

Environment Protection (Contaminated Sites) Environment Protection Policy 2017

Notifiable Instrument NI2017-698

made under the

Environment Protection Act 1997, section 27 (Making of environment protection policy)

1 Name of instrument

This instrument is the *Environment Protection (Contaminated Sites) Environment Protection Policy 2017*.

2 Commencement

This instrument commences on the day after its notification day.

3 Contaminated Sites Environment Protection Policy

I make the Contaminated Sites Environment Protection Policy as set out in the schedule.

4 Brief Description of Policy

The Contaminated Sites Environment Protection Policy contains information and policies relating to the assessment, remediation (including management) and audit of contaminated land and aims to minimise the risk of adverse impacts of contaminated land on the environment and human health.

The policy explains the procedures used by the Environment Protection Authority to regulate the management of contaminated land within the ACT and provides guidance for owners and occupiers of contaminated land to meet their legislative obligations under the *Environment Protection Act 1997*.

5 Where copies of the policy may be inspected and obtained

Copies of the Contaminated Sites Environment Protection Policy may be inspected and obtained at the following locations:

- (1) During business hours, at the Environment, Planning and Sustainable Development Directorate (EPSDD), Dame Pattie Menzies House, 16 Challis Street Dickson, ACT; and
- (2) On the EPSDD website:
http://www.environment.act.gov.au/environment/legislation_and_policies

6 Revocation

The *Environment Protection (Contaminated Sites) Environment Protection Policy 2012 (No 1)* (NI2012-301) is revoked.

Greg Jones
Environment Protection Authority
21 December 2017



ACT
Government

CONTAMINATED SITES ENVIRONMENT PROTECTION POLICY

ENVIRONMENT PROTECTION AUTHORITY
DECEMBER 2017

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1. WHAT ARE ENVIRONMENT PROTECTION POLICIES?

Environment Protection Policies (**EPPs**) are policies and guidelines, issued to coincide with the *Environment Protection Act 1997* (the Act), which help to explain and apply the Act and the Environment Protection Regulation 2005 (the Regulation) made under that Act.

To explain the policy context, **EPPs** often summarise or explain the Act. However, the Act, Regulation and other legislation remain the authoritative statement of the law and readers should refer to the actual text of the legislation whenever necessary.

This **EPP** is one of several issued to coincide with the Act. The Environment Protection Authority (**EPA**) intends to update **EPPs** regularly, to ensure they are relevant, useful, reflect both experience and current best environmental practice and in line with community expectations.

1.1 WHAT IS THE DIFFERENCE BETWEEN EPPS, THE ACT AND REGULATION?

The Act and Regulation are legislative instruments that are legally binding. As policies and guidelines, the **EPPs** are not legally binding. They support the operation of the legislation by providing certainty and transparency in its administration.

For example, the **EPA** will consider any relevant **EPPs** in determining the condition of an **Environmental Authorisation** or **Environmental Protection Agreement**.

1.2 HOW DO ALL THREE COMPONENTS (ACT, REGULATION AND EPPS) FIT TOGETHER?

The Act, Regulation and **EPPs** all work together to provide an integrated framework for environment protection as follows:

- » the Act is a general legislative framework that establishes the machinery necessary for environment protection. For example, it establishes the independent statutory role of the **EPA** and provides for instruments like **environmental authorisations**
- » the Regulation contains rules and standards about specific aspects of the environment. Examples of matters dealt with in the Regulation are setting environmental standards for water quality and noise levels for particular areas of the ACT
- » the **EPPs** contain guidance on meeting the requirements of the Act and the Regulation

Sections 3C and 3D of the Act sets out the **Objects** and **Principles** of the Act, and require along with Section 12 that the Act shall be construed and administered so as to be consistent with the **Objects** and **Principles**. As the Regulation and the **EPPs** are made under the Act, this principle applies with equal force to those instruments.

1.3 HOW ARE EPPS PRODUCED AND WHO HAS INPUT?

The **EPA** develops draft **EPPs**, but before these are finalised, the **EPA** must advertise the release of drafts and give members of the public 40 working days (8 weeks) to comment on them.

The **EPA** must consider these comments and may incorporate them into the **EPP** if appropriate. An **EPP** can only be made with the consent of the Minister responsible for the Act.

1.3.1 How will people know about changes to policies?

The **EPA** must publish a notice in the Legislation Register and provide additional public notice when an **EPP** is finalised, changed or revoked, except when changes are only editorial.

For example, if the name of a government agency has changed, the name can be changed in the **EPPs** without public consultation or notification in the Legislation Register.

The **EPA** cannot vary or revoke an **EPP** without the Minister's consent.

1.4 HOW MANY EPPS ARE THERE?

Currently, there are eight **EPPs**:

- » General
- » Noise
- » Motor Sport Noise
- » Water Quality
- » Contaminated Sites (this **EPP**)
- » Outdoor Concert Noise.
- » Air
- » Hazardous Materials

The **EPA** may develop other **EPPs** over time as required to meet emerging issues or community expectations.

1.5 HOW ARE THE EPPS STRUCTURED?

The **EPPs** are generally structured along the following lines:

- » Background – this part sets out the context and underlying policy objectives of the **EPP**.
- » Policies and Guidelines – this part explains how relevant provisions of the Act and Regulation work and contains the substantive policies and guidelines of the **EPP**.
- » Glossary – this part contains explanations of words and abbreviations, particularly those specific to the particular **EPP**. Terms used in more than one **EPP** are included in the Glossary for the General **EPP**.
- » Appendix – this part contains detailed or technical information separated from policies and guidelines for easy reference.

1.6 TO WHOM AND WHERE DO THE EPPS APPLY?

The **EPPs** apply to all persons and things for activities on all land within the ACT, including land owned by the Commonwealth, to which the Act applies. This includes the ACT Government and its agencies and government-owned companies. At present the Act does not bind the Commonwealth Government, however, generally Commonwealth agencies have committed to comply with the Act.

1.7 HOW ARE EPPS KEPT UP TO DATE?

EPPs can be amended at any time to keep them up to date. All amendments other than those of an editorial nature must go through the public consultation process above.

1.8 NOTES ON READING THIS EPP

Where the **EPP** refers to a legal requirement, it will give the source of this requirement for reference. Wherever a term is used that is defined in the Act or Regulation, it appears in bold.

2. ROLE OF THIS EPP

2.1 BACKGROUND

This **Contaminated Sites EPP** is designed to help people understand the Act and the Regulation as they apply to **contaminated land**. There are general offences in the Act and specific provisions for **contaminated land**, which carry substantial penalties. This **EPP** provides guidance on meeting these legislative requirements, including the need to adopt the **general environmental duty**, as specified in the Act, to prevent or minimise **environmental harm**. This **EPP** has been prepared by the **EPA** in accordance with Part 4 of the Act.

The role of **EPPs** and their relationship to the Act and the Regulation is explained in the General **EPP**. The General **EPP** also contains other material of relevance to this **EPP** such as environmental management instruments, enforcement and access to information held by the **EPA**. This **EPP** should be read together with the General and other relevant **EPPs**.

This **EPP** contains information and policies relating to the assessment, remediation (including management) and audit of **contaminated land** and aims to minimise the risk of adverse impacts of **contaminated land** on the environment and human health. This **EPP** explains the procedures used by the **EPA** to regulate the management of **contaminated land** within the ACT and provides guidance for owners and occupiers of **contaminated land** to meet their legislative obligations under the Act.

In the past, hazardous substances have been manufactured, used and disposed of without a full knowledge of the potential impacts of these activities on human health and the **environment**.

Examples of hazardous substances associated with activities known to have caused an unacceptable risk to human health or the **environment** through **land** contamination include: asbestos, polychlorinated biphenyls (PCBs), organochlorine pesticides (OCPs), per and polyfluorinated alkyl substances ((PFASs) surfactants), heavy metals (for example, arsenic, lead, chromium, cadmium and mercury), trichloroethylene ((TCE) an industrial solvent) and hydrocarbons (petroleum products).

In most cases **land** contamination is the result of past activities which have been poorly managed or where there was a general lack of knowledge of the potential impacts that certain substances may have on human health and the **environment**.

At present, although hazardous substances are generally managed in a responsible manner, there is still potential for **land** contamination to occur due to unforeseen circumstances, accidents or criminal acts.

The policies outlined in this **EPP** for the management of **contaminated land** are designed to minimise the risk from sites **contaminated** with hazardous substances.

2.2 ADMINISTRATION CONSISTENT WITH OBJECTS AND PRINCIPLES OF THE ACT

This **EPP** has been developed in accordance with the **Objects** (Section 3D) and **Principles** (Section 12) of the Act. Specifically, Section 3C(g) states that an **Object** of the Act is to ensure that **contaminated land** is managed having regard to human health and the **environment**.

To ensure this **EPP** is consistent with the **Objects** and **Principles** of the Act, this **EPP** has been developed in accordance with the following:

- » The level of regulatory control over **contaminated land** should reflect the risk to the **environment** and human health arising from that **land**. For example, the risk to the **environment** or human health arising from an existing operational service station site with some hydrocarbon contamination present is not likely to be as great as a former sheep dip site that has been proposed for redevelopment for residential housing. The past use of the sheep dip site may have resulted in contamination of soils and groundwater with arsenic and organochlorine compounds. Therefore Section 3C(1)(d) and (i), to effectively integrate environmental, economic and social considerations and considering contamination that poses a significant risk, along with Section 3D1(b) the precautionary principle, of the Act are likely to be given high consideration during the assessment process for the development of a site with a former sheep dip, as opposed to the operations of an appropriately managed service station.
- » Where possible, regulatory controls on **contaminated land** should not adversely impact on regional commerce and should be consistent with national competition policy principles. Specifically, any restriction on competition should apply on the basis that the public benefit from the restriction outweighs the public interest in competition. In this situation 3C(1)(d) of the Act, to achieve effective integration of environmental, economic and social considerations in decision-making processes, will need to be applied.
- » The **EPP** should be consistent with national and international agreements relating to **contaminated land**. For example, in 1992 the Commonwealth, all states and territories, and the Australian Local Government Association signed the Intergovernmental Agreement on the Environment (the Agreement). The Agreement clarified the role of the three levels of government in management of the **environment**. It set out nationally agreed principles of **environmental** policy, such as the principle of polluter pays, which details that those who generate contamination should bear the costs of any **assessment** and **remediation** that may be required. The **polluter pays principle** is included and defined in Section 3D of the Act.
- » The Agreement also provides for the National Environment Protection Council (NEPC). This is a Ministerial Council with powers to establish, monitor and report on **National Environment Protection Measures (NEPMs)**, which include standards, guidelines, goals and associated protocols for various aspects of **environment** protection. Existing **NEPMs** include: Air Toxics, Ambient Air Quality, Diesel Vehicle Emissions, Used Packaging Materials, National Pollutant Inventory, Movement of Controlled Waste between States and Territories and the Assessment of Site Contamination. Section 3C(1)(e) of the Act states that an **Object** of the Act is to facilitate the implementation of **NEPMs** under **national scheme laws**.
- » Section 3C of the Act states that an **Object** of the Act is to minimise the risk to human health, while Section 3D creates a principle of acknowledging environmental needs in economic and social decision making. The **Objects** and **Principles** help support an integrated approach to the management of **contaminated land**. The **EPA** works with other regulatory agencies such as public health, planning, construction, occupational health and safety, waste management and dangerous goods authorities to ensure an integrated approach. For example, all development applications in the ACT are referred to the **EPA** and other relevant government agencies for comment.

