

Assessment Report

201810134 – Enviro Waste Services Limited – [s 9(2)

[s 9(2)(b)(ii)], [s 9(2)(ba)(i)]

(b)(ii)]

Key information

Incident date	1 November 2022
Triage date	8 November 2022
Assessment date	4 April 2023
Incident officer	Isabella Serci
Assessment team	Isabella Serci

Relevant consent

1. On 12 September 2019, Enviro Waste Services Limited (**Enviro Waste**) was granted consent to acquire approximately 275.32 hectares of non-urban land located at 587 Ridge Road and Beaver Road, Pokeno, South Auckland, through the sensitive land pathway.¹
2. Enviro Waste is one of the largest waste collection and disposal businesses in New Zealand offering waste-related services to industry, councils, and the public via collection services, one long-life landfill and transfer stations throughout New Zealand.

Person/company concerned

3. Enviro Waste is an overseas person under the Act as it is owned by foreign companies, predominantly in Hong Kong.
4. **Individuals with control (IWC) /Directors:** Christopher Aughton (NZ citizen), Andrew John Hunter (UK citizen), Hing Lam Kam (Canadian citizen), Duncan Nicholas Macrae (UK citizen), Richard Clive Pearson (NZ citizen) and Pak Chung Eddy Tsang (Australian citizen).

Brief summary of Incident as alleged

The Incident

5. Enviro Waste operates a power and resource recovery centre for waste management at the Hampton Downs site in the North Waikato region (**Hampton Downs**).
6. On 16 March 2020, an Enviro Waste employee was killed while working at the Hampton Downs Site. The employee (who had exited his vehicle at the site) was crushed between his stationary vehicle and a reversing loader truck operated by another employee. Following an investigation by New Zealand Police, the driver of the loader truck was convicted of the criminal offence of careless driving causing death.

¹ Consent 201810134 – notice of decision dated 12 September 2019:
<https://objective.linz.govt.nz/documents/A4161211>

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Enforceable undertaking

7. WorkSafe investigated the Incident and charged Enviro Waste with one contravention under section 36(1)(a), 48(1) and (2)(c), of the Health and Safety at Work Act 2015 (**Health and Safety Act**) before accepting Enviro Waste's Enforceable Undertaking on 6 September 2022. No proceedings were pursued by WorkSafe in relation to the charges.²
8. Enviro Waste acknowledges that "Worksafe alleges a contravention occurred",³ and details the allegations set out in WorkSafe's charging document in the Enforceable Undertaking document.⁴
9. Enviro Wastes further details its commitments under the Enforceable Undertaking, which include:
 - a total of \$160,675 spent on rectifications to the workplace and work practices at the Hampton Downs site.
 - offer of amends of \$99,410 upon execution of this Enforceable Undertaking to bring the total offer of amends to the victim's widow of \$161,973.
 - implementation of new procedures and processes to ensure the ongoing effective management of risks to health and safety in the future conduct of the business and this enforceable undertaking, including initiatives that will deliver benefits for the wider industry.

OIO assessment

10. We became aware of this Incident through monitoring and media scanning after WorkSafe and the media reported on the Enforceable Undertaking between Enviro Waste and Worksafe. At triage phase, the Screening Group asked the Assessment Team to issue a PEL letter requesting that Enviro Waste explain:
 - (a) Why the OIO was not notified of the charges and the Enforceable Undertaking.
 - (b) any progress made by Enviro Waste to date towards meeting the terms of the Enforceable Undertaking.
11. Subsequently, [s 9(2)(a)] /Enviro Waste provided a comprehensive response to our letter, as summarised at paragraphs 15-26 of this report.⁵

Consent conditions

12. The Incident raises two issues relating to the following OIO consent conditions:⁶
 - (a) **Requirement to remain of good character:** Condition 4 requires that the IWC must remain of good character.

