

# ***Contaminated Sites Act 2003***

## **Section 46**

### **INVESTIGATION NOTICE AMENDMENT**

**This notice is amendment 1 to Investigation Notice Reference No:  
DWERDG437/18**

#### **PERSON TO WHOM THIS NOTICE IS GIVEN:**

Joseph Andrew Avila and Naline Ruth Avila of 945 Abernethy Road, Oakford, being the registered proprietors of Lot 36 Abernethy Road, Oakford WA 6121 (**Owners**).

#### **SITE TO WHICH THIS NOTICE RELATES**

The entirety of Lot 36 Abernethy Road, Oakford in Western Australia, being more particularly described as Lot 36 on Diagram 66394 as shown on certificate of title 1666/695 (**Site**).

#### **AMENDMENT**

1. **Clause 1.1** of the Investigation Notice is amended by the deletion of the text shown in strikethrough below and the insertion of the bold text shown in underline below:

1.1 Within 44 **28** days of ~~this Notice~~ **the Commencement Date**, notify the CEO of the Environmental Consultant the Owners propose to engage to carry out the actions required by clause 1.2, for approval by the CEO.

2. A new **clause 1.1A** and **1.1B** is inserted in the Investigation Notice as follows:

**1.1A** If the CEO gives notice in writing that the Environmental Consultant proposed under clause 1.1 is not approved, the Owners are to propose another Environmental Consultant for the purposes of clause 1.1 within 14 days of the date of the CEO's written notice.

**1.1B** If the CEO gives notice in writing that the Environmental Consultant proposed under clause 1.1A is not approved, that notice is to be accompanied by a list of acceptable Environmental Consultants, and the Owners are to engage an Environmental Consultant from the list within 14 days of the date of the CEO's written notice to carry out the work described in clause 1.2.

3. **Clause 1.2** of the Investigation Notice is amended to delete clause 1.2(i).
4. All remaining references in the Investigation Notice to the '**Amended Galt SMP**' are deleted and replaced with '**Galt SMP**'.
5. The first line of **clause 2.1** of the Investigation Notice is amended by the deletion of the text shown in strikethrough below and the insertion of the bold text shown in underline below:

2.1 Within 24 **35** days of ~~this Notice~~ **the Commencement Date**, engage an Auditor to:

6. A new clause 2.1A is inserted in the Investigation Notice as follows:

2.1A Upon engagement of the Auditor pursuant to clause 3.1, the Owners are to provide a copy of Schedule 2 and Appendix 3 to this notice to the Auditor.

7. Clause 5.1 is amended to delete item ii(a) and insert the following items:

ii(a) who will, once satisfied that the Environmental Consultant proposed to be engaged under clause 1.1 or 1.1A meets the definition provided in Appendix 1, approve, in writing, that Environmental Consultant for the purposes of clause 1; and

ii(aa) who will require the engagement of an Environmental Consultant for the purposes of clause 1.1B

8. Appendix 1 Definitions of the Investigation Notice is amended to insert the following definition in alphabetical order:

**“Commencement Date”** means the day on which judgement is delivered in Supreme Court Proceedings CIV 1645 of 2020 (**the proceedings**), or the day on which the proceedings are otherwise withdrawn, discontinued or dismissed.

9. Appendix 3 is deleted and the following Appendix is inserted:

### **APPENDIX 3**

#### **MATTERS FOR CONSIDERATION OF AUDITOR**

Without otherwise limiting the scope of matters, the Auditor engaged by the Owners should have regard for the following matters:

1. The methods for PFAS sampling in the SMP must meet the standards specified in the PFAS NEMP.
  - a. The SMP is to provide specific details as to how PFAS sampling will be carried out to avoid cross-contamination.
  - b. Detergent is not to be used during PFAS sampling.
  - c. A frequency of one in 10 quality control samples is to be used for PFAS sampling.
2. The assessment levels in the SMP must meet standards the Auditor considers appropriate.
3. The SMP must require laboratory analysis of substances the Auditor considers appropriate.
4. Ground water sampling is also to include bore BH101D, as shown in Schedule 2.



**Jason Moynihan**

EXECUTIVE DIRECTOR, SCIENCE AND PLANNING  
DEPARTMENT OF WATER AND ENVIRONMENTAL REGULATION

Delegated Officer under section 91  
of the *Contaminated Sites Act 2003*

05 August 2022

**IMPORTANT NOTES: APPEALS**

Under section 52 of the *Contaminated Sites Act 2003* a person on whom an investigation notice is binding may appeal against a requirement of the notice.

In accordance with section 79 of the *Contaminated Sites Act 2003* any appeal is to be lodged with the Contaminated Sites Committee in writing, setting out the grounds and facts on which the appellant relies, within 21 days of being given this notice, or within 21 days of being bound by this notice.

**OFF SITE ACCESS**

If, in order to comply with a notice, a person will need to enter land of which the person is not an occupier, the notice may require the person to make reasonable attempts to obtain, within the time specified in the notice, the permission of the occupier or owner, as is relevant, to enter the land to take action to comply with the requirements of the notice.

If a person on whom a notice, which has a requirement to enter land of which the person is not an occupier, is binding fails to obtain the permission of the occupier or owner after making reasonable attempts to do so within the time specified in the notice, the person is to notify the CEO of that failure within 3 days after the latest day on which the person was required to obtain the permission.

**AUDITOR**

In accordance with section 44 of the *Contaminated Sites Act 2003* an accredited contaminated sites auditor must be appointed to report on actions taken to comply with the requirements of this notice.

**SECTION 43. Notice to be complied with**

(1) A person on whom a notice is binding must ensure that the requirements of the notice are complied with within such time as is specified in the notice.

Penalty: \$500 000, and a daily penalty of \$100 000.