2.3 ACTIVITIES ADDRESSED BY THIS EPP

This **EPP** provides guidance on the procedures for assessing, remediating and auditing of **contaminated land** resulting from activities that have caused or are likely to cause a significant risk of harm to human health and/or **material** or **serious environmental harm**.

Land contamination can arise from a range of **land** uses and activities, including commercial, residential, industrial and agricultural, particularly when the **land** use has involved hazardous substances. These substances, if not properly managed, may threaten human health or the **environment**, or may affect the current or future **land** use.

Specific guidance relating to the management of these activities is contained in the General and other **EPPs**, for example, the Hazardous Materials and Water Quality **EPPs**.

*Note: Auditing in relation to contaminated land can be carried out by the EPA or by an **auditor** approved for this purpose under Section 75 of the Act.*

2.4 THE NATIONAL ENVIRONMENT PROTECTION (ASSESSMENT OF SITE CONTAMINATION) MEASURE

The **National Environment Protection (Assessment of Site Contamination) Measure** 1999 (the ASC **NEPM**) is the national guidance document for the **assessment** of site contamination in Australia. **NEPMs** are made under the *National Environment Protection Council Act 1994 (ACT)*.

The purpose of the ASC **NEPM** is to establish a nationally consistent approach for the **assessment** of site contamination to ensure sound environmental management practices are adopted by the community, including regulators, site assessors, site contamination consultants, **auditors**, landowners, developers and industry parties.

The desired outcome of the ASC **NEPM** is to provide adequate protection of human health and the **environment**, where contamination has occurred, through the development of an efficient and effective national approach to environmental site assessment.

This **EPP** is consistent with the ASC **NEPM**.

On 11 April 2013 the ASC **NEPM** (1999) was amended and came into effect on 16 May 2013.

In accordance with the requirements of the Act the amended ASC **NEPM** (2013) and its Schedules also came into effect in the ACT on 16 May 2013.

The ASC **NEPM** contains the following Schedules:

Schedule A: a flow chart that outlines the recommended process for the **assessment** of site contamination; and

Schedule B: that provides guidelines for the **assessment** of site contamination.

- » B1: Guideline on investigation levels for soil & groundwater
- » B2: Guideline on site characterisation
- » B3: Guideline on laboratory analysis of potentially contaminated soils
- » B4: Guideline on site-specific health risk assessments
- » B5a: Guideline on ecological risk assessments
- » B5b: Guideline on methodology to derive ecological investigation levels (EILs)
- » B5c: Guideline on soil quality guidelines
- » B6: Guideline on risk based assessment on groundwater contamination
- » B7: Guideline on health-based investigation levels (plus appendices: B7a1, B7a2, B7a3, B7a4, B7a5, B7b, B7c)
- » B8: Guideline on community engagement & risk communication
- » B9: Guideline on competencies & acceptance of environmental auditors

To assist in the implementation of the ASC **NEPM** (2013) useful guidance documents and calculators are provided in the ASC **NEPM** Toolbox at www.scew.gov.au/node/941.

In the ACT all **contaminated** site assessments commencing after 16 May 2013 are to be undertaken in accordance with the amended ASC **NEPM** (2013). **Contaminated** site assessments substantially progressed prior to 16 May 2013 can continue to be undertaken in accordance with the original ASC **NEPM** (1999) subject to **EPA** agreement.

2.5 WHAT ABOUT OTHER LEGISLATION?

This **EPP** is complemented by other environmental programs and legislation aimed at protecting human health and the **environment**.

More detailed information is available as follows:

Activity	Act	Contact*
Handling and storage of dangerous goods	<i>Dangerous Substances Act 2004</i>	WorkSafe ACT, Access Canberra
Waste management	<i>Waste Management and Resource Recovery Act 2016</i>	ACT NOWaste, Transport Canberra and City Services Directorate
Land use and development	<i>Planning and Development Act 2007</i>	ACT Planning and Land Authority, Environment, Planning and Sustainable Development Directorate
Protection of public health	<i>Public Health Act 1993</i>	Health Protection Service, ACT Health Directorate
Heritage protection	<i>Heritage Act 2004</i>	Heritage Unit, Environment, Planning and Sustainable Development Directorate
Preservation of the natural environment	<i>Nature Conservation Act 2014</i>	Conservator of Flora and Fauna, Environment, Planning and Sustainable Development Directorate
Working with hazardous materials	<i>Work Health and Safety Act 2011</i>	WorkSafe ACT, Access Canberra
Water extraction, work in waterways	<i>Water Resources Act 2007</i>	Environment Protection Authority, Access Canberra

ACT legislation is available on the ACT Legislation Register which can be found at: www.legislation.act.gov.au

To contact the ACT government agencies listed above call Access Canberra on 13 22 81.

3. DEFINITION AND MANAGEMENT OF CONTAMINATED LAND

3.1 WHAT IS CONTAMINATED LAND?

Contaminated land is **land** (including buildings and structures impacted by **contaminated land** and surface and underground water) on and/or in which:

- » a substance is present at a concentration which exceeds that normally present (i.e. commonly referred to as the background level)
- » the presence of which presents, or would be likely to present a risk of harm to human health and/or a risk of **environmental harm**.

For the purposes of the Act, **land** would not be considered **contaminated** merely due to the presence of hazardous substances in, on or under the **land** (including in buildings and structures on the **land**). For example a landfill site authorised under the Act may have substances in surface water above the background levels where the water is contained and managed within the site.

In this case the surface water is not considered to be **contaminated land** under the Act. Another example is a building that contains asbestos as part of the building fabric, construction material or insulation. The presence of asbestos as part of the building would not be considered **contaminated land** under the Act..

However, if these **substances** are managed in an appropriate manner the site would not pose a significant risk of harm to human health or the **environment**.

Land may be **contaminated land** even if it became **contaminated** partly or entirely by the migration of contaminants into, onto or under the **land** from other **land**. For example petroleum products leaking from underground fuel storage tanks have been known in the past to cause contamination of the surrounding soils and groundwater. In some cases this contamination has been known to migrate through the soils and groundwater to an adjacent site.

3.2 MANAGING CONTAMINATED LAND

Generally, the process of managing **contaminated land** can include any or all of the following:

- » site **assessment**
- » site **remediation**
- » audit of **assessment** and **remediation**
- » on-going site management.

4. POLICY OBJECTIVES

The Objectives of this **Contaminated Sites EPP** are to provide information to the community to:

- » minimise the risk of adverse impacts of **land** contamination on the **environment** and human health within the ACT and elsewhere
- » ensure that the approved **land** use (or uses) can be conducted without contamination presenting, or being likely to present a significant risk of harm to human health or a significant risk of **material** or **serious environmental harm**
- » establish a process for assessing potentially **contaminated land** and, where appropriate, remediating **contaminated land** which presents, or is likely to present, a significant risk of harm to human health and/or a significant risk of **material** or **serious environmental harm**
- » ensure that the ACT meets its national obligations and plays its part in Australia meeting its international obligations under national and international agreements relating to **contaminated land**
- » support auditing of **contaminated land assessment** and **remediation**.

5. COMPLIANCE WITH THIS EPP

EPPs are not legally binding in themselves; they are statements of policy, guidelines and explanations of legal requirements. Where something is legally required, this **EPP** refers to the source legal document (usually the Act or Regulation). **EPPs** have been developed to help people comply with the legal requirements of the Act and Regulation and the **general environmental duty**, which requires people to take practicable and reasonable steps to prevent or minimise **environmental harm** or **environmental nuisance**.

The **EPA** has produced a range of educational materials, including industry specific information sheets, guidelines, standards and codes of practice, to inform the public of their obligations under, and promote a high level of compliance with, the Act and the Regulation.

6. COMPLIANCE AND ENFORCEMENT

The **EPA** has a range of administrative, civil and criminal enforcement actions available to ensure compliance with, and enforcement of, the Act and Regulation. Section 11 of the General **EPP** outlines the enforcement actions available under the legislation. Compliance and enforcement action taken is detailed in the **EPA's** Environment Protection Compliance Framework and Environment Regulation and Protection Compliance and Enforcement Guideline 2016.

7. REVIEW OF EPA DECISIONS

Certain decisions made by the **EPA** are reviewable. There are two types of reviewable decisions:

- » Internally reviewable decisions (a decision is reviewed by the **EPA**).
- » Reviewable decisions (a decision is reviewed by the ACT Civil and Administrative Tribunal (ACAT)).

Under Section 135 of the Act, which specifies both the internally reviewable decision and reviewable decisions, an eligible person can make an application either to the **EPA** or to ACAT for review of a decision.

8. LEGISLATIVE REQUIREMENTS

This section describes the legislative framework used to protect the human health and environmental risks associated with **contaminated land**.

8.1 ENVIRONMENTAL DUTIES

The Act creates environmental duties:

- » a **general environmental duty** (Section 22 of the Act)
- » the duty to notify the **EPA** of actual or threatened **environmental harm** (Section 23 of the Act)
- » the duty to notify the existence of **contaminated land** (Sections 23A of the Act).

8.1.1 General environmental duty

The **general environmental duty** requires all people to take practicable and reasonable steps to prevent or minimise any **environmental harm** or **environmental nuisance** their actions may cause. **Environmental harm** is defined as any impact that has the effect of degrading the **environment**. Therefore any activity leading to the creation of **contaminated land** (which will constitute a degrading of the **environment**) or any activity associated with the management of **contaminated land** that has a similar effect, is unlawful.

8.1.2 Duty to notify actual or threatened environmental harm

Section 23 of the Act creates a duty to notify actual or threatened **environmental harm** and requires a **relevant person**, when they realise their actions have caused or are likely to cause **material** or **serious environmental harm** from pollution, to report the matter to the **EPA** as soon as possible. This requirement applies even if reporting an incident might involve admitting to something unlawful. To encourage compliance with this provision, Section 150 of the Act provides that this information is not admissible in evidence against the person in a prosecution under the Act.

In the event of a notification under Section 23 (including Section 23A) an assessment must be commenced within 3 months of the notification to determine the extent of any impacts and be completed within 6 months or timeframe agreed by the **EPA**.