² Enforceable undertaking document: <https://objective.linz.govt.nz/documents/A5071745>

³ The charge being that Enviro Waste being a PCBU, and having a duty to ensure, so far as is reasonably practicable, the health and safety of workers who worked for the PCBU, while the worker are at work in the business or undertaking, did fail to comply with that duty, and in doing so, exposed a worker to a risk of death or serious injury (see ss 36(1)(a), 48(1) and (2)(c) – <https://www.legislation.govt.nz/act/public/2015/0070/latest/DLM5976918.html>)

⁴ 1.2, Enforceable Undertaking

⁵ Enviro Waste – Letter to the OIO dated 16 December 2022: <https://objective.linz.govt.nz/documents/A5133223>

⁶ Note of decision dated 12 September 2019: <https://objective.linz.govt.nz/documents/A4161211>

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- (b) **Reporting Duties:** Condition 5 requires the consent holder to notify the OIO in writing within 20 working days if it commits an offence or contravenes the law, whether convicted or not. Enviro Waste is also required to tell the OIO about any offences or contraventions it is charged with, and any investigation by enforcement or regulatory agencies.

13. I will deal with these two requirements separately below.

Reporting duties

Response

14. Enviro Waste's response acknowledged that Enviro Waste had not advised the OIO in writing of the investigation within the time required by condition 5 of the consent, noting that "this was an inadvertent and unintentional mistake, and Enviro Waste unreservedly apologies for this oversight."

15. Enviro Waste explained that it had been focused on dealing with the repercussions of the Incident by way of providing reparations to the victim's family, assisting others impacted by the Incident, engagement with the New Zealand Police and WorkSafe New Zealand (including preparing and agreeing to the enforceable undertaking and joint public announcement).⁷

16. Enviro Waste stated:

Throughout its engagement with WorkSafe, Enviro Waste was aware that the matter would become public at the conclusion of that process. There has been no conviction for any breach of law or offence in this case. The Enforceable Undertaking was submitted by Enviro Waste and accepted by WorkSafe, and as a result all charges have been withdrawn, notwithstanding a significant number of material facts and allegations remained in dispute by Enviro Waste at the time the Enforceable Undertaking was accepted. For those reasons, and without any intent to mislead the OIO, the specific requirement in Condition 5 to separately notify the OIO of the Incident in writing at an earlier time did not occur to Enviro Waste.

17. Enviro Waste further stated that it has now implemented a system to ensure that appropriate persons are alerted to notify the OIO in compliance with Condition 5 if any issue of the nature covered by Condition 5 occurs in the future. These new measures include:

- a. Utilisation of an internal "bring up" system **s 9(2)** in which a notification will be sent to the legal team and the senior management team as a reminder to actively consider whether any investigations have been commenced by any regulatory body.
- b. Amendment to Enviro Waste's incident reporting tool **s** so that an email is sent to the general legal email inbox whenever a "Notifiable Incident" occurs to prompt the legal team to consider whether a reporting obligation has arisen or may arise from the incident.
- c. Enviro Waste's monthly reporting procedures for the legal, health and safety and environmental teams have been updated to include any disclosures under the Condition 5. Again, this is designed to prompt discussions.
- d. Notification to the OIO will be triggered when Enviro Waste is notified of a formal investigation by a regulator/enforcement agency or there has been a breach of the law which has been accepted by Enviro Waste.

Analysis

18. Enviro Waste's response addresses its failure to notify the OIO and provides a reasonable response as to why notification was not considered at the time. Enviro Waste has also detailed new measures that have been implemented to prevent a further breach of condition 5.

⁷ A joint public announcement by Enviro Waste and WorkSafe on 1 November 2022: link <https://www.worksafe.govt.nz/about-us/news-and-media/enforceable-undertaking-aims-to-improve-site-safety/>

