified to the person
- be supported by enough information to enable the department to decide the application for review
- be made using the application for review of an original decision form (EM709).¹

Where an application has been made for a decision to be reviewed, the applicant may also apply to the relevant court for a stay of the decision to secure the effectiveness of the review.

Once the original decision has been reviewed, a person who is dissatisfied with the review decision may be able to appeal against that decision to the relevant court within 22 business days after receiving notice of the review decision.

A person whose interests are or would be adversely affected by a decision of the department may be able to request a statement of reasons for a decision or a statutory order review under the *Judicial Review Act 1991*.

For further information about reviews and appeals see the information sheet - internal review and appeal to the Planning and Environment Court (EM1866). You may have other legal rights or obligations and should seek your own legal advice.

D. Penalties

Failing to comply with a direction notice is an offence unless the person has a reasonable excuse.

- The maximum penalty for an individual for wilfully contravening a direction notice is 1665 penalty units, totalling \$202,963.50.
- The maximum penalty for a corporation for wilfully contravening a direction notice is 8325 penalty units, totalling \$1,014,817.50.
- The maximum penalty for an individual contravening a direction notice is 600 penalty units, totalling \$73,140.
- The maximum penalty for a corporation contravening a direction notice is 3000 penalty units, totalling \$365,700.

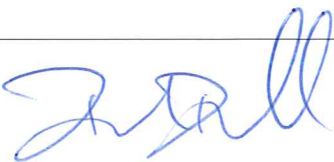
Section 2B of the *Penalties and Sentences Regulation 2005* prescribes the monetary value of a penalty unit.

The department may also consider alternative compliance or enforcement action in relation to the offences that are the subject of this notice.

¹ This is the publication number. The publication number can be used as a search term to find the latest version of a publication at <www.ehp.qld.gov.au>.

Direction Notice

Should you have any queries in relation to the notice, please contact Luke Davison, Senior Environmental Officer on telephone number 07 4971 6512 or email cwes_gladstone@ehp.qld.gov.au



Signature



Date

Enquiries:

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Department of Environment and Heritage
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Environmental Protection Act 1994



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