Where a consultant/**auditor** becomes aware of **land** that is contaminated in such a way as to present, or to be likely to present— (a) a significant risk of harm to human health; or (b) a risk of **material environmental harm** or **serious environmental harm** the consultant/auditor must inform their client of their obligation to notify the **EPA** under section 23A of the Act.

Where a site has been notified under section 23A of the Act and off-site impacts have been identified the **relevant person** must notify the impacted land custodians of the nature, extent, magnitude and risks of the contamination and their proposed remediation/management measures.

8.1.3 Duty to notify the existence of contaminated land

A lessee, sublessee or occupier of **land** must notify the **EPA** (under Section 23A of the Act) in writing when:

- » they become aware that the **land** is **contaminated**
- » the **land** is **contaminated** in such a way as to present or be likely to present a significant risk of harm to human health and/or a significant risk of **material** or **serious environmental harm**.

A notice under this Section of the Act should specify¹:

- » the location of the **land** (block, section and suburb or street address)
- » the activity that has **contaminated** the **land**
- » the nature of the contamination
- » the nature of the risk
- » any other matter the person making the notification believes is relevant to the contamination.

Examples of indicators of contamination or harm may include²:

- » case(s) of a biologically plausible illness or health impairment among people who have had exposure to a particular **contaminated** site
- » the presence of chemicals on or in surface water or groundwater at the site (for example, abnormal colouration of the water, odours emanating from the water)
- » visible signs of toxic responses to contaminants in flora and fauna (for example, unusual numbers of birds dying on or near the site, abnormal domestic animal or wildlife behaviour, dead vegetation within or adjacent to areas of otherwise normal growth)
- » liquid or solid chemicals or chemical wastes found on or in the soil during site works
- » unusual odours emanating from the soil
- » the entry of chemicals into on-site or off-site service trenches
- » the presence of discarded explosive materials on site
- » the presence or the storage of bulk liquid dangerous goods on the site with potential for leakage or spillage
- » the presence of illegal and/or uncontrolled landfilling on site
- » evidence of off-site migration of contaminants into adjacent or nearby environments (for example, migration to residential areas, creeks, rivers, wetlands, sediments or groundwater).

The notification of asbestos contamination is required where :

- » friable asbestos is present in or on soil on the **land**
- » the level of asbestos (% weight for weight) in an individual soil sample is equal to or above the health screening level of friable asbestos in soil (0.001%) specified in Section 4.8, Schedule B1 of the ASC **NEPM**, made by the NEPC

¹ see Appendix D for notification form

² Guidelines on the Duty to Report Contamination under the *Contaminated Land Management Act 1997*, NSW DECC 2015

- » a person has been, or foreseeably will be, exposed to greater than 0.01 fibres/mL of asbestos fibres by breathing them into their lungs.

This is not an exhaustive list and there may be additional indicators of harm evident.

The Act provides for penalties for non-compliance with this duty to notify (section 23A).

The notification should be completed using the form provided in Appendix D of this **EPP**.

Note: *The information provided in the notice is not admissible as evidence in any proceedings against the person for an offence under the Act. However this does not prevent the EPA from issuing an order to assess or remediate contaminated land.*

8.2 ENVIRONMENTAL MANAGEMENT INSTRUMENTS

The Act creates a number of environmental management instruments. An explanation and general policies on the use of the instruments is described in Section 10 of the General **EPP**. The application of these instruments to **contaminated land** is described below.

8.2.1 Environmental authorisations

Environmental authorisations (Part 8 of the Act) are a form of licence to conduct an activity (Schedule 1 of the Act) which has a significant potential to cause **environmental harm**, and sets out conditions under which the activity must be conducted. **Environmental authorisations** are required for activities which have the potential to cause contamination. Examples of activities which have the potential to adversely impact on human health and the **environment**, and which require an **environmental authorisation** under the Act, are:

- » Commercial incineration of wastes (including medical, chemical and municipal wastes)
- » Commercial landfills
- » Sewerage treatment works
- » Petroleum storage
- » Electricity generation
- » Commercial use of chemicals
- » Preservation of timber
- » Electronic waste treatment
- » Operation of an outdoor rifle range

For **contaminated land** an **environmental authorisation** is required for the following activities:

- » the treatment (other than by incineration), storage or handling of more than 1 000 m³ of **contaminated** soil from **land** outside the parcel of **land** where the **contaminated** soil is treated, stored or handled
- » the treatment (other than by incineration), storage or handling of more than 10 000 m³ of **contaminated** soil from **land**.

8.2.2 Environmental protection agreements

Environmental protection agreements are formal, but non-contractual, agreements under Part 7 of the Act between the **EPA** and businesses. The **EPA** may request a person voluntarily conducting an **assessment** of **contaminated land** to enter into an **environmental protection agreement** under Section 38 of the Act. The terms of such an agreement would depend on the potential nature and extent of the contamination and the location of the site.

An **environmental protection agreement** would include requirements for the **assessment, remediation** (if required) and independent **environmental audit** to ensure the site is suitable for the intended and permitted uses. For example, there are specific guidelines dealing with the **assessment** and validation of sites containing above and below ground fuel storage tanks. The **EPA** endorses the use of the ASC **NEPM** for the **assessment** of sites containing or suspected of containing fuel storage tanks. Information sheets containing the **EPA** requirements for sites containing above ground and underground fuel storage tanks and the disposal of soil from these sites can be found at www.accesscanberra.act.gov.au.

An **environmental protection agreement** can also be entered into as a means of enforcing an ongoing site management plan. Section 9.3.6 of this **EPP** outlines the procedures to be considered to ensure the legal enforceability of a site management plan required by a site **assessment** and/or an independent **environmental audit of contaminated land**. This policy applies to **land** where, following a **contaminated land assessment**, ongoing management is required.

Non-compliance with an agreement may result in the **EPA** issuing an **environment protection order** under the Act to ensure compliance.

8.2.3 Environment protection orders

An **environment protection order** is an instrument issued by the **EPA** under Section 125 of the Act, where the **EPA** is satisfied that the person has breached the Act or an **environmental authorisation** condition. The **EPA** may issue an **environment protection order** for **land** that is known to be **contaminated** where the **land** is still suitable for its current use (or another approved use) to permit the current use (or another approved use) subject to compliance with certain conditions.

This option may be adopted where:

- » the site would not present, or would not be likely to present, a significant risk of harm to human health or a significant risk of **material** or **serious environmental harm**
- » the site would not present, or would not be likely to present, a significant risk of harm to human health or a significant risk of **material** or **serious environmental harm** while measures for its containment continue.

An example of this is where an **assessment** finds that an industrial site is **contaminated** with hydrocarbons (i.e. petroleum products) in excess of levels suitable for certain sensitive **land** uses (for example, residential) but below those suitable for its current use. In this case the conditions in an **environment protection order** may include that provided the current **land** use continues and measures employed to contain and monitor the contamination are in place the site would not pose a significant risk of harm to human health or the **environment**.

8.2.4 Other environmental management instruments

Enforceable undertakings (Part 14A) are an alternative to infringement notices and criminal prosecutions. They are voluntary binding agreements that must be proposed by an alleged offender and accepted by the **EPA**. An **enforceable undertaking** requires the alleged offender to undertake tasks to settle an alleged contravention of the Act and remedy the harm to the **environment** and the community.

The other environmental management instruments, **environment improvement plans** (Division 9.1), **emergency plans** (Division 9.3) and **financial assurances** (Division 9.4) are unlikely to be used in managing **contaminated land**.

8.3 SPECIFIC CONTAMINATED SITES LEGISLATIVE PROVISIONS

8.3.1 Assessment, remediation and costs

Division 9.5 of the Act outlines provisions allowing the **EPA** to order an **assessment** and/or **remediation** of **land**, notification of orders for **assessment** or **remediation** and choice of **appropriate person**. See Section 9.1, 9.2 and 9.5 of this **EPP** for further information on **assessment** and **remediation orders**.

Division 9.6 of the Act outlines provisions relating to the recovery of costs associated with **assessment** or **remediation**. See Section 9.7 for further information.

8.3.2 Assessment of harm

The **EPA** may consider a range of matters in assessing whether **land** is **contaminated** with one or more substances in such a way as to present, or be likely to present, a significant risk of harm to human health or a significant risk of **material** or **serious environmental harm**, under Section 91B of the Act. These include:

- » whether the contamination of the **land** has already caused harm
- » whether the substances are toxic, persistent or bioaccumulative or are present in large quantities or high concentrations or occur in combinations
- » whether there are routes by which the substance may proceed from the source of the contamination to a human being or other aspects of the **environment**
- » contamination to a human being or other aspects of the **environment**
- » whether the uses to which the **land** and adjoining **land** are currently being put are such as to increase the risk of harm
- » whether the use of the **land** and the **land** adjoining it, being a use permitted by the lease to which the **land** is subject, is such as to increase the risk of harm
- » whether the substances have migrated or are likely to migrate from the **land** (whether because of the nature of the substances or the nature of the **land**)
- » the contents of this **EPP** (and any other **EPP** relating to contamination and **remediation**)
- » any relevant **NEPM**, in particular the ASC **NEPM**.

For indications of contamination in soils and/or water (including groundwater), which would be considered to present a significant risk of harm to human health, see the Guidelines on the Duty to Report Contamination under the *Contaminated Land Management Act 1997* (NSW), section 2.2.1 Indicators of Contamination. This guideline is available from, www.environment.nsw.gov.au.

The General **EPP** also provides guidance on whether **material** or **serious environmental harm** has occurred. For example, if the remedial action required to address contamination at a site exceeds \$5,000 or \$50,000, the contamination is deemed to have caused **material environmental harm** or **serious environmental harm** respectively.

8.3.3 Appropriate person

Consistent with the **polluter pays principle** (section 3D(1)(e)), the Act introduces the concept of an **appropriate person** (Section 91I) to rank the responsibility for **contaminated land**.

The **appropriate person**(s) is chosen in the following order:

- » the person(s) who was responsible for contamination of the **land** or, if not practicable
- » a lessee or sub-lessee of the **land** (whether or not the person had any responsibility for such contamination); or, if not practicable
- » a notional lessee of the **land** (whether or not the person had any responsibility for such contamination).

It is possible that an **appropriate person** cannot be chosen because the person(s) cannot be identified or located, or the person(s) does not have adequate resources to remediate the contamination.

Where an **appropriate person** cannot be identified, the ACT Government in the case of Territory land and the Commonwealth Government in the case of National land shall take the necessary action to manage the **assessment, remediation** and audit of the **land**.

9. SITE ASSESSMENT AND REMEDIATION

9.1 WHEN IS A SITE ASSESSMENT REQUIRED?

A site **assessment** would normally be required where there is a change to the lease purpose, or **land** use where the past use of the **land** may have caused contamination. See Appendix A for a list of specific industries and **land** uses that have previously been associated with **contaminated land**.