Requirement to remain of good character

Response

19. Enviro Waste submits there is no basis for the (acknowledged) inadvertent breach of condition 5 to bear on any good character assessment. Enviro Waste makes a number of points in support of its submission, as outlined below:
20. Enviro Waste states that it "takes the health and safety of its employees, contractors and others present on its sites very seriously and is committed to doing its utmost to ensure, as far as possible, their safety at all times". Enviro Waste said it continues to demonstrate its commitment to health and safety by:
 - (a) having an experienced and proactive health and safety team.
 - (b) evident continuous improvement in the health and safety space across the business, and commitment to identifying and trialling new ways of working to minimise or eliminate risks.
 - (c) engagement with Enviro Waste workers as much as possible through training, Standard Operating Procedure (SOP) reviews, various health and safety meetings (SHE Rep meetings, tailgates, toolbox talks etc).
 - (d) having in place an incident reporting system with a high reporting culture.
 - (e) its standard operating procedure, work instructions, policies and procedures to address the main hazards and risks for certain tasks and provide the best controls available that Enviro Waste can practically provide for the work being undertaken on each site.
 - (f) significant investment in health and safety initiatives, including electronic and driver safety software, for example the "Guardian" fatigue management system.
 - (g) engagement of consultants in specialist areas as required.
 - (h) the development of its own "Life Saving Rules" as an easy way for workers to understand Enviro Waste's expectations and standards in relation to workers' behaviour on site.
21. Enviro Waste also noted that in its Enforceable Undertaking it has committed to make significant new investments in health and safety technology and processes and related community and sector engagement initiatives.
22. Further, Enviro Waste's Hampton Downs occupational health and safety management systems are now ISO 45001:2018 certified.⁸
23. Enviro Waste noted that WorkSafe commented on Enviro Waste's investments in its public announcement on 1 November 2022 of the Enforceable Undertaking:⁹

The investment EnviroWaste is prepared to make exceeds what even the courts may have ordered in penalties. This demonstrates a substantial commitment to health and safety and will see benefits being directed back to workers, the industry, and the community.

We are particularly keen to see the outcome of EnviroWaste's study into how visual artificial intelligence can aid traffic risk management on worksites, and how the findings can be shared with other organisations.

⁸ Access standard ISO 45001:2018 briefing note at:
https://www.iso.org/files/live/sites/isoorg/files/archive/pdf/en/iso_45001_briefing_note.pdf

⁹ See above, footnote 6.

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24. [s 9(2)(a)]
[s 9(2)(a)] Enviro Waste said it disputed (and continues to dispute) the facts as alleged by WorkSafe and WorkSafe's findings and WorkSafe is aware that Enviro Waste has not accepted the allegations.¹⁰
25. [s 9(2)(a)]
[s 9(2)(a)]
[s 9(2)(a)]
[s 9(2)(a)]
26. Enviro Waste concludes its submission by offering to arrange a discussion of any of these matters with the OIO and/or provide further information if required.

Good character/investor test

27. Enviro Waste received consent on 12 September 2019, prior to the 2020 amendments.
28. Section 16(2)(c) of the Act (now repealed) provided that "good character" is a criterion required to permit ROPS/IWC to have (and maintain) an overseas investment in sensitive land in New Zealand. Under section 16(2)(c) the question was whether the Incident makes the IWC of the relevant Overseas Person unsuitable to hold sensitive assets.

29. [s 9(2)(h)]
[s 9(2)(h)]
30. [s 9(2)(h)]
[s 9(2)(h)]

Analysis

31. [s 9(2)(h)]
[s 9(2)(h)]
32. [s 9(2)(h)]
[s 9(2)(h)]
33. Therefore, [s 9(2)(h)] the next question is if on review of the Incident, Enviro Waste has "remained of good character" [s 9(2)(h)]
[s 9(2)(h)]
34. The following circumstances are relevant to this assessment:
- (a) The Incident is serious in that it resulted in the death of an Enviro Waste employee who was working at the Hampton Downs Site (owned and controlled by Enviro Waste) at the time of the Incident.

¹⁰ Enviro Waste's response states that Enviro Waste has not sought to recount any of these disputes in this letter as "they are numerous and detailed" but has offered to provide the OIO with information in this respect if requested.

