

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.

Orica Australia Pty Ltd (ACN 99 004 117 828)
Level 3, 1 Nicholson Street
EAST MELBOURNE VIC 3002

Your reference: CR78089

Our reference: STAT1243 (Varied)

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

The direction notice is issued in respect to the activities of Orica Australia Pty Ltd at ACN 004 117 828 Fishermans Landing caustic storage facility, Yarwun, on land described as Lot 502 on SP252988 (the premises).

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 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.*

- 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:

1. 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 storage facility at the premises.
2. At approximately 11.30am on Thursday 30 March 2017 the department was verbally notified that as a result of ex-tropical cyclone Debbie a return pipe at your caustic storage facility at the premises was damaged, resulting in the release of concentrated sodium hydroxide to the surrounding area (the Incident). 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.
3. Sodium hydroxide has a pH of >12 and so it is a prescribed water contaminant under item 7, Schedule 9, *Environmental Protection Regulation 2008*.
4. As a result, an authorised person formed the view that a prescribed water contaminant (namely sodium hydroxide) had been deposited, or caused to move, to a roadside gutter or stormwater drainage.
5. On 22 May 2017, 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 to be completed and reporting requirements to EHP.
6. On 3 August 2017, the department confirmed that all the requirements of the Direction Notice had been completed.
7. You notified the department in the July monthly compliance report that following approximately 30mm of rainfall at the premises on the night and early morning of 10 and 11 July 2017, water with an elevated pH was identified at the caustic storage facility. You stated that the most likely cause of the elevated pH is residual sodium hydroxide, from the 30 March 2017 Incident, within the rock armouring of the geotank bladder bund wall.
8. Between 25 and 29 September 2017 you conducted remediation works to treat the residual contamination on the rock armouring of the geotank bladder bund wall.
9. On 27 October 2017 you applied for a Temporary Emissions Licence (TEL), in the supporting information you stated that as a result of a rainfall event on 2 October 2017, you became aware of a likely need for further remediation work. You stated that the most likely cause of the elevated pH following this rainfall event was residual sodium hydroxide from within the rock armouring on the geotank bladder wall.
10. On 8 November 2017 authorised persons inspected the caustic storage facility at the premises and considered that the containment measures currently in place were inadequate to prevent a release of contaminated water off site in the event of heavy rainfall. Authorised persons also considered that a temporary collection point at the base of the geotank bladder and containment measures at the fence line, were not installed to prevent a release offsite and may not be adequate for this purpose. Should more heavy rain fall at the premises it's likely that sodium hydroxide will mobilise to the fence line and has the potential to enter the earthen drain.
11. As stated in the October 2017 monthly compliance report, on 18 October 2017 following heavy rainfall you discovered that water with an elevated pH was releasing from the Fishermans Landing caustic storage facility into the earthen drain.
12. The earthen drain discharges into Gladstone Harbour.

13. You have no lawful authority to deposit a prescribed water contaminant at another place and in a way that the contaminant could reasonably be expected to wash, blow, fall or otherwise move into water, a roadside gutter or stormwater drainage, except as permitted by your Environmental Authority.
14. As a result, an authorised person has formed the view that a prescribed water contaminant (namely the sodium hydroxide) has been unlawfully deposited at a place, and in a way so that the contaminant could reasonably be expected to wash or otherwise move into waters, a roadside gutter or stormwater drainage.
15. Accordingly, the authorised person considers that you have contravened section 440ZG of the Act: Depositing prescribed water contaminants in waters on 30 March 2017.
16. Given the inadequate containment measures at the premises, the authorised person considers that it is likely that the contravention will continue and/or be repeated if no act is taken to remedy the matter.

B. Reasonable steps

The authorised person considers that the following reasonable steps are necessary to avoid further contravention of the prescribed provision:

1. By 8 December 2017, you must identify areas contaminated with caustic material at the premises as a result of the 30 March 2017 incident.
2. By 15 December 2017 (or a later date agreed to by the department), you must submit a remediation plan to the department which includes the following:
 - a) Identifies areas requiring remediation; and
 - b) Identifies short and long term remediation actions and measures that will be implemented to rectify the impacts, considering the structural and geotechnical constraints.
3. By 28 February 2018 (or a later date agreed to by the department), you must implement the actions and measures in the remediation plan. If any contaminated material is proposed to be removed, you must ensure it is transported to a site that has the authority to accept the contaminated material.
4. By 28 February 2018 (or a later date as agreed to by the department), you must submit a report to the department which includes the following:
 - a) Summary of the measures and timelines for implementation; and
 - b) Assessment of the activities implemented in accordance with the remediation plan referred to in requirements 3 and 4 which demonstrates that all areas contaminated with caustic at the premises as a result of the incident on 30 March 2017 have been remediated.

Take notice:

- The contravention must be remedied by 28 February 2018.
- 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 \$210,039.75
- The maximum penalty for a corporation for wilfully contravening a direction notice is 8325 penalty units, totalling \$1,050,198.75.
- The maximum penalty for an individual contravening a direction notice is 600 penalty units, totalling \$75,690.
- The maximum penalty for a corporation contravening a direction notice is 3000 penalty units, totalling \$378,450.

Section 3 of the *Penalties and Sentences Regulation 2015* 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>.

Should you have any queries in relation to the notice, please contact Tracey Wilson, Acting Compliance Delivery Manager on telephone number 07 4971 6512 or email cwes_gladstone@ehp.qld.gov.au.



Signature

8 January 2018

Date

Tony Baker

Program (Manager Compliance)

Department of Environment and Science

Environmental Protection Act 1994

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