The exact level of risk of **land** contamination associated with any particular industrial, commercial or agricultural practice will depend upon the standard of management, including the past regulatory framework and safety procedures employed at individual sites.³

In the ACT an **assessment** is usually triggered by a change in lease purpose or **land** use where potentially contaminating activities have occurred at a site. In these cases the **assessment** is undertaken voluntarily by the lessee, sublessee, land custodian (for unleased land) or developer who will benefit from the change in use or redevelopment of the site. An example being the redevelopment of disused service station sites throughout the ACT. Site specific requirements are included in the **development** approval granted by the ACT Planning and Land Authority regarding the **assessment, remediation** (if required) and independent audit of a site to ensure it is suitable for the intended and permitted uses.

An **assessment** can be carried out voluntarily; this is the preferred option of the **EPA**. A voluntary **assessment** may require an **environmental audit** depending upon the complexity of the issue. The **EPA** can also order an **assessment** (under Section 91C of the Act) to be carried out by the **appropriate person** if required. An **environmental audit** must be carried out on an **assessment order** issued by the **EPA**. Any site subject to an **assessment order** for contamination will be placed on the **Register of Contaminated Sites** (see Section 11.1 of this **EPP** for further information).

Where a voluntary **assessment** is proposed, the person may also be asked to enter into an **environmental protection agreement** with the **EPA** under Section 38 of the Act. The terms of such an agreement would depend on the potential nature and extent of the contamination and the location of the site.

An **assessment** may also be required where the **EPA**:

- » has been notified of the existence of **contaminated land** (under Section 23A of the Act)
- » has reasonable grounds for believing that **land** is **contaminated** and the contamination presents, or would be likely to present a significant risk of harm to human health and/or a significant risk of **material** or **serious environmental harm**.

In these cases the **EPA** in the first instance would request that the **appropriate person** enter into an **environmental protection agreement** to undertake a voluntary **assessment** of the **land**. If agreement cannot be reached the **EPA** may (under Section 91C of the Act):

- » order the **appropriate person** to conduct an **assessment** of the **land** contamination
- » conduct such **assessment** itself.

The method of choosing an **appropriate person** is explained in Section 8.3.3 of this **EPP**.

Refer to Section 8.3.1 of this **EPP** for further information regarding the content of an order to assess **land** contamination.

The Act provides for penalties for non-compliance with the requirements to conduct an **assessment** (Section 91C) and to commission an **environmental audit** (Section 76(2)) of the **assessment**.

³ Australian and New Zealand Guidelines for the Assessment and Management of Contaminated Sites, ANZECC & NHMRC 1992

In all cases the person proposing to undertake an **assessment** or **environmental audit** of **contaminated land** should discuss the proposal with a suitably qualified consultant, familiar with **contaminated land** assessments. If a change in lease purpose or **land** use for the site is proposed then the proposal should also be discussed with the **EPA** and the relevant planning authority.

*Note: If an **assessment** finds that the **land** is **contaminated** in such a way as to present or be likely to present a significant risk of harm to human health and/or a significant risk of **material** or **serious environmental harm**, the lessee, sublessee or occupier is required to notify the **EPA**. This duty to notify is discussed in more detail in Section 8.1.3 of this **EPP**.*

The EPA Information Sheets and Guidelines (see Section 12 of this **EPP**) on certain contaminants and activities, including sites impacted by asbestos and for the abandonment of fuel storage tanks, are available at www.accesscanberra.act.gov.au.

Note: There are specific requirements for the abandonment of fuel storage tanks, including that approval for the method of abandonment is required from Access Canberra. The removal of fuel storage tanks from a site also constitutes development under the Planning and Development Act 2007 and development approval is required for the works.

9.2 WHEN IS REMEDIATION OF CONTAMINATED LAND REQUIRED?

Remediation is required where an **assessment** indicates there is a significant risk of harm to human health or significant risk of **material** or **serious environmental harm**.

Remediation of **contaminated land** can be undertaken voluntarily, which is the preferred option of the **EPA**. For complex sites the **EPA** will generally take a cautious approach and require an **environmental audit** on voluntary **remediation**.

Where the **EPA** has reasonable grounds for believing that the **land** to which an **audit** (Section 91C of the Act) relates is contaminated and this contamination presents, or would be likely to present, a significant risk of harm to human health and/or a significant risk of **material** or **serious environmental harm** the **EPA** may (under Section 91D of the Act):

- » order the **appropriate person** to remediate the **land** contamination
- » conduct the **remediation** itself.

The method of choosing an **appropriate person** is explained in Section 8.3.3 of this **EPP**.

Refer to Section 9.5 of this **EPP** for further information regarding the content of an order to remediate **land** contamination.

An **environmental audit** must be carried out on **remediation** ordered by the **EPA**. Any site subject to a **remediation order** will be placed upon the **register** of **contaminated** sites.

Remediation in relation to **contaminated land** includes:

- » preparing a long-term management plan
- » removing, dispersing, destroying, reducing, mitigating or containing the contamination
- » eliminating or reducing any hazard arising from the contamination, including restricting access to the **land**.

An example of this was the **remediation** of sheep dip sites in the ACT in the 1990s that had been redeveloped for residential housing. The **assessment** determined there was a significant risk to human health from elevated levels of arsenic in the soils, and **remediation** was required to protect human health and the **environment**.

Due to the complex nature of **contaminated land remediation**, remedial actions are developed on a site-specific basis utilising best practice methodology and remedial techniques. The preferred order of options for site **remediation** and management are:

- » on-site treatment of the soil and or water (including groundwater) so that the contaminant is either destroyed or the associated hazard is reduced to an acceptable level
- » off-site treatment of excavated soils which, depending on the residual levels of contamination in the treated material, is then returned to site, removed to an **EPA** approved site for beneficial re-use or removed as waste to an **EPA** approved landfill.
- » mitigation of the risks associated with contamination by engineering controls.

In the ACT the **EPA** manages an approval process for controlling the beneficial reuse (BRU) of soil off-site and disposal of **contaminated** soil to licensed facilities.

Information sheets containing the **EPA** requirements for the disposal of soil and beneficial reuse from these sites can be found at www.accesscanberra.act.gov.au.

Some **remediation** works, such as the treatment of contaminated soil, may require licensing by the **EPA** (see Section 8.2.1 of the **EPP** for more detail). The **EPA** should be contacted prior to commencing **remediation** works to determine these requirements.

Actions to remediate **contaminated land** may range from managing the effects without destroying or removing the contaminants, to a complete clean-up of the site. Examples of actions to manage the effect of contamination are fencing off areas, sealing areas with concrete, capping with clean soil, and covering with well-maintained grass, or changing **land** use at the site to a less sensitive use.

If the preferred option is clean-up, there are two broad approaches to determining clean-up levels. The first is to decontaminate the site by bringing the level of contamination back to background levels. This approach preserves the multi-functionality of the **land**, rendering the site suitable for any future use.

The second approach is to set the level of clean-up no higher than necessary to be compatible with the intended or permitted uses of the site. This fit-for-use approach recognises that resources are always limited and in some circumstances it may not be necessary or desirable for economic, social or environmental reasons to have the site suitable for any use. For example, if the site were in an industrial area, there may be no benefit in cleaning the site to a level suitable for residential housing.

The principle guideline for the **remediation** and management of **contaminated land** in the ACT is the *Australian and New Zealand Guidelines for the Assessment and Management of Contaminated Sites*, Australian and New Zealand Environment and Conservation Council and the National Health and Medical Research Council, January 1992 (ANZECC & NHMRC).

9.3 WHAT IS REQUIRED FOR A CONTAMINATED SITE ASSESSMENT?

The purpose of a **contaminated site assessment** is to determine whether site contamination poses an actual or potential risk to human health and/or the **environment**, either on or off site, of sufficient magnitude to warrant **remediation**, or management for the current or proposed uses.

The **assessment** should be undertaken in accordance with the ASC **NEPM** by professionals who have relevant qualifications, competencies and experience in site contamination assessments (see Section 9.4 of the **EPP** for further guidance).

It is recommended that a **contaminated site assessment** be undertaken in a staged approach based on the level of information required. Each stage of a site **assessment** should include the relevant level of risk **assessment**, which requires a comprehensive knowledge of the source, pathway and receptors in each case.

Typically there are three phases involved:

- » Phase 1 – Site History and Preliminary Site Assessment
- » Phase 2 – Detailed Site Assessment
- » Phase 3 – **Remediation** (including Site Management (if required))

Each phase will determine the need for the subsequent phase.

9.3.1 Phase 1 – Site History and Preliminary Site Assessment

The first phase of **contaminated** site **assessment** involves establishing a site history of potentially contaminating activities. This site history review involves the collation of information, from various sources, to determine if the site is or may have hosted or is likely to have been impacted by a potentially contaminating activity. Where a site history review clearly demonstrates that site activities have been non-contaminating this information can be used to justify not progressing with further **assessment**.

However, where there is an indication that the **land** may potentially be **contaminated**, as a result of current or past activities, a Preliminary Site Assessment (PSA) should be conducted by a suitably qualified and experienced consultant. A PSA usually includes a desktop study to identify the site characteristics (site location, site layout, building construction, geological setting, historical **land** uses and activities at the site and on adjacent sites) and a site inspection (including interviews with site representatives).

The PSA should be sufficient to determine contaminants of concern and identify areas of potential contamination, including all sources of potential contamination. The PSA may also include initial sampling to provide a preliminary **assessment** of site contamination and need for further investigation.

A starting point of a site history review (and a PSA) is consideration of the potentially contaminating activities list (see Appendix A of this **EPP**) and whether the **land** in question has hosted or currently hosts or is adjacent to a site that has hosted or currently hosts a potentially contaminating activity .

The information collected as part of the PSA should result in the development of an initial Conceptual Site Model (CSM) - a representation of site-related information regarding potential or known contamination sources and receptors, and the potential exposure pathways between those sources and receptors. Refer to Schedule B2 of the ASC **NEPM** for more information.

In the ACT, elements to be included in the site history review are:

- » a review of historic aerial photographs held by Surveying and Spatial Data, Environment, Planning and Sustainable Development Directorate
- » a Contaminated Land Search (see Section 11.3 of this **EPP** and Appendix F)
- » a review of Access Canberra records for Dangerous Substances (including fuel and chemical storage, asbestos, lead paint and PCB electrical equipment)
- » a groundwater bore search of records held by the **EPA** (see Section 11.5 of this **EPP**)
- » a search for significant species, vegetation communities and registered trees (see ACTMAPi at: www.actmap.i.act.gov.au)
- » a search of Heritage records (contact the Heritage Unit, Environment, Planning and Sustainable Development Directorate
- » a review of historic plans and/or records (including the site's building file) held by ACT Government and Commonwealth Government departments
- » a review of current and former uses of the site
- » discussions with current and past **land** managers, lessees, sublessees and site users

- » a site inspection to identify the presence or otherwise of above ground and/or underground fuel storage tanks (*note: commercial buildings built before the arrival of natural gas to the ACT in the early 1980's were generally heated using fuel oil heating systems associated with above and below ground fuel tanks, only tanks greater than 50,000L in capacity were required to be registered with Access Canberra*)
- » identification of potential contaminant types based on site uses, site history and building records.