¹¹ [Section 18A\(3\)](#), the Overseas Investment Act

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- (b) Enviro Waste has a duty to keep its workers safe at work by having in place reasonable health and safety conditions on site and having procedures in place to manage likely risks – such as risks associated with the operation of heavy machinery/ the existence of multiple vehicles on site.
- (c) WorkSafe alleges a contravention occurred and made a number of allegations which may have contributed to the Incident (although not accepted by Enviro Waste in the Enforceable Undertaking)
- (d) Enviro Waste is, to some extent, responsible for the conduct of other employees while at work – in this case, an employee was charged and convicted of a careless driving offence.

35. However, we also note that:

- (a) WorkSafe and the Police have concluded their investigations and Enviro Waste was not convicted of any contravention or offence as a result of the Incident.
- (b) The contraventions acknowledged in Enviro Waste’s Enforceable Undertaking and alleged by WorkSafe do not involve the more serious offence of reckless conduct in respect of Enviro Waste’s duties under the Health and Safety at Work Act.
- (c) Following the Incident Enviro Waste has implemented various measures to improve health and safety at the Hampton Downs site (as detailed above) and as evidenced by the Hampton Down site now being ISO 45001:2018 certified.
- (d) From the information provided, there is nothing to indicate that the IWC are separately a fault and Enviro Waste’s consent was issued under the old wording, which did not include liability of entities.
- (e) [s 9(2)(a)]

Assessment

Question		Y/N	Basis for answer
Does there appear to have been a breach of the Rules?		Y	Yes. Enviro Waste did not report the incident within the specified timeframe in the consent. This is a breach of Condition 5. Unlikely a breach of Condition 4.
Does the Incident fall within the OIO’s Enforcement Criteria?			
Is there any reason to qualify, amend or add to the answer to Triage questions?			

Recommendation

Based on my review of the information, I recommend:

Recommendation	Tick	Basis for answer
<p>You decide you have reason to suspect that there has been a breach of the Act or an offence under the Act has been committed</p>	<p>Y</p>	<p>Condition 5</p> <p>I consider that we have adequately reminded Enviro Waste of its obligations under this condition in our PEL, which Enviro Waste provided a comprehensive response to.</p> <p>Condition 4</p> <p>No breach. For the reasons I've stated above, the conduct giving rise to WorkSafe's enforcement action (enforceable undertaking) does not make Enviro Waste unsuitable to own or control any sensitive NZ assets.</p> <p>Further, there is nothing to indicate that the IWC are separately at fault.</p>
<p>The Incident progress to Investigation Stage 1</p>	<p>N</p>	
<p>No further action be taken and the Incident be closed</p>	<p>Maybe</p>	
<p>An Enforcement Tool be deployed [link to Enforcement Approach] and then the Incident be closed</p>	<p>Maybe</p>	<p>Enviro Waste has acknowledged their breach of condition 5. The breach is elevated by the fact that entering into an enforceable undertaking with a regulator is an investor test factor. Therefore, a compliance letter outlining Enviro waste's reporting obligations prior to closing the file should also be considered.</p>
<p>Priority Level:</p> <ol style="list-style-type: none"> 1. Strategic priority 2. Moderate priority (not an identified strategic priority) 3. Lesser priority but requires action 4. Complete (quick action) or close) 		
<p>Proposed next steps:</p>		

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[s 9(2)(a)]

Agree: Y
 Disagree:
 Amend as marked:

Andre Baldock
 Senior Investigator Enforcement

Date:

[s 9(2)(a)]

Agree: Y
 Disagree:
 Amend as marked:

Simon Pope
 Manager Enforcement

Date:

Notes/guidance for Investigation Team

Matters to be considered	Notes
Enforcement tool to be deployed and Implementation person or matter to be closed?	
Otherwise	
Investigation team members	Issy and Sherlene to draft compliance letter
Lead Investigator (note responsible for setting strategy meeting and devising Investigation Plan)	
Track I or Track II Investigation	
Date of First Advisory Group (note ordinarily 30 working days for Track II and 20 working days for Track I Investigation)	
Comments/Guidance on Investigation	Recommend a light touch compliance letter to consent holder to remind them of their reporting obligations and confirming we are taking no further action.

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