

ENFORCEABLE UNDERTAKING

Environment Protection Act 1970 (Vic)

Section 67D

The commitments in this undertaking are offered to the Environment Protection Authority
(EPA) by:

Powercor Australia Limited

A. DEFINITIONS

In addition to terms defined elsewhere in this undertaking, the following definitions are used:

Auditor means an independent auditor appointed under section 53S of the *Environment Protection Act 1970 (Vic)*.

EPA means the Environment Protection Authority.

Employees and Contractors means employees of the Company and contract personnel engaged by the Company.

Field Staff means Employees and Contractors within the Network Services group who are involved in construction, maintenance and fault activities.

Local Service Agent means lineworkers engaged by the Company as contractors to perform fault rectification, street light repair and metering and servicing in the Regional Locations.

Network Services means the network services business unit of the Company.

Regional Locations means the following 14 regional locations: Apollo Bay; Ararat; Castlemaine; Charlton; Cobden; Maryborough; Portland; Hamilton; Ouyen; Robinvale; Swan Hill; Cobram; Nhill and Edenhope.

Relevant Personnel means Employees and Contractors who are either:

- a) performing the function of site environmental representative; or
- b) engaged within the following Network Services groups: resources; major projects; asset services; supply chain solutions; resource partner performance or electrical plant maintenance.

Supply Chain Solutions Staff means Employees and Contractors engaged within the warehousing and distribution group of Network Services who have direct responsibility for receiving, handling, storage and despatch of Prescribed Industrial Waste.

the Act means the *Environment Protection Act 1970 (Vic)*.

the Company means Powercor Australia Limited (ACN 064 651 109).

Undertaking means Enforceable Undertaking made pursuant to section 67D of the *Environment Protection Act 1970*.

B. BACKGROUND

EPA's role

The EPA is a statutory body created by the Act, which has primary responsibility for the administration and enforcement of that Act.

INCIDENT 1

Details of conduct / incident

An EPA investigation confirmed:

- During September 2008, the Company had a contractual relationship with MRI (Aust) Pty Ltd (**MRI**) to collect and dispose of obsolete electrical equipment from its depot located at 990 Norman Street, Wendouree, Victoria (**Ballarat Premises**). The electrical equipment included old transformers, a number of which contained oil (**Waste**) that was partly comprised of Polychlorinated Biphenyls (**PCB**).
- PCBs are regarded as Prescribed Industrial Waste (**PIW**) under the Victorian environmental legislative framework.
- MRI subcontracted with the OD Group to transport the Waste from the Ballarat Premises, to Hydrodec Australia Pty Ltd in New South Wales for treatment and disposal. Some of the waste was drained from the transformers prior to transport to the interim stopover at MRI's Campbellfield premises, however an unknown quantity of PCBs did remain in the transported equipment.
- On 20 April 2009, the OD Group transported the Waste from the Ballarat Premises to MRI's premises at Campbellfield without a mandatory Waste Transport Certificate (**WTC**).

EPA's investigation and analysis

On or around 22 May 2009 the EPA conducted an audit of MRI's premises at Campbellfield.

EPA's investigation identified that WTCs were not used on 20 April 2009 by the Company, the OD Group or MRI, and the vehicle used by the OD Group did not have an EPA permit as required by law.

Alleged Contraventions

On or around 20 April 2009, the *Environment Protection (Prescribed Waste) Regulations 1998 (Vic)* and the *Industrial Waste Management Policy (Prescribed Industrial Waste) 2000 (Vic)* applied as part of the legislative framework provided by the Act. A new framework for the management of PIW has since been enacted, with the *Environment Protection (Industrial Waste Resource) Regulations 2009 (Vic)*, the *Industrial Waste Guidelines*, and the *Industrial Waste Resource Guidelines* now in force.

Under the current legislative framework, it is the responsibility of the waste producer, transporter and receiver of the waste to ensure that an accurately completed WTC accompanies each load of PIW that is transported to/from premises, by a vehicle that is permitted to carry PIW. Where a waste producer, such as the Company, engages a contractor to dispose of PIW, the following must be completed:

- Part A of a WTC must be completed by the waste producer;
- Part B of a WTC must be completed by the waste transport contractor; and
- Part C of a WTC must be completed by the waste receiver.