To contact the government agencies detailed above contact Access Canberra on 13 22 81.

For buildings constructed prior to 2004 this must also include a Hazardous Materials Survey. The Hazardous Materials Survey should be undertaken in accordance with the requirements of Section 8.1 of the **EPA's** Hazardous Materials **EPP**, November 2010.

An appraisal of the site history is fundamental to the preliminary **assessment** and should be used to assess potential **land** contamination. It is important to review and assess all relevant information about the site, including information obtained during a site inspection.

Where a complete site history clearly demonstrates that site activities have been non-contaminating, there may be no need for further investigation or site sampling. However, where contaminating activities are suspected or known to have occurred, or if the site history / records are incomplete, it may be necessary to undertake a preliminary sampling and analysis program to assess the need for a detailed site investigation.

9.3.2 Phase 2 – Detailed Site Assessment

A detailed site investigation involves the taking of samples from air, soil and surface and/or groundwater to confirm the presence or absence of contamination identified or suspected in the Phase 1 investigation.

The investigation should involve the development of Data Quality Objectives (DQO) based on an initial Conceptual Site Model and be undertaken in accordance with a Sampling and Analysis Quality Plan (SAQP). The SAQP sets the sampling program and DQOs as well as the Quality Assurance (QA) and Quality Control (QC) methodologies to be employed to manage the field work stage of the **assessment**. See Schedule B2 of the ASC **NEPM** for further guidance.

A number of sampling events may be required to delineate the contamination and determine the risk to human health and/or the **environment** which may require changes to the sampling methodology and should be reflected by amending the SAQP.

*Note: in accordance with the ASC **NEPM** (Schedule B6), the **assessment** process for groundwater contamination differs from that of **land** contamination in that there is greater emphasis on suitability for current and realistic future uses, compared with the emphasis on current and intended or permitted uses for soil **assessment**.*

The ASC **NEPM** Field Checklist, which is part of the ASC **NEPM** Toolbox provides details of the parameters that should be collected in the field based on the objectives of the investigation and the contaminants of concern.

The detailed site investigation should be comprehensive enough to identify the nature of the contamination and delineate its lateral and vertical extent to a sufficient degree that an appropriate level of human health and environmental risk **assessment** may be undertaken and, if necessary, to provide the basis for the development of an appropriate **remediation** or management strategy.

Where management is proposed for residual contamination and not **remediation**, the consultant should justify the approach and ensure the management measures are enforceable and appropriate to the current and/or future uses or development of the site. Any **assessment** must consider all uses permitted for a sites zoning under the *ACT Territory Plan 2008* and where the **assessment** does not find a site suitable for certain uses these uses must be clearly excluded in the **assessment** report's findings.

The **NEPM** Toolbox includes a draft document on the 'Key Principles for Remediation and Management of Contaminated Sites' which may be of assistance in determining whether **remediation** and/or management will be implemented at a site, based on the findings of the detailed site investigation.

9.3.3 Phase 3 - Remediation (including management)

If site contamination is found to pose an actual or potential risk to human health and/or the **environment**, either on or off the site and therefore the site may not be suitable for its current or proposed uses, **remediation** and/or management should be considered.

The method of **remediation** and/or management should take into consideration the hierarchy of options for site clean-up and management as defined under Principle 16 of the **NEPM**, and may vary depending on:

- » the type and extent of contamination
- » where the contamination is (soil, sediments or ground/surface water)
- » the risk that the material poses.

Where **remediation** involves asbestos, the WA Health Department publications including the *Guidelines for the Assessment, Remediation and Management of Asbestos Contaminated Sites in Western Australia (2009)* should be considered.

Complex **remediation** should be supported by the development and implementation of a Remediation Action Plan (RAP). The key components of a RAP are:

- » Identification of the key stakeholders and responsibilities including consultation
- » Development of **remediation** goals and clean-up acceptance criteria
- » **Assessment** of the **remediation** options and determination of the preferred **remediation** option
- » Documentation of the **remediation** methodology including any regulatory permit/licensing requirements
- » Development of an Environment Management Plan
- » Defining the validation program to demonstrate the successful completion of the **remediation**, including monitoring.

9.3.4 Validation

Following **remediation**, it must be proven that remediation goals have been met and remnant contamination does not present an unacceptable risk to human health and/or the environment based on the current or proposed land use, through appropriate sampling of soil, groundwater and/or vapour. Validation of groundwater quality requires ongoing monitoring over a pre-determined period of time.

9.3.5 Monitoring

Where monitoring is necessary to demonstrate that **remediation** is occurring or has been successful, monitoring should take into account a range of factors that may affect results, including but not limited to seasonal changes in groundwater levels, artifacts from sampling and changes in conditions due to **remediation**.

A contingency plan is often required (i.e. a change in remedial method or further **remediation**) if the chemical levels identified during monitoring exceed a pre-determined trigger level.

9.3.6 Site Management Plan

A Site Management Plan (SMP) is different to an Environment Management Plan (EMP). An EMP details the measures to be adopted during remedial works. A SMP is required where ongoing monitoring or management of a site is required following remedial works due to remaining contamination on or off site.

SMP's must be practical to implement and enforceable. To ensure this the **EPA** has developed an Institutional Controls Policy as detailed in the following section of this **EPP**.

9.3.7 Institutional Controls

Following the environmental **assessment, remediation** and **audit** of **contaminated land** there are instances where ongoing site management is required. These management requirements, as detailed in a SMP, may be passive or active and must be implemented to ensure any residual contamination is appropriately managed and does not pose an ongoing and/or unacceptable risk to human health and/or the **environment**.

For an independently audited site, the **auditor** must, as a requirement of their accreditation, ensure that any ongoing management plan is reasonably legally enforceable.

From a policy perspective this would equally apply to sites audited by the **EPA** to ensure any ongoing SMP is legally enforceable.

To ensure SMPs are implemented and are legally enforceable they require appropriate institutional controls to be in place. These institutional controls may include conditions within the crown lease and notation on title for a site, entering into an **Environmental Protection Agreement (Agreement)** under Section 38 of the Act with the land custodian or, if necessary, serving of an **Environment Protection Order** under Section 125 (3) of the Act.

It has been the **EPA's** experience that by the nature of their redevelopment, sites on leased **land** subject to ongoing site management requirements can be either managed by a single entity or become unit titled and managed by an Owner's Corporation represented by the Body Corporate. Due to the probable large number of owners within unit titled complexes and the possible frequent change of ownership of the individual titles it would be impractical to control these sites using the provisions under the Act listed above, that is, through **Environmental Protection Agreements** or **Environment Protection Orders**.

9.3.8 Unleased Land, Government Leased Land, Leased Land - Subject to Interim Development

For sites requiring ongoing management which are on unleased Territory **land**, on leased **land** being managed by an ACT government agency or on leased **land** subject to interim development (for example, Greenfields developments, multi unit developments or mixed use developments which are subject to interim development prior to the land's sale and/or the establishment of the Body Corporate) an **Agreement** under section 38 of the Act should be entered into between the **EPA** and the **land** custodian.

The **Agreement** will detail the nature of the substances remaining at the site (or off site), specific site details and the required management measures. The **Agreement** would include a requirement that the site be managed in accordance with the **EPA/Auditor** endorsed SMP and that management continue until the **EPA** (and the **Auditor** for independently audited sites) agrees in writing that the SMP is no longer required.

Should the **Agreement** not be complied with, an **Environment Protection Order** under Section 125 (3) of the Act could be issued on the **land** custodian to ensure the site continues to be managed appropriately.

For sites where **land** custodianship falls to business units within the ACT Government Directorates the **Agreement** would also specify that these management requirements be recorded in the TCCS Integrated Asset Management System in accordance with its *Procedure for the Management of Contaminated Assets* Version 1.2 dated 31 May 2013 (as updated from time to time).

The transfer of responsibility for SMPs subject to an **Agreement** (or **Environment Protection Order**) can only occur with the written acceptance of the **EPA**.

9.3.9 Leased Land – Private

Where the **EPA** and/or **Auditor** require that leased **land** be managed in accordance with an ongoing SMP the lessee or sublessee should request, through the ACT Planning and Land Authority, a lease variation.

The variation application should request that the conditions of the site's lease be updated to include a condition that the site be managed in accordance with an **EPA/Auditor** endorsed SMP and that management continue until the **EPA** (and the **Auditor** for independently audited sites) agrees in writing that the SMP is no longer required.

Following the variation of the lease the **EPA** will register a Miscellaneous Application Encumbrance for the site with the ACT Land Titles Office. The application must reference, and include a copy of, the SMP (and the Site Audit Statement for sites subject to an audit by an **EPA** approved **Auditor**).

Commonly for unit titled sites the responsibility for the SMP initially falls to the developer and then is transferred to the Owner's Corporation. This is because when a units plan is registered the Owner's Corporation is created and it is automatically responsible for all common property at the site.

To ensure that the Owner's Corporation (and thus the unit owners) understand their obligations and responsibilities under the SMP the following requirements (or similar) must be met prior to the **EPA** accepting transfer of the SMP from the developer to the Owner's Corporation:

- » at the inaugural meeting of the Owner's Corporation a resolution is passed accepting that it (the Owner's Corporation) is responsible for the requirements of the SMP
- » the resolution is provided to all unit owners and
- » the budget for the unit complex makes allowances for the assessment and/or remediation (including monitoring) costs required under the SMP.

It is the **EPA's** preference that at least some of this budget is provided by the developer for a period of 12 to 24 months from the time of handover.

In the event that the lessee or sublessee does not apply for a lease variation and/or agreement for the transfer of the SMP is not reached between the developer and the Owner's Corporation the **EPA** may consider serving an **Environment Protection Order** under Section 125(3) of the Act on the **appropriate person**.

*Note: Sites subject to independent audit requiring ongoing management or sites where an **Environment Protection Order** under section 125(3) of the Act has been issued will be placed on the **Register** of **contaminated** sites under section 21A of the Act. These sites can only be removed from the **Register** following receipt and acceptance by the **EPA** of advice from an **EPA** approved **auditor** that ongoing management of the **land** is no longer required.*

All sites are recorded on the **EPA** Contaminated Sites Management Database and Geographic Information System (see Section 11 of this **EPP** for further details).

9.4 WHO CAN CONDUCT AN ASSESSMENT?

Specialist environmental consulting firms drawing on a number of disciplines can undertake **assessments** of **contaminated** sites. The consultant must have a range of professional competencies consistent with the requirements of Schedule B (9) of the ASC **NEPM** and be able to recognise the need for supporting professional advice beyond their expertise when assessing contamination and its effects on human health and the **environment**.

