

Occupational Health and Safety Act 2004 PROHIBITION NOTICE



This notice is issued under section 112 of the Occupational Health and Safety Act 2004 to the person (which can mean a body corporate) who has or may be reasonably presumed to have control over the prohibited activity. This notice prohibits an activity which involves or will involve an immediate risk to the health and safety of any person. The activity remains prohibited until an inspector certifies in writing that the risk which gives rise to the notice is removed. Section 114(2) places obligations on the person to whom a prohibition notice is issued. If that person is an employee, he or she must give a copy of the notice to the employer. Otherwise, and for an employer given a copy of a notice issued to an employee, the person must:

- bring the notice to the attention of all persons whose work is affected by the notice;
- give a copy to each health and safety representative who represents employees whose work is affected by the notice; and
- display a copy of the notice in a prominent place at or near the workplace or part of the workplace where the affected work is being performed.

Issued by: **Marrisa Pamela Ross**, an Inspector appointed under the Occupational Health and Safety Act 2004.

Signature: _____

Date of issue: **21/01/2012**

Notice issued to: **AUSTRALIAN POWER PARTNERS B V & OTHERS**

Tenement No: **MIN5004**

**BRODBRIBB ROAD
HAZELWOOD 3840**

ABN: **40024789557**

Notice given to: **LUB Dietvorst**

Service method: **Left for a person**

WORKPLACE ACTIVITY PROHIBITED: The workplace activity prohibited is access onto the D11 Dredger.

The reasons for the Inspector's belief that the activity involves an IMMEDIATE risk to health and safety:

I believe the activity described above involves an immediate risk to the health and safety of persons because the health and safety of employees could be affected if access onto the D11 Dredger continues, as there is a risk of serious or fatal injuries occurring to any person that enters the area in which a fire occurred. The structural integrity of the areas involved in the fire is unknown and may not be able to sustain a persons weight.

Directions as to the measures to be taken to remedy the IMMEDIATE risk:

AUSTRALIAN POWER PARTNERS B V & OTHERS must ensure that access onto the D11 Dredger by any person, other than for rendering the D11 Dredger safe - such as attending to electrical work, conducting firefighting and inspection of the structural integrity of the D11 Dredger - is prohibited, until an initial report indicating the structural integrity of the fire affected areas of the D11 Dredger has been obtained.

The report is to be provided by an independent Structural Engineer and must include information on the condition of all of the structures affected by the fire and actions that will need to be taken to dismantle the D11 Dredger.

A copy of the initial report and associated action plan is to be provided to WorkSafe Victoria for review, in order to achieve remedy of the immediate risk.

Provision of this Act and / or the Regulation(s) that is being contravened: I reasonably believe the activity involves a contravention of Section 21(1) and 21(2)(a) of the Occupational Health and Safety Act 2004

Reason(s) for the belief that the activity involves a contravention or likely contravention: There is a failure to provide a safe system of work associated with access onto the D11 Dredger as the structural integrity of the areas involved in the fire is unknown and may not be able to sustain a persons weight. A person exposed to the affected areas may sustain serious or fatal injuries if the areas accessed collapse whilst the person is located on them.

This notice remains in force until an inspector certifies in writing that the matters which give or will give rise to the IMMEDIATE risk have been remedied.

If you believe you have remedied the IMMEDIATE risk identified above, contact WorkSafe to arrange for an inspector to attend your workplace and review the matter.

Remedying the IMMEDIATE risk may also remedy the contravention, or likely contravention, identified above. However, remedying the IMMEDIATE risk may not also remedy the identified contravention, or likely contravention.

If, when certifying that the IMMEDIATE risk has been remedied, the inspector believes that the measures taken will not also remedy the contravention or likely contravention identified above, an improvement notice(s) may be issued to the relevant dutyholder(s).

The following provides additional guidance for remedying the contravention or likely contravention: The employer must ensure that no work is conducted on the D11 Dredger is performed until an initial report indicating the structural integrity of the fire affected areas of the D11 Dredger has been obtained.

The report is to be provided by an independent Structural Engineer and must include information on the condition of all of the structures affected by the fire and actions that will need to be taken to dismantle the D11 Dredger.

A copy of the initial report and associated action plan is to be provided to WorkSafe Victoria for review, in order to achieve remedy of the contravention.

See Review and Offence provisions below

Internal Review

As the person to whom this prohibition notice has been issued, you or another eligible person can apply to WorkSafe Victoria (WorkSafe) for internal review of this reviewable decision. Your application must be in the approved form and must be received by WorkSafe's Internal Review Unit within 14 days after the day on which the decision first came to your notice or came to the eligible person's notice. WorkSafe may however allow a longer period of time within which the application has to be lodged in appropriate cases. The applicant may also request a stay of the operation of the reviewable decision pending the outcome of the internal review. The request for a stay must accompany the application for internal review. WorkSafe must make a decision to grant a stay with or without conditions or not to grant a stay and communicate that decision within 24 hours of receipt of the request for a stay. If no decision is made, WorkSafe is considered to have granted a stay. If no request for a stay is made the operation of this prohibition notice remains in force. The application for internal review must be made to the Internal Review Unit, WorkSafe Victoria, Ground Floor, 222 Exhibition Street, Melbourne 3000. An Inspector must not give written certification that the activity or matters to which the notice relates have been remedied whilst there is an internal review pending.

You can contact the Internal Review Unit on telephone (03) 8863 5450, fax (03) 8863 5451 or by email at internalreviewunit@worksafe.vic.gov.au

If you have lodged an application for internal review and you do not receive a decision within the required time frame (which is taken to be a decision to affirm the reviewable decision) or you receive a decision that you are not happy with you can apply to Victorian Civil and Administrative Tribunal for external review within 14 days of the date the decision or non-decision came to the attention of the applicant. Applicants seeking external review must be an eligible person.

Offence

A person to whom a prohibition notice is issued and who does not comply with the prohibition notice shall be guilty of an indictable offence against the Act. In the case of a natural person, the indictable offence carries a penalty of not more than \$61,070. In the case of a body corporate, the indictable offence carries a penalty of not more than \$306,350.

The issue, variation or cancellation of this notice does not affect any proceedings for an offence against this Act or the regulations in connection with any matter in respect of which the notice was issued.

COMPLIANCE WITH THIS NOTICE DOES NOT indicate that the person to whom it is issued complies with all health and safety requirements, **NOR** does it effect the continuing obligation to ensure workplace health and safety.