EPA alleges the following:

- On 20 April 2009, where the vehicle used by the OD Group did not have an EPA permit as required by law when it transported equipment containing PIW, the Company caused or permitted PIW to be transported on a highway from premises or a place owned or occupied by the Company, where the vehicle used to transport the waste was not authorised by a permit to transport PIW, in contravention of section 53B of the Act; and
- On 20 April 2009, by not completing Part A of a WTC and not ensuring that a WTC was used for the transport of equipment containing PIW, the Company caused or permitted PIW to be transported from premises or a place occupied by the Company in contravention of the regulations applying to the Company which require the identification of the waste, the making and keeping of records about the waste or the movement of the waste, the notification and reporting of information about the waste and the movement of the waste, in contravention of section 53C of the Act.

INCIDENT 2

Details of conduct / incident

An EPA investigation confirmed:

- During March and April 2010, the Company had a contractual relationship with Veolia Environmental Services (Australia) Pty Ltd (**Veolia**) to collect and dispose of various forms of waste, including PIW, from the Company's Horsham zone substation located at the corner of Western and Henty Highways, Horsham, Victoria (**Horsham Premises**).
- Following a fire at the Horsham Premises during which soil at the Horsham Premises became contaminated (**Soil**), on 15 March 2010 the Company placed an order with Veolia for a sealed skip to be delivered to the Horsham Premises. At this point, the extent of contamination of the Soil, and therefore the category of waste, was not known.
- Veolia subcontracted with SITA Australia Pty Ltd, who subcontracted with D.J. & R.A. Hobbs Pty Ltd (trading as **Westonvic Waste**), to collect and dispose of the Soil.
- Westonvic Waste delivered the sealed skip to the Horsham Premises on 16 March 2010.
- Due to miscommunication, on 22 March 2010, before the category of waste had been determined and without the knowledge of the Company, Westonvic Waste collected the skip and disposed of the Soil at Horsham Rural City Council landfill (Ladlows Road, Dooen) (**Landfill**).

- On 25 March 2010, the Company first become aware that the Soil was Category A waste. Category A waste is regarded as PIW under the Victorian environmental legislative framework.
- Not realising the Soil had already been collected and disposed of, on 29 March 2010 the Company requested Veolia to collect the skip and dispose of the Soil and advised Veolia of its Category A status,
- On 15 April 2010, Veolia provided the Company a quotation for collection and disposal of the Soil (Category A). On 16 April 2010, Veolia informed the Company that the Soil had already been collected and disposed by Westonvic Waste at the Landfill.
- No WTC was in place for transport of the Soil and Westonvic Waste is not licensed by the EPA to transport PIW. The Landfill is not licensed to accept Category A waste.
- On 16 April 2010, the Company informed the EPA of the incident.

EPA's investigation and analysis

- On or about 4 May 2010, the EPA visited the Horsham Landfill.
- On 7 May 2010, the EPA served a notice under section 55(3D) of the Act on the Company. The Company responded within the prescribed timeframe.
- On 19 May 2010, the EPA served a notice under section 55(3)(a) of the Act on the Company.
- On 2 June 2010, the Company responded to the section 55(3)(a) notice by making all relevant documents available for viewing by the EPA.
- The Company provided a written statement of the circumstances surrounding Incident 2 to the EPA on 9 July 2010.

Alleged Contraventions

Under the *Environment Protection (Industrial Waste Resource) Regulations 2009* (Vic), the *Industrial Waste Guidelines* and the *Industrial Waste Resource Guidelines* it is the responsibility of the waste producer, transporter and receiver of the waste to ensure that an accurately completed WTC accompanies each load of PIW that is transported to/from premises, by a vehicle that is permitted to carry PIW. Where a waste producer, such as the Company, engages a contractor to dispose of PIW, the following must be completed:

- Part A of a WTC must be completed by the waste producer;
- Part B of a WTC must be completed by the waste transport contractor; and
- Part C of a WTC must be completed by the waste receiver.