It is accepted that one person will not have all the knowledge required to assess a complex site, therefore their access to relevant expertise in other fields (e.g. toxicology, hydrology etc.) is critical to a thorough site **assessment**. The extent to which these competencies apply depends on the complexity of the contamination issues and the particular site.

9.4.1 Consultant certification

While the **EPA** cannot recommend specific consultants, the use of appropriately certified consultants is recommended.

Contaminated land consultant certification schemes have been developed nationally to ensure those consultants dealing with **contaminated** sites have the necessary competencies to carry out the work. These certifications include the [Site Contamination Practitioners Australia](#) (SCPA) scheme, the Environment Institute of Australia and New Zealand's (EIANZ) [Contaminated Land Assessment Specialist Certified Environmental Practitioner](#) (CLA Specialist CEnvP) scheme and the Soil Science Australia (SSA) [Certified Professional Soil Scientist Contaminated Site Assessment and Management](#) (CPSS CSAM) certification.

The **EPA** recognises the SCPA, CLA Specialist CEnvP and SSA certifications as providing a process for certifying **contaminated land** consultants to a minimum standard of competency.

9.5 ORDERS FOR ASSESSMENT OR REMEDIATION OF CONTAMINATED LAND

An order to assess or remediate **land** contamination must be issued in writing and specify:

- » the person to whom it relates
- » the **land** to which it relates
- » the period within which the **assessment** or **remediation** is to be conducted
- » the nature of the actual or possible contamination
- » the action that the person subject to the order must take in assessing or remediating and reporting
- » any other requirements the **EPA** considers appropriate having regard to the nature and extent of the contamination and the physical attributes of the **land**.

The actions referred to in the fifth point of the previous paragraph may include:

- » serving a notice of the order on the occupiers of **land** access to which is necessary for the person to carry out the **assessment** or **remediation** and, if an occupier is not the lessee of that **land**, serving a notice on the lessee or sub-lessee (this might be a case where the order is being served on a polluter who is not the lessee or sub-lessee of the **land**)
- » making progress reports on the **assessment** or **remediation** to the **EPA**
- » advertising and conducting meetings to give progress reports to the public, and to receive public comment, on the **assessment** or **remediation**.

A person to whom an order to assess or remediate the **land** has been served must:

- » conduct, within the time period specified in the order, the **assessment** or **remediation** in accordance with the prescribed standards and procedures for carrying out the **assessment** or **remediation**, including standards and procedures specified in a relevant **National Environment Protection Measure** and in accordance with the terms of the order
- » commission an **environmental audit** of the **assessment** or **remediation**
- » provide to the **EPA** within 10 working days from the date of the order the name of the **auditor** who will conduct an **environmental audit** of the **assessment** or **remediation** (such an audit can only be conducted by an **auditor** approved for this purpose under Section 75 of the Act).

9.6 NOTIFICATION OF SITE ASSESSMENT OR REMEDIATION (INCLUDING ACCESS TO RELEVANT DOCUMENTS)

Section 91E and Section 91F of the Act determine notification requirements. They also set out the mechanism through which certain documents related to a specific site are made available. The **EPA** provides written notification to the occupier and, if the occupier is not the lessee or sublessee, to the lessee or sublessee of any **land** adjacent to the **land** in relation to which an order to assess or to remediate has been issued or which is being assessed or remediated by the **EPA**.

The intention of Subsection 91E(1) and Subsection 91E(2) of the Act are that the notice will:

- » state that **assessment** or **remediation** is taking place
- » invite the person to whom the notice is given to make a written submission to the **EPA** within 21 days from the day after the date of the notice

- » identify where copies of the following documents (if available) may be inspected:
 - a report of the outcome of the **assessment**
 - a progress report on the **assessment**
 - an audit of the **assessment**
 - a report of the outcome of the **remediation**
 - a progress report on the **remediation**
 - an audit of the **remediation**

The documents specified above are available for inspection as detailed in Section 19 of the Act.

9.7 COST OF ASSESSMENT AND REMEDIATION – WHO IS FINANCIALLY LIABLE?

Where the **EPA** has conducted an **assessment** or **remediation** of **contaminated land** itself, the **EPA** may (under Section 91K of the Act) recover costs of such **assessment** or **remediation** from an **appropriate person**.

If the **EPA** undertook **assessment** or **remediation** of **contaminated land**, in lieu of this being done by an insolvent owner, the **EPA** may (under Section 91L of the Act) recover costs of such **assessment** or **remediation** in priority to other parties. This provision only applies in the very limited circumstances where a liquidator or trustee in bankruptcy appointed under Commonwealth law has disclaimed the **land** as onerous property (i.e. where the liquidator or trustee believes the **land** has a negative worth).

When the **EPA** serves an order to assess or remediate **contaminated land** on a person and the person has incurred costs as a result of this action that person may (under Section 91M of the Act) recover from another responsible party the whole or a portion of those costs through the courts. This provision applies only if the person is either not responsible or only partially responsible for the contamination. Section 91N of the Act identifies those persons responsible for the contamination in any proceedings under Section 91M and creates a rebuttable presumption that a previous occupant of **land**, who carried out activities generating the substances that have caused contamination of the **land**, is responsible for the contamination.

Lessees, sublessees or occupiers of the **land** may recover (under Section 91O of the Act) loss and damages from a person conducting **assessment** or **remediation** work on their **land**. This situation may arise where the lessee, sublessees or occupier has consented to a person (typically a former lessee, sublessees or occupier who was the polluter) entering the **land** to comply with an order to assess or remediate.

The **EPA** may apply (under Section 91P of the Act) to the Supreme Court for an order that a person who was a director of a wound-up body corporate be made personally liable for the costs of **assessment** or **remediation**. The court may make such an order if satisfied that the body corporate failed to comply with an order to assess or remediate, or only partially completed the order, or was wound up to avoid compliance.

The **EPA** may apply (under Section 91Q of the Act) to the Supreme Court for an order that a person who was a director of a body corporate be made personally liable for the costs of **assessment** or **remediation**. The court may make such an order if satisfied that the body corporate of which the person was a director disposed of the **land** to avoid having to comply with an **assessment** or **remediation** order in respect of the **land**.

Under Section 91R of the Act the **EPA** may pursue a corporation through the court, where a holding company of the corporation is wound up to avoid costs of complying with an order to assess or remediate.

10. ENVIRONMENTAL AUDITS

10.1 WHAT IS A SITE AUDIT?

A site audit of **contaminated land** is an independent review of an **assessment** and/or **remediation** by an approved **contaminated land auditor**.

An audit can be conducted for the purpose of determining any one (or more) of the following matters, including:

- » the nature and extent of any contamination of the **land**
- » the nature and extent of the **assessment** or **remediation**
- » what **assessment** or **remediation** remains necessary before the **land** is suitable for any specified use or range of uses
- » the comprehensiveness of a remedial action plan for **contaminated land**.

On completion of an audit, the **auditor** is required to issue a site audit statement (or certificate of **environmental audit**). An ACT specific site audit statement template is provided at Appendix E. Prior to issuing a site audit statement, the **auditor** must complete a site audit report that summarises the basis and rationale for the conclusions in the site audit statement.

The main purpose of an audit is to determine whether a site is suitable for a particular use or range of uses. . Any audit must consider all uses permitted for a site under the ACT Territory Plan 2008 and where the assessment does not find a site suitable for certain uses these uses must be clearly excluded in the audit findings; and Site Audit Statement (see Appendix E) if required. 8.2.

Note: *A draft site audit statement and site audit report (along with an on-going site management plan, if appropriate) must be submitted to the **EPA** for comment prior to the submission of the final documents.*

10.2 WHEN IS A SITE AUDIT REQUIRED?

An independent audit is required if the **EPA** has issued an order to assess (under Section 91C of the Act) or remediate (under Section 91D of the Act) **contaminated land**. The **EPA** may also require an audit (under Section 76 of the Act), such as a condition of a **development** approval, or request an **auditor's** statement (under Section 76A of the Act). All audited sites are entered onto the **Register** of **contaminated** sites (Section 21A of the Act).

The **EPA** can also require a person to undertake an audit under Subsection 76(1) (a) of the Act. This may occur where the **EPA** wishes to verify a voluntary **assessment** or **remediation** of **contaminated land**.

An audit is usually required when a more sensitive **land** use is proposed for a site where past activities may have caused **land** contamination. For example where a disused sewage treatment works is to be redeveloped for residential or commercial purposes. Sewage treatment works have been associated in the past with significant contamination of soils and groundwater, which may pose a significant risk of harm to human health and/or the **environment**. In this case an **assessment** would be required, followed by an independent audit to certify that the site is suitable for the intended and permitted uses.

Generally the **EPA** will take a precautionary approach where past activities at a site may have resulted in contamination of the **land**, and may require that a site audit be conducted to ensure the accuracy of any **assessment** or **remediation**. The resultant site audit statement serves as an assurance to the actual or prospective lessees/sublessees/occupiers of the site, including government, financial institutions and the community that the site is suitable for a particular **land** use or range of uses.

10.3 WHO CAN UNDERTAKE A SITE AUDIT?

Section 75 of the Act states the provisions for approving **contaminated land auditors**. The **auditors** approved under Section 75 of the Act are suitable for the purposes of undertaking **environmental audits** of **contaminated land**. Only **auditors** meeting these provisions can undertake statutory audits under the Act.

By virtue of Section 75, Subsection 91C (4)(b) and Subsection 91D (4)(b) of the Act, an **auditor** conducting an audit of an **assessment** or **remediation** of **contaminated land** must be approved by the **EPA**.

Subsection 91C(7) and Subsection 91D(7) stipulate that the **EPA** will not approve an **auditor** for the purpose of Section 91C and Section 91D of the Act unless the **auditor** meets the prescribed criteria. As at this time there are no prescribed criteria for that purpose, it is sufficient if **auditors** meet the criteria specified in Section 75 of the Act (i.e. accredited as a **contaminated land auditor** by another state or territory).

An **auditor** accredited by another state or territory, when undertaking a statutory audit under the Act, must undertake the audit in accordance with the requirements of the accrediting state or territory.

In accordance with Subsection 91C(5) and Subsection 91D(5) an **auditor** preparing an audit of an **assessment** or **remediation** must consider:

- » the provisions of the Act and Regulations
- » the permitted and approved uses of the **land** to which the **assessment** relates (Note – it is extremely important that the **auditor** discuss the certification criteria for a particular site with the **EPA** and relevant planning authority prior to issuing the draft site audit statement to ensure compatibility with **land** use policy and legislative requirements in the ACT)
- » the degree or extent of contamination
- » any relevant **EPPs**
- » any relevant **NEPMs**.

