



Section 73A
Environmental Protection Act 1986.

PREVENTION NOTICE

Reference No: 202305(2)

Persons to whom this Prevention Notice is issued:

Derby Industries Pty Ltd ACN 009 033 612

6 Short Street

FREMANTLE WA 6160

In it's capacity as occupier of the **Premises** and holder of Licence L6932/1988/11 (**Licence Holder**).

Premises to which this notice relates (the Premises):

The Premises, the subject of this section 73A *Environmental Protection Act 1986* (WA) (the **Act**) Prevention Notice (**Notice**), is situated on:

CM Farms - Nambeelup – 230 Gull Road NAMBEELUP (the **Premises**).

Reasons for which this Notice is issued:

This Notice is issued because I reasonably suspect on the following grounds that the **Licence Holder** has failed to comply with a condition of Licence L6932/1988/11 and that a condition of pollution is likely to arise:

- a) On 26 July 2021, the Department of Water and Environmental Regulation (the department) was notified by an environmental consultant (the consultant), engaged directly or indirectly by Derby Industries, that desludging of ponds (described as ponds 3 and 4) had occurred.
- b) On 11 August 2021, department officers conducted an inspection of the Premises and identified that the desludging waste material had been placed on paddocks to the north of the wastewater pond area, and not removed or stored in accordance with condition 16 of Licence L6932/1988/11.
- c) On 6 October 2022, the department received information from the consultant confirming that the waste material contained Per-and polyfluoroalkyl substances (PFAS), specifically PFOS concentrations which exceed the ecological indirect exposure criteria for soil specified in the PFAS National Environment Management Plan 2.0 (the PFAS NEMP) of 0.01 mg/kg, with average concentrations of 0.029 mg/kg (reported as 29 µg/kg,) in the material.¹

¹ PFAS NEMP 2.0, s 8.6.1 pp 36.

- d) Information received from the consultant on 6 October 2022, further indicated that analysis of leachate results for the waste material confirmed the presence of PFOS concentrations exceeding the 99% species protection level for freshwater.
- e) PFAS are a group of synthetic chemicals which are persistent and bio-accumulate in the environment. PFAS is highly soluble and highly mobile and has the potential to cause significant and long-term impacts to the environment including to aquatic ecosystems and other environmental values.
- f) Further information provided by the consultant on 11 October 2022, confirmed that, in addition to PFAS, the waste material contained elevated levels of nutrients, with leachate results showing elevated levels of total phosphorous (2.3 mg/L), total nitrogen (18 mg/kg) and Ammonia as N (11 mg/kg).
- g) The **Premises** where the waste material is stored is within the Nambeelup Brook catchment area.
- h) Nambeelup Brook is directly connected to Black Lake, Geogrup Lake, and the Serpentine Rivers, which discharge into the Peel Inlet.
- i) The **Premises** is subject to the Environmental Protection (Peel Inlet – Harvey Estuary) Policy 1992.
- j) I reasonably suspect that PFAS is likely to enter groundwater and has the potential to migrate from the **Premises** to waterbodies and/or waterways within the catchment, giving rise to potential pollution.

I am satisfied that because:

Derby Industries Pty Ltd is the company who has directly or indirectly placed the waste material onto paddocks at the Premises and are the appropriate person(s) to give this Notice to.

Requirements of this Notice:

Terms used in this Notice have the meaning defined in Appendix 1 to this Notice.

In accordance with section 73A(2) of the **Act**, this Notice is subject to the following requirements upon the person to whom the Notice is given.

Requirements

1. Within 30 days of the date of issue of this Notice (202305(2)), provide the issuing Inspector or Authorised Person with a documented **Disposal Plan** for the removal of the waste material from the **Premises**, for approval.
2. The **Disposal Plan** specified in requirement 1 is to be prepared by a **suitably qualified and experienced** environmental consultant.
3. The **Disposal Plan** specified in requirement 1 is to include:
 - 3.1. details of waste characterisation in accordance with the department guideline '*Landfill waste classification and waste definitions*' (December 2019).
 - 3.2. details of the controlled waste transport carrier including Licence details, and details of the proposed authorised waste facility that will receive the waste for disposal.
 - 3.3. details of the proposed schedule for the removal of the waste including expected timeframes for completion of removal and disposal of waste from the **Premises**.