EPA alleges the following:

- On 22 March 2010, where the vehicle used by the Westonvic Waste did not have an EPA permit as required by law when it transported soil containing PIW, the Company caused or permitted PIW to be transported on a highway from premises or a place

owned or occupied by the Company, where the vehicle used to transport the waste was not authorised by a permit to transport PIW, in contravention of section 53B of the Act; and

- On 22 March 2010, by not completing Part A of a WTC and not ensuring that a WTC was used for the transport of soil containing PIW, the Company caused or permitted PIW to be transported from premises or a place occupied by the Company in contravention of the regulations applying to the Company which require the identification of the waste, the making and keeping of records about the waste or the movement of the waste, the notification and reporting of information about the waste and the movement of the waste, in contravention of section 53C of the Act.

INCIDENT 3

Details of conduct / incident

An EPA investigation confirmed:

- On 23 August 2010 an internal fault occurred in a pole transformer located in Charles Street, Edenhope. This fault caused a localised spray of oil from the transformer over the immediately adjacent road and soil at the verge of Charles Street.
- The West Wimmera Shire Council attended the site and laid absorbent material (quarry dust) on the road.
- On 24 and 25 August 2010, contractor's eductor trucks attended the site and removed surface water puddled along the verge. The water was transported with a waste transport certificate to the contractor's depot for analysis.
- On 24 August 2010, Miller's Civil Contractors (**Millers**), instructed by Powercor, attended the site and removed the absorbent material from the road, and bagged it on site (this material was subsequently transported to the Horsham depot on 25 August 2010).
- On 25 August 2010, Millers removed the impacted soil and debris near the foot of the pole to the level of staining. The soil and sand was excavated into large soil bags. Millers transported approximately 4 cubic metres of soil and sand to Powercor's Horsham depot. The soil and sand was stored in a secure location at the Horsham depot pending analytical results and disposal.
- On 25 August 2010, Powercor received laboratory results indicating that the oil that was sampled from an area below the transformer was contaminated with PCBs to the level of 2.5ppm.
- On 26 August 2010, at Powercor's instruction, Millers attended and removed approximately 6 cubic metres of crushed rock from the road. Millers transported the material to the Horsham depot. The crushed rock was stored pending analytical results and disposal.

EPA's investigation and analysis

- On 1 September 2010, the EPA served a notice under section 55(3D) of the Act on the Company.
- On 6 September 2010 the EPA attended the Powercor Horsham Depot and took their own samples of soil from the skips.
- On 29 September 2010 the EPA provided written notice that a potential contravention of the Act had occurred.

Alleged contraventions

Under the *Environment Protection (Industrial Waste Resource) Regulations 2009 (Vic)*, the *Industrial Waste Guidelines* and the *Industrial Waste Resource Guidelines* it is the responsibility of the waste producer, transporter and receiver of the waste to ensure that an accurately completed WTC accompanies each load of PIW that is transported to/from premises, by a vehicle that is permitted to carry PIW. The following must be completed:

- Part A of a WTC must be completed by the waste producer;
- Part B of a WTC must be completed by the waste transport contractor; and
- Part C of a WTC must be completed by the waste receiver.

EPA alleges the following:

- On 25 and 26 August 2010, where the vehicle used by Millers did not have an EPA permit as required by law when it transported soil containing PIW, the Company caused or permitted PIW to be transported from Charles Street, Edenhope to the Company depot in Horsham without a permit in contravention of section 53B of the Act.
- On these same dates, by not completing Part A of a WTC and not ensuring that a WTC was used for the transport of soil containing PIW, the Company caused or permitted PIW to be transported from premises or a place occupied by the Company in contravention of the regulations applying to the Company which require the identification of the waste, the making and keeping of records about the waste or the movement of the waste, the notification and reporting of information about the waste and the movement of the waste, in contravention of section 53C of the Act.

