

# NOM19/17 TOXIC SITE IN FAWKNER (D17/109333)

Cr Sue Bolton

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## 1. Background

From 1957-1981, Nufarm had a factory on McBryde Street, Fawkner which manufactured a range of chemicals including various Dioxins; DDT; Toluline-based based emulsifiable concentrate; Phenoxyacetic acid herbicide; 2,4-D; 2,4,5-T; Esters; Dichlorophenol and Trichlorophenol; Arsenic based sheep dip; Benzene off shoots. The Dioxin products were commonly known as Agent Orange, Agent Red, Agent Blue, Agent Yellow etcetera. Agent Orange was used by American troops during the Vietnam War, defoliating large areas of forest in Vietnam. The chemicals in Agent Orange still cause birth defects in Vietnam today, as well as causing terrible illnesses in Vietnam veterans from the participating countries. All of these chemical substances are highly toxic, highly carcinogenic and heavy traces of them were found on the site after Nufarm demolished its factory and left the site.

During the time of operation of the factory, a cancer cluster is said to have existed in the area of McBryde Street, Percy Street and Bruce Street.

At some point after the factory closed down, the site was subdivided into 100 and 102 McBryde Street. Planning enforcement investigations have revealed that illegal building activity has occurred on both sites. Separately, it is understood that an excavator driver fell ill when undertaking works on the site.

Officer's comments:

In 2013 planning enforcement officers investigated building work at 100 McBryde Street, Fawkner. The investigation was concluded when a retrospective planning permit MPS/2013/812 was issued on 27 May 2014 for the 'use of land as a store and buildings and works to construct a shed'. The assessment of this application noted:

*A previous Statement of Environmental Audit, prepared 30 May 1995, identified the land as potentially contaminated and required remedial action to ensure the land is suitable for future uses. This included maintaining a clay capping across the entire site. A review of the works comprising this application and compliance with the conditions of the audit was prepared by Compass Environmental, dated 5 September 2013. This review indicated that the works have not compromised the statement conditions except for condition 4 which requires details of any works be submitted to the local planning authority. The applicant is seeking to rectify this as part of this retrospective planning application.*

*Considering the comments provided by Compass Environmental, and the submission of the current planning application, the current proposal satisfies the requirements of the Environmental Audit at this point in time.*

## 2. Policy Context

Officer's comments:

The environmental audit system has operated in Victoria since 1989. The *Environment Protection Act 1970* (the 'Act') provides for the appointment by the Environment Protection Authority (EPA Victoria) of environmental auditors who conduct independent, environmental audits.

Environmental audit, reports are prepared by EPA-appointed environmental auditors.

A certificate of Environmental Audit indicates that the auditor is of the opinion that the site is suitable for any beneficial uses defined in the Act, whilst a statement indicates that there is some restriction on the use of the site.

Any individual or organisation may engage environment auditors, to undertake environmental audits. The EPA administers the environment audit system and ensure its ongoing integrity by assessing auditor's applications and ensuring audits are independent and are conducted with regard to guidelines issued by EPA.

The EPA identifies contaminated land in a number of different ways, including:

- Priority sites register which are sites for which EPA has issued a cleanup notice pursuant to section 62A or a pollution abatement notice pursuant to section 31A or 31B (relevant to land and/or groundwater) of the Environment Protection Act 1970.
- Groundwater quality restricted use zone which seeks to retain information about the condition of groundwater and to ensure such information is made available to those who may be interested in using groundwater.
- A register of Environmental Audits issued within Victoria, which can be accessed via the EPA's website:

[https://portal.epa.vic.gov.au/irj/portal/anonymous?NavigationTarget=ROLES://portal/content/epa\\_content/epa\\_roles/epa.vic.gov.au.anonrole/epa.vic.gov.au.searchanon&trans\\_type=Z010](https://portal.epa.vic.gov.au/irj/portal/anonymous?NavigationTarget=ROLES://portal/content/epa_content/epa_roles/epa.vic.gov.au.anonrole/epa.vic.gov.au.searchanon&trans_type=Z010)

A search of the EPA website from the above link confirms that an EPA Clean Up Notice was issued on 20 June 1990 which required the assessment of the site at 100,102 McBryde Street to determine the type, extent and quantity of contaminants presents.

A second Clean Up Notice to Nufarm Limited on 20 November 1991 specified (Section 12) that a program to clean up the site located at 100-102 McBryde Street, Fawkner be developed. A report which described proposed demolition and clean up procedures was submitted to the EPA in June 1994. This resulted in the issuing of a new Clean Up Notice on 23 September 1994 which required cleanup of the premises in accordance with the submitted cleanup plan dated June 1994 (Direct Interactive Remediation Technology 1994). This notice also required Nufarm Limited to obtain either a Certificate or Statement from an EPA approved Auditor.

On 30 May 1995 a Statement of Environmental Audit (the 'Audit') was issued for the land known as 100-102 McBryde Street, Fawkner. This audit relates to the light industrial zoning of the land and includes a condition:

*... is conditionally acceptable for uses confirming with its present industrial zoning (in accordance with Planning Certificate Number 312021, where the land is included in a Light Industrial (Broadmeads) Zone and abuts on a road proposed main).*

*The conditions are as follows:*

- (1) *The thickness or function of the clay capping defined in Figure 3 of this Audit Report be maintained.*

The recent 2017 Government response to the independent inquiry into the Environment Protection Authority (the 'Inquiry') recognised that there is a need to improve access to information regarding contamination. It noted that the Government does support recommendations 14.1 and 14.2 of the Inquiry which recommend:

*The Department of Environment, Land, Water and Planning develop a comprehensive statewide database of sites that pose a high risk to the community because of their past use, which should link to other relevant government data sources including information held by the EPA.*

*Integrate and strengthen planning and environmental regulation of legacy contamination, through a reform process led by the Department of Environment, Land, Water and Planning to provide a more consistent, risk-based approach to risk screening, assessment and remediation requirements and ongoing compliance mechanisms.*

### **3. Financial Implications**

There are no financial implications associated with drafting letters to the EPA and Minister for Planning.

### **4. Resources Implications**

The drafting of letters to the EPA and Minister for Planning can be accommodated within existing staff resources.

As Council is not responsible for the management of toxic sites it is not recommended that Council publish toxic sites on its website but rather it provides a link the relevant EPA website details.

## **Motion**

Council resolves to:

1. Write to the EPA requesting an urgent EPA-initiated independent environmental audit of the contaminated sites at 102 and 100 McBryde Street, Fawkner which includes testing the integrity of the clay cap.
2. Write to the State Planning Minister requesting improved public access to a comprehensive list of toxic sites and the nature of their toxicity and improved practices for managing toxic sites to ensure that development which could be harmful to residents and workers' health, not be conducted on these sites.
3. Provide a link to the relevant EPA website in relation toxic sites as the relevant authority when this becomes available, and request that the EPA add 100 and 102 McBryde Street, Fawkner to its list of contaminated sites.