Under subsection 91C(4)(b) and Subsection 91D(4)(b) of the Act a person on whom an order to assess or remediate has been served must also commission an **environmental audit** of the **assessment** or **remediation**. Additionally, under Section 76 of the Act the **EPA** may require an **environmental audit** of **contaminated land**. This Section may be invoked where an **assessment** or **remediation** is not automatically followed by an audit, such as a voluntary **assessment** and/or **remediation**.

Section 76A of the Act requires an **auditor** to provide to the **EPA**, within 7 days of receiving a request under this or another Act (for example, conditions of approval in a Notice of Decision under the *Planning and Development Act 2007*) to carry out an audit, including:

- » the name of the person making the request
- » reasons for the person making the request
- » the location of the **land** to which the audit relates
- » an estimation of the time within which the audit will be completed.

Section 76A also requires that site audit statements (Appendix E) be provided to the **EPA** within 15 business days after completion.

The notification should be completed using the form provided at Appendix B in this **EPP**.

Section 76B of the Act requires the **auditor** to provide to the **EPA**, within 60 working days after the end of each financial year, a report about each audit of **contaminated land** carried out in the ACT under this, or any other Act. The report must be provided in a form approved by the **EPA** (see Appendix C).

Under Section 91H of the Act the **EPA** may, by notice in writing, require an **auditor** to provide further information relating to a specific **assessment** or **remediation**. This may be the case where the **EPA** wishes to verify the findings of the audit or where more information is required to satisfy community concerns.

Under Subsection 76(3) of the Act an **auditor** shall not carry out an audit for the purposes of Subsection 76(2) of this Act if he or she was involved in the **assessment** or **remediation** for a particular site. Additionally, when a potential conflict of interest exists or could be perceived, the **auditor** must write to the **EPA** seeking clarification and approval prior to commencing the audit.

Note: *Any condition applying to a person accredited as a **contaminated land auditor** by another State or Territory applies to that person when conducting an audit under the Act or another Act of the Territory.*

11. CONTAMINATED SITES REGISTER AND INFORMATION MANAGEMENT

11.1 REGISTER OF CONTAMINATED SITES

Under Section 21A(1) of the Act the **EPA** is required to keep a **register** of contaminated sites. The following is to be included on the **register**:

- » an order under Subsection 91C(1) of the Act to assess whether **land** is **contaminated**
- » an order under Subsection 91D(1) of the Act to remediate **contaminated land**
- » an **environment protection order** under Subsection 125(2) or Subsection 125(3) of the Act to manage **contaminated land**
- » an **environmental audit** required under Subsection 76 (2) (**EPA** may require an **environmental audit**)
- » a notice under Subsection 76A(1) (Requests for auditor's statements) that an **auditor** has been engaged to undertake an **environmental audit** of **contaminated land** under the Act or another Act. Typically this will be under the *Planning and Development Act 2007* where a condition of development approval requires that an **auditor** be engaged to verify the **assessment** and any required **remediation** of a site as part of its redevelopment, for example the redevelopment of former service station sites for residential purposes.

Section 21A(4) also allows for the removal of a site from the **register** by the **EPA** when:

- » a **remediation** or **environmental protection order** to manage any contamination that remains on the site has not been issued by the **EPA** (within 60 days of the **EPA** receiving an **environmental audit** of the **assessment**)
- » if the **EPA** has not entered into an **environmental protection agreement** to manage any remaining contamination (within 60 days of the **EPA** receiving an **environmental audit**)
- » a condition or annotation has not been included on a crown lease or title for the **land** in relation to an **environmental audit** to manage any remaining contamination (within 60 days of the **EPA** receiving an **environmental audit** of the **assessment**)
- » the **EPA** has decided (based on advice from an approved **auditor**) that ongoing management of the land is no longer required.

In any other case a site entered to the **register** will remain on the **register** in perpetuity.

The **register** only records those sites subject to an **environmental audit** of **contaminated land** by an **EPA** approved **auditor** as required under subsections 76(2), 76A(1), 91C(1), 91D(1), 125(2) or 125(3) of the Act. These sites have been determined to have the greatest potential to cause harm to human health or the **environment**.

The **register** is an information device available to the **EPA** to provide information to the community, practitioners, proponents, and other stakeholders including prospective purchasers, government agencies and planning authorities on the contamination status of a site. The **register**, **environmental protection agreements** and orders are publicly available in accordance with Section 19 of the Act.

The **register** of **contaminated** sites is publicly available online at: www.accesscanberra.act.gov.au.

Section 21A(5) of the Act requires the **EPA** to give written notice of the entry or removal of a site from to the **register** to the Planning and Land Authority and, if the **land** is in a designated area, the National Capital Authority. In addition, to be consistent with other notification requirements, the **EPA** will advertise in the ACT Legislation Register and the ACT Open Government website within 10 working days when a record is entered to, or removed from, the **register**.

11.2 CONTAMINATED SITES MANAGEMENT DATABASE AND GEOGRAPHIC INFORMATION SYSTEM

The **EPA** is responsible for recording information held by the ACT Government on **contaminated** sites in the ACT.

The **EPA** maintains two data systems for recording information on sites which are known to be or have been **contaminated**. The data systems also contain records of potential **contaminated** sites which do not present a significant risk of harm while the current **land** use continues (for example, active municipal landfills, historic sheep dips in rural areas or operational service stations). The data systems are the Contaminated Sites Management Database (CSMD) and the Contaminated Sites Geographic Information System (CSGIS).

The CSMD is used as an electronic means of recording correspondence regarding a site subject to a **contaminated land** enquiry (for example a Contaminated Land Search).

The CSGIS is used to spatially record a site that is potentially or known to be **contaminated**. It also includes those sites that have been assessed, remediated and audited, including sites subject to on-going management and recorded on the **Register** of contaminated sites. For each site basic information on the activity, location, contaminants of concern and status is recorded. Detailed information available is recorded in ACT Government file management systems.

*Note: the records held by the **EPA** do not include all known or potentially **contaminated** sites in the ACT. If the **EPA** has no information on contamination for a particular site this does not absolutely rule out the possibility of contamination and should not be interpreted as a warranty that there is no contamination. To be completely sure, a person should arrange to conduct an independent **assessment** to absolutely rule out the existence of contamination (see Section 9.3 of this **EPP** for further information on undertaking a preliminary site.*

11.3 CONTAMINATED LAND SEARCH

Information on sites recorded in the **Register** of contaminated sites, CSMD and CSGIS systems is generally available to the public through a Contaminated Land Search. In some cases the information is the intellectual property of the lessee, sublessee or **land** custodian for unleased **land** and is only available with the written consent of these parties (for example assessment reports commissioned by the lessee, sublessee or land custodian).

Information on whether a site is in the CSMD and/or the GIS can be obtained via a Contaminated Land Search:

All Contaminated Land Search requests must be in writing on the required form and must include:

- » the name and contact details of the person making the request
- » the nature of the request (**land** purchase, due diligence, environmental reports, etc.)
- » the site location, including block, section, suburb and division
- » the street address (if known).

A Contaminated Land Search form and details on submitting the query, including associated fees, can be found on the Access Canberra website at: www.accesscanberra.act.gov.au (search '**contaminated land**').

11.4 LEASE CONVEYANCING OR DUE DILIGENCE ENQUIRIES

To facilitate access to information contained on both the **Register** of **contaminated** sites and CSGIS for **land** purchases in the ACT, a query is included in the Lease Conveyancing Enquiry administered by the ACT Planning and Land Authority. This query flags whether a site is recorded on the **register** or the CSGIS and provides contact details where further information is available.

A Lease Conveyancing Enquiry and details on submitting the query can be found on the Access Canberra website at: www.accesscanberra.act.gov.au (search 'lease conveyancing enquiry').

When considering the purchase of **land** or the transfer of a **land** title, due diligence should be exercised. Any site flagged by the Lease Conveyancing Enquiry should be investigated and **EPA** records should be checked for information in relation to the particular **land** title through a Contaminated Land Search.

11.5 GROUNDWATER BORE SEARCH

A register is kept of privately managed water abstraction bores and groundwater monitoring bores within the ACT. For an administrative fee, a search can be undertaken to detect if registered bores are located near an area of interest.

A Groundwater Bore Search form and details on submitting the query can be found on the Access Canberra website at: www.accesscanberra.act.gov.au (search 'groundwater bore').

12. GUIDELINES AND OTHER RESOURCES

The following lists relevant publications at the time of preparing this document.

From time to time these documents are updated and therefore the most recent versions should be used.

12.1 STATUTORY GUIDELINES

Currently, there are no guidelines, standards or procedures, other than the ASC **NEPM**, prescribed under the Act or Regulations for **contaminated** sites. Nonetheless, the guidelines and references listed below constitute a good reference source and should be used, as appropriate, for **contaminated land assessment** or **remediation** in the ACT. If there are inconsistencies between any of these guidelines and the ASC **NEPM**, the latter prevails.

*Note: the ASC **NEPM** only deals with the **assessment** of **contaminated** sites and does not provide guidance on the **remediation** and management of **contaminated land**. The ASC **NEPM** was developed to provide a nationally consistent approach to the **assessment** of **contaminated** sites. The ASC **NEPM** supplements the ANZECC & NHMRC 1992 Guidelines for the Assessment and Management of Contaminated Sites, which is the principal guideline for the management of **contaminated** sites in Australia.*

12.2 ACT PUBLICATIONS

- » ACT's Environmental Standards: Assessment and Classification of Liquid and Non-liquid Wastes, June 2000
- » Information Sheet No.1 – Contaminated Sites - Decommissioning, Assessment and Audit of Sites Containing Above Ground or Underground Fuel Storage Tanks, February 2014
- » Information Sheet No.2 – Contaminated Sites - Requirements for the Assessment and Validation of Former Service Station Sites in the ACT, December 2014
- » Information Sheet No.3 – Contaminated Sites - Requirements for the Assessment and Validation of Sites Containing Above Ground or Underground Fuel Storage Tanks in the ACT, December 2014
- » Information Sheet No.4 – Contaminated Sites - Requirements for Re-use and Disposal of Contaminated Soil, June 2015

- » Information Sheet No. 5 – Contaminated Sites – Requirements for Transport and Disposal of Asbestos Contaminated Wastes, February 2014
- » Information Sheet No. 6 – Contaminated Sites – Management of Small Scale, Low Risk Soil Asbestos Contamination, February 2014
- » Information Sheet No. 7 – Contaminated Sites – Guidance for Undertaking Preliminary Contamination Investigation for Development Purposes, December 2014
- » Territory and Municipal Services – Procedure for the Management of Contaminated Assets, May 2013
- » Environmental Guidelines for Service Station Sites and Hydrocarbon Storage, January 2014
- » Environmental Protection Guidelines for Construction and Land Development in the ACT, March 2011
- » General Environment Protection Policy, May 2016
- » Water Quality Environment Protection Policy, April 2008
- » Hazardous Materials Environment Protection Policy, November 2010
- » Environmental Guidelines for the Preparation of an Environmental Management Plan, May 2013