4. Analysis of waste samples collected for the purposes of waste characterisation must be performed by a NATA accredited laboratory.
5. Within 60 days of the date of written notification of approval of the Disposal Plan by the issuing Inspector or Authorised Person, the waste material must be removed from the **Premises** in accordance with the approved **Disposal Plan**.
6. The issuing Inspector or Authorised Person must be notified by email to compliance@dwer.wa.gov.au no less than two (2) business days prior to the commencement of the waste removal from the **Premises**.
7. The issuing Inspector or Authorised Person must be notified by email to compliance@dwer.wa.gov.au no less than two (2) business days after the completion of the waste removal from the **Premises**.
8. Within 14 days of the removal of the waste material in accordance with the approved **Disposal Plan**, provide the issuing Inspector or Authorised Person via email to compliance@dwer.wa.gov.au a report prepared by a **suitably qualified and experienced environmental consultant**, documenting the removal process, and verifying compliance with the approved **Disposal Plan**. This report must also include:
 - 8.1. the times and dates that the waste material was removed,
 - 8.2. a copy of all waste characterisation sampling results,
 - 8.3. the name and licence number of the company transporting the waste, and
 - 8.4. a copy of all associated Certificates of disposal including weigh-bridge dockets.
9. The requirements and timeframes stipulated in this Notice may be amended by an Inspector or Authorised Person in writing, on application by Derby Industry Pty Ltd or their authorised representative, with reasonable justification.

Duration

This Notice subsists until it is cancelled by written notice from an Inspector or Authorised Person in writing.



Paul Newell FRACI CCHEM

Inspector and Authorised Person
under section 87(1) and 88 of the
Environmental Protection Act 1986

8 August 2023

Important Information:

A PERSON WHO IS BOUND BY THIS PREVENTION NOTICE AND WHO DOES NOT COMPLY WITH THIS NOTICE COMMITS AN OFFENCE UNDER THE *ENVIRONMENTAL PROTECTION ACT 1986*.

Note that under section 118 of the Act that each person who is a director or who is concerned in the management of the body corporate may be taken to have also committed the same offence.

Section 103 of the Act provides that:

- a person who is aggrieved by a requirement contained in this Notice may within 21 days of being given this notice lodge with the Minister for Environment an appeal in writing setting out the grounds of that appeal; and
- any other person who disagrees with a requirement contained in this Notice may within 21 days of the making of that requirement lodge with the Minister for Environment an appeal in writing setting out the grounds of that appeal.

PENDING THE DETERMINATION OF AN APPEAL REFERRED TO ABOVE, THE RELEVANT REQUIREMENTS CONTAINED IN THIS NOTICE CONTINUE TO HAVE EFFECT.

Appendix 1: Definitions

In this Notice, unless the contrary intention appears –

‘Act’ means the *Environmental Protection Act 1986* (WA).

‘Authorised person’ means a person or member of a class of persons appointed under section 87(1) of the *Environmental Protection Act 1986*

‘Days’ means all days including weekends unless otherwise defined in the Notice

‘Department’ means the Department of Water and Environmental Regulation

‘Disposal Plan’ means a documented plan for the removal of the waste material specified in the Notice from the Premises to an appropriately Licenced waste disposal facility authorised under Part V of the *Environmental Protection Act 1986* to receive PFAS containing solid waste

‘Inspector’ means a person appointed to be an inspector under section 88 of the *Environmental Protection Act 1986*

‘Inspector’ for the purposes of correspondence means;

Senior Manager – Environmental Compliance
Department of Water and Environmental Regulation
Locked Bag 10
JOONDALUP DC WA 6919
Telephone: (08) 6364 7000
Fax: (08) 6364 7001
Email: compliance@dwer.wa.gov.au

‘Licence Holder’ means Derby Industries Pty Ltd trading as CM Farms

‘NATA’ means National Association of Testing Authorities

‘NEPM’ means the *National Environment Protection (Assessment of Site Contamination) Measure 1999* (Cth) available at <https://www.legislation.gov.au/Details/F2013C00288>

‘PFAS’ means perfluoroalkyl and polyfluoroalkyl substances

‘PFAS NEMP’ means the PFAS National Environmental Management Plan Version 2.0, dated January 2020, published by the National Chemicals Working Group of the Heads of EPAs Australia and New Zealand

‘Premises’ refers to the Premises to which this Notice applies, as specified at the front of this Notice

‘Suitably qualified and experienced’ has the definition provided in Schedule B9 of the NEPM