C. ACKNOWLEDGMENTS

- The Company acknowledges that EPA has alleged the Company has contravened provisions of the *Environment Protection Act 1970*. These allegations are considered very serious and the Company has conducted its own investigations into both the alleged contraventions and the necessary remedial measures required to minimise the likelihood of repetition of the alleged contraventions.
- The Company acknowledges that the EPA:
 - may issue a media release on execution of this Undertaking referring to its terms and to the concerns of EPA which led to its execution;
 - may from time to time publicly refer to this Undertaking; and
 - will make this Undertaking available for public inspection on a register of undertakings, in accordance with section 67G of the Act and that this Undertaking will remain on the register upon completion of all undertakings contained within.
- Further, the Company acknowledges that:
 - EPA's acceptance of this Undertaking does not affect EPA's power to bring proceedings against the Company, to issue penalty infringement notices or instigate any other enforcement action against the Company in relation to any subsequent contravention or alleged contravention of the Act that is not the subject of this Undertaking, whether or not the subsequent contravention or alleged contravention involves a provision of the Act that is referred to in section B;
 - this Undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this Undertaking or arising from subsequent conduct; and
 - EPA had reason to be concerned as to the alleged facts and has offered an Undertaking according to the terms of section G.

D. STATEMENT OF REGRET

The Company regrets the situations that occurred on 20 April 2009, 22 March 2010 and 25 to 26 August 2010.

The Company recognises that the wellbeing of our community is largely dependent upon the health of the environment. As such, the Company and its staff will strive for improved environmental performance and embrace a culture of continual improvement and environmental leadership.

E. ASSURANCE ABOUT FUTURE BEHAVIOUR

The Company commits to stopping the particular conduct in the alleged breaches that led to this Undertaking and to not recommencing that conduct.

The Company acknowledges that implementation of the actions outlined within this Undertaking, is likely to reduce the risk and lower the consequence of future non-compliance.

The Company has undertaken an extensive review of internal processes with a view to improving the compliance with legislative requirements in relation to the WTC regime.

F. EFFECT OF NON-COMPLIANCE

The Company acknowledges that failure to comply with section G of this Undertaking may result in the Authority seeking to enforce the Undertaking in the Magistrates' Court.

G. UNDERTAKINGS OF THE COMPANY

Key Objectives of this undertaking

This Undertaking is a binding agreement that aims to:

- deliver benefits beyond compliance;
- deliver benefits to the environment and to local communities that have been affected by the alleged contravention; and
- improve the Company's environmental performance by implementing systemic changes that will reduce the likelihood of a similar incident occurring in the future.

Under section 67D of the Act, the Company has offered, and EPA has agreed to accept as an alternative to taking Court proceedings, the following undertakings:

1. Review policies and procedures

The Company undertakes to review policies and procedures relevant to the management and disposal of PIW to ensure that they reflect current legislative requirements. In particular, the following procedures will be reviewed and updated in accordance with the requirements of the *Environment Protection (Industrial Waste Resource) Regulations 2009*;

- Waste Management Standard Work Instruction 16-10-W009
- Management of Soil in Construction and Maintenance Projects Work Instruction (05W-912)
- Management Of Oil and Oil Containing Equipment 16-10-W0008
- PCB Handling and Disposal Manual 16-10-M0002

This undertaking will be completed within one month, and uploaded onto the Company's IT system within two months of the date this Undertaking is accepted and signed by EPA.

2. Training of Employees and Contractors

The Company undertakes to train Employees and Contractors by the following means:

- a) Communications are to be provided to Relevant Personnel in relation to the importance of the correct disposal of PIW and contaminated soil management processes.

This undertaking will be completed within one month of the date this Undertaking is accepted and signed by EPA.

- b) Annual Waste Transport Certificate Training is to be implemented for all Supply Chain Solutions Staff.
 - (i) The Waste Transport Certificate Training will include the Waste Transport Certificates Publication IWRG822.1 and the *Environment Protection (Industrial Waste Resource) Regulations 2009*, and the Company's internal procedures. Training package will be prepared and facilitated by a Certificate IV accredited trainer. Training material will be approved by the Environmental Manager and Network Training

Coordinator. Statutory declaration from third party of attendees (attendance sheet) will be provided.

This undertaking will be completed within six months of the date the Undertaking is accepted and signed by EPA and then ongoing on an annual basis.

- c) Specific environmental training (including PIW and contaminated soil management) is to be provided to Field Staff every 3 years with the next course scheduled for May 2011. The importance of PIW and contaminated soil management is to be reinforced in annual refresher training provided to Field Staff.
 - (i) The specific environmental training will include Waste Transport Certificate Training in particular on the Waste Transport Certificates Publication IWRG822.1 and the *Environment Protection (Industrial Waste Resource) Regulations 2009* and the Company's internal procedures. Training package will be prepared and facilitated by a Certificate IV accredited trainer. Training material will be approved by the Environmental Manager and Network Training Coordinator. Statutory declaration from third party of attendees (attendance sheet) will be provided.
 - (ii) The annual refresher training will involve field supervisors directly presenting to Field Staff on an annual basis. The material will be approved by the Environmental Manager.

This undertaking will be completed within six months of the date the Undertaking is accepted and signed by EPA and then ongoing on an annual basis.

- d) Audits of Powercor's waste contractors are to be conducted and WTC procedures are to be reinforced with them.

This undertaking will be completed by 31 December 2011.

- e) Face to face training will be provided to the Company's Local Service Agent staff for the Regional Locations covered by the Local Service Agents on:
 - (i) the Company's environmental waste procedures and in particular those relating to the handling and disposal of PIW; and
 - (ii) the EPA regulations,at the Company's annual Local Service Agent forum.

This undertaking will be completed by 31 December 2011.

3. Review of contract formulation

The Company undertakes to review contract requirements in relation to PIW for all new waste contracts. In particular the Company undertakes to:

- a) Ensure that it only engages waste contractors who can demonstrate appropriate training in the transport of prescribed waste.

- b) Ensure that the authority to raise contract documentation (Form No. 08-F173) specifies the PIW performance requirements.
- c) Ensure that the contract is approved by legal personnel, and that the conditions of contract include some or all of the following clauses in the Scope of Services where relevant:
 - *You shall comply with PAL/CP Management of Oil and Oil Containing Equipment (Work Instruction 16-10W0008).*
 - *You shall comply with EPA Industrial Waste Regulations 2009.*
 - *Before you transport any oil, you must obtain and provide us with a copy of the PCB analysis from a NATA certified laboratory.*
 - *Prior to the transport of any oil, you must ensure that the transporter has appropriate spill containing equipment, including spill kits and spill tray.*
 - *You must ensure that the following documents are provided to us (distinguished between CitiPower and Powercor):*
 - *Waste Transport Certificates*
 - *EPA Victoria consent form (if interstate transport used); and*
 - *Consignment form (if interstate transport used).*
 - *You must ensure that all necessary forms are completed in accordance with section 8 of the EPA Industrial Waste Resource Guidelines which can be obtained from the following hyperlink:*

<http://www/epa.vic.gov.au/waste/industrial-waste-guidelines.asp>
 - *Contaminated soil skips must only be picked up by prior arrangement with Powercor's Environmental Officer after the soil has been tested.*

This undertaking will be completed within three months of the date the Undertaking is accepted and signed by EPA.

4. Supervisory arrangements

The Company undertakes to ensure that arrangements are put in place to supervise all PIW waste dispatches at all Powercor sites. In particular the Company undertakes to:

- a) Ensure a CitiPower/Powercor Environmental Officer is on site and supervises PCB-contaminated waste despatches, fills out and sign Part A of EPA WTCs and ensures that the WTCs are signed off by relevant parties. For other PIW and contaminated soil, a suitably trained Powercor staff member shall complete Part A of the WTC.
- b) CitiPower/Powercor Environmental Officers will conduct regular biannual and ad hoc audits of the waste collection processes, both internal and at a contractor level.
- c) CitiPower/Powercor will schedule and conduct meetings every two months with CitiPower/Powercor's principal waste contractors to discuss works conducted during the previous two months and identify scope for improvement for CitiPower/Powercor and the contractors.

This undertaking will be implemented immediately from the date the Undertaking is accepted and signed by EPA and then be ongoing.

5. Material affected by spill from Transformer

The Company undertakes to:

- a) immediately assume that any soil or material affected by oil spilt from a Transformer is contaminated (unless it can prove otherwise); and
- b) ensure that any soil or material affected by oil spilt from a Transformer remains on-site until analysis and appropriate strategy for transport and disposal has been determined by the Company, or as otherwise agreed with EPA; and
- c) within 28 days of the date the Undertaking is accepted and signed by EPA, amend its procedures to reflect the above.

6. Design of a physical locking mechanism

The Company undertakes to immediately investigate and if feasible implement a physical locking mechanism attached to waste skips containing contaminated soils which would prevent the removal of the skip without the Company releasing the locking mechanism.

7. Payment of Financial Contributions to Environmental Causes

The Company undertakes to make the following financial contributions via Landcare Australia Limited:

- a) \$20,000 to the Ballarat Environmental Network;
- b) \$20,000 to the Hindmarsh Landcare Network for works and/or activities in or around the Horsham area; and
- c) \$20,000 to the Kowree Farm Tree Group.

This undertaking will be completed within 28 days of the date the Undertaking is accepted and signed by EPA.

8. Further Measures

The Company undertakes to:


- a) present and discuss the learnings from this Enforceable Undertaking with peer electricity utilities at an Energy Networks Australia Health, Safety and Environment Committee meeting during 2011; and
- b) contact its Victorian electricity distribution industry peers and offer to host and facilitate a forum to specifically share the Company's learnings regarding the Enforceable Undertaking, in order to provide greater understanding and consistency across the industry.


These undertakings will be completed by 30 November 2011.

9. The Company undertakes that it will pay the costs of its own compliance with this Undertaking.
10. The Company undertakes to provide written progress reports at three monthly intervals on the implementation of section G items 1-8 of this Undertaking to the EPA from the date this Undertaking is accepted and signed by EPA and until this Undertaking is terminated. In addition, the Company will supply all documents and information requested by EPA from time to time for the purpose of assessing the Company's compliance with the terms of this Undertaking.
11. The Company undertakes to engage, at its own cost, an Auditor. The Auditor will examine the content of this Undertaking and will review the Company's compliance with its terms. The Auditor will provide written assurance to EPA that the implementation of section G items 1-8 of this Undertaking have been satisfactorily completed.
12. The Company undertakes that any public reference to the actions contained within this undertaking shall also make reference to the Undertaking.
13. The Company has estimated the cost of compliance with this Undertaking to be up to approximately \$100, 000. This consists of approximately \$40,000 in additional training, procedures and auditing, together with the payment of \$60,000 in financial contributions in accordance with Item 6 of Section G of this Undertaking. The Company undertakes to provide to the Authority a detailed costing of compliance expenditure at the completion of the Undertaking.
14. This Undertaking will terminate 18 months from the date that the Undertaking is accepted and signed by EPA. All undertakings contained within this Undertaking must be completed and verification of completion by the Auditor must be provided to EPA by this time. Failure to do so may result in EPA taking action to enforce this Undertaking.
15. The Company agrees and acknowledges that as provided in section 67D(4) of the Act, EPA's acceptance of this Undertaking means that proceedings may not be brought by EPA against the Company for the offences constituted by the alleged contraventions described in section B of this Undertaking.
16. The Company agrees and acknowledges that as provided in section 67D(5) of the Act, if the Company withdraws this Undertaking before it has been satisfactorily completed, proceedings may be brought for the offences constituted by the alleged contraventions described in section B of this Undertaking.
17. The Company agrees and acknowledges that this Undertaking has no operative force until accepted and signed by EPA. The Company and EPA acknowledge that the date of the Undertaking is the date on which it is accepted and signed by EPA.


THE COMMON SEAL of THE)
COMPANY was affixed in accordance with)
the Corporations Act 2001 in the presence of:




..... Director


..... Director/Company Secretary

Accepted by the Environment Protection Authority under section 67D of the Environment Protection Act 1970 by its CEO and Deputy Chairman:


.....

JOHN MERRITT

CEO and Deputy Chairman of the Environment Protection Authority

Date: 25.4.11