12.3 ANZECC, ARMCANZ, ENHEALTH AND NHMRC PUBLICATIONS

- » Australian and New Zealand Guidelines for Fresh and Marine Water Quality, Australian and New Zealand Environment and Conservation Council & Agriculture and Resource Management Council of Australia and New Zealand, Paper No. 4, October 2000
- » Financial Liability for Contaminated Sites Remediation: A Position Paper, Australian and New Zealand Environment and Conservation Council, 1994
- » Guidelines for Groundwater Protection in Australia, Agriculture and Resources Management Council of Australia and New Zealand & Australian and New Zealand Environment and Conservation Council, 1995
- » National Water Quality Management Strategy, Australian Drinking Water Guidelines 6, 2004, National Health and Medical Research Council, Natural Resources Management Ministerial Council, 2004
- » Polychlorinated Biphenyls Management Plan, Australian and New Zealand Environment and Conservation Council, Canberra, April 2003
- » Minimum Construction Requirements for Water Bores in Australia 3rd Edition, Agriculture and Resources Management Council of Australia and New Zealand, Australian and New Zealand Environment and Conservation Council & Agriculture and Resource Management Council of Australia and New Zealand, 2012
- » Guidelines for the Assessment of On-Site Containment of Contaminated Soil, Australian and New Zealand Environment and Conservation Council 1999
- » Management of Asbestos in the Non-occupational Environment, enHealth 2005

12.4 AUSTRALIAN STANDARDS

- » AS 4482.1 : 2005 Guide to the investigation and sampling of sites with potentially contaminated soil - Part 1: Non-volatile and semi-volatile compounds
- » AS 4482.2 : 1999 Guide to the sampling and investigation of potentially contaminated soil - Part 2: Volatile substances
- » AS 4361.2-1998 : Guide to lead paint management - Residential and commercial buildings
- » AS/NZS 5667.11:1998 : Water quality - Sampling - Guidance on sampling of groundwater's
- » AS/NZS 5667.1:1998 : Water quality - Sampling - Guidance on the design of sampling programs, sampling techniques and the preservation and handling of samples

12.5 NSW PUBLICATIONS

- » Guidelines on the Duty to Report Contamination under the *Contaminated Land Management Act 1997*, NSW DECC, 2015
- » Guidelines for the NSW Site Auditor Scheme (3rd edition), NSW EPA, 2017
- » Technical Note: Investigation of Service Station Sites, NSW EPA, 2014
- » Sampling Design Guidelines, NSW EPA, 1995
- » Guidelines for Consultants Reporting on Contaminated Site, NSW Office of Environment and Heritage, 2011
- » Guidelines for the Vertical Mixing of Soil on Former Broad-Acre Agricultural Land, NSW EPA, 1995
- » Guidelines for Assessing Former Orchards and Market Gardens, NSW EPA, 2005
- » Guidelines for the Assessment and Management of Groundwater Contamination, NSW DEC, 2007
- » UPSS Technical Note: Site Validation Reporting, NSW Department of Environment, Climate Change and Water, 2010.

12.6 VICTORIAN PUBLICATIONS

- » Groundwater Sampling Guidelines: Publication 669, EPA Victoria, 2000
- » Hydrogeological Assessment (Groundwater Quality) Guidelines, Publication 668, EPA Victoria, 2006
- » Sampling and Analysis of Waters, Wastewaters, Soils and Wastes, Publication IWRG701, EPA Victoria, 2009

12.7 WA PUBLICATIONS

- » Guidelines for the Assessment, Remediation and Management of Asbestos-Contaminated Sites in Western Australia, WA Department of Health, May 2009

12.8 OTHER PUBLICATIONS

- » CRC CARE Technical Reports (www.crccare.com/publications/technical-reports)
- » PFAS, National Environmental Management Plan, 2017

13. GLOSSARY

The definitions of the terms listed in this glossary are provided to assist in reading this **EPP**.

Term	Definition
Assessment of Site Contamination NEPM	National Environment Protection (Assessment of Site Contamination) Measure 1999 made by the National Environment Protection Council as amended on 16 May 2013.
EPA	The Environment Protection Authority – a statutory office holder established under Part 2 of the Act to administer the Act
Environmental authorisations	A form of licence under Part 8 of the Act to conduct an activity (Schedule 1 of the Act) which has a significant potential to cause environmental harm , and sets out conditions under which the activity must be conducted.
Environmental Protection Agreement	A written agreement with the EPA where the person is, or proposes to conduct an activity listed in Schedule 1 B of the Act or for the purposes of giving effect to the objects of this Act
Environment Protection Order	An instrument, issued by the EPA where the EPA is satisfied that a person has breached the Act or an authorisation condition, specifying that certain actions be or not be taken
EPP	Environment Protection Policy
National Environment Protection Council	A council of Commonwealth, state and territory Ministers established under complementary legislation (the <i>National Environment Protection Act 1994</i> in the ACT) to make and monitor the implementation of NEPMs
National Environment Protection Measure [NEPM]	A form of delegated legislation under the <i>National Environment Protection Council Act 1994</i> .

14. REFERENCES

14.1 NATIONAL ENVIRONMENTAL HEALTH FORUM MONOGRAPHS

Imray, P & Langly, A. (1996) Health-Based Soil Investigation Levels. National Environmental Health Forum Monographs, Soil Series No.1, SA Health Commission, Adelaide.

Taylor, R & Langly, A. (1996). Exposure Scenarios and Exposure Settings. National Environmental Health Forum Monographs, Soil Series No.2, SA Health Commission, Adelaide.

Lock, W. H. Composite Sampling. National Environmental Health Forum Monographs, Soil Series No.3, SA Health Commission, Adelaide.

14.2 SOUTH AUSTRALIAN HEALTH COMMISSION CONTAMINATED SITES MONOGRAPH SERIES

El Saadi O. & Langley A., eds (1991). The Health Risk Assessment and Management of Contaminated Sites: Workshop Proceedings of the National Workshop on the Health Risk Assessment and Management of Contaminated Sites, SA Health Commission, Adelaide.

Langley A. & Van Alphen M., eds (1993). The Health Risk Assessment and Management of Contaminated Sites: Proceedings of the Second National Workshop on the Health Risk Assessment and Management of Contaminated Sites. Contaminated Sites Monograph Series No.2, SA Health Commission, Adelaide.

Edwards, J. W., Van Alphen, M & Langley, A (1994). Identification and Assessment of Contaminated land- Improving Site History Appraisal. Contaminated Sites Monograph series, No.3, SA Health Commission, Adelaide.

Olszowy, H., Torr, P., Imray, P. Trace Element Concentrations in Soils from Rural and Urban Areas of Australia, Contaminated Sites Monograph Series No.4, 1995, SA Health Commission, Adelaide.

Langley A., Markey B., & Hill H., eds (1996). The Health Risk Assessment and Management of Contaminated Sites: Proceedings of the Third National Workshop on the Health Risk Assessment and Management of Contaminated Sites. Contaminated Sites Monograph Series, No. 5, SA Health Commission, Adelaide.

APPENDICES

APPENDIX A – INDUSTRIES AND LAND USES ASSOCIATED WITH CONTAMINATED LAND

Specific industries and **land** uses that have been associated with **contaminated land** include:

- » abrasive blasting
- » acid/alkali plant and formulation
- » agricultural/horticultural activities (orchards, vineyards etc.)
- » airports
- » ammunition manufacture and usage (e.g. shooting ranges)
- » asbestos production, handling or disposal
- » asphalt/bitumen plants
- » battery manufacturing or recycling
- » boat/ship building, marinas, slip ways and associated boat yards
- » boiler or kiln usage
- » brickworks
- » cement works
- » ceramic works
- » chemical manufacture, formulation or storage (e.g. fertilisers, paints, pesticides, photography, plastics, solvents)
- » commercial engine and machinery repair sites
- » concrete batch plants
- » defence establishments and training areas (for example field firing ranges)
- » drum re-conditioning works
- » dry cleaning establishments
- » electrical transformers
- » Electronic waste treatment and storage
- » electroplating and heat treatment premises
- » engine works
- » ethanol production plant
- » explosives production and storage
- » fertiliser manufacturing plants
- » field firing ranges (e.g. gun, pistol and rifle clubs)
- » fill material imported onto a site from a potentially contaminated source
- » fire training facility
- » foundry operations
- » gas works
- » herbicide manufacture
- » sites of incidents involving release of hazardous materials
- » industrial activities involving hazardous chemicals in significant quantities
- » iron and steel works
- » landfill sites
- » metal smelting, refining or finishing;
- » metal treatment
- » mineral processing
- » mining and extractive industries
- » oil or gas production and storage (including fuel depots)
- » paint formulation and manufacture
- » pest controllers being areas where pest control chemicals are stored or vehicles and tanks used in connection with pest control are washed
- » pesticide manufacture and formulation sites
- » petroleum product or oil storage
- » pharmaceutical manufacture and formulation
- » power stations
- » printers
- » radio-active material usage (e.g. hospitals)
- » railway yards
- » scrap yards and recycling facilities
- » service stations
- » sewage treatment works
- » sheep and cattle dips
- » sites of fires involving hazardous materials, including fire fighting foam use
- » smelting and refining
- » spray storage and mixing sites (e.g. for orchards)
- » spray painting industries
- » tanning and associated trades
- » textile operations
- » tyre manufacturing and retreading works
- » uncontrolled fill sites
- » vehicle maintenance and brake testing
- » waste storage, treatment or disposal (e.g. incinerators)
- » wood preservation and storage or cutting of treated timber

This is not an exhaustive list and other activities where hazardous substances were used may have resulted in **contaminated land**. A good reference is the **Assessment of Contaminated Sites NEPM 1999**.

APPENDIX B – STATUTORY SITE AUDIT NOTIFICATION FORM



ACT
Government

ENVIRONMENT PROTECTION AUTHORITY

STATUTORY SITE AUDIT NOTIFICATION – *Environment Protection Act 1997* section 21B

SITE AUDITORS DETAILS:

Name: Ph:

Company: Fax:

Address:

Accredited by (State Authority):

Accreditation No.: File Reference No.:

NOTIFICATION:

Notification No.:

SITE LOCATION:

Block: Section: Division: District:

Deposited Plan No.:

Address: Postcode:

SITE AUDIT REQUESTED BY:

Name:

Company:

Address: Postcode:

Phone: Fax:

Date request received:

Notification must be sent to the EPA within 7 days of receiving the request.

ENVIRONMENT PROTECTION AUTHORITY, GPO BOX 158, CANBERRA ACT 2601

NATURE OF STATUTORY REQUIREMENTS:

A Requirement under the *Environment Protection Act 1997*.

Type of instrument imposing the requirement (e.g. assessment order):

Date of issue:

A requirement imposed by an environmental planning instrument (EPI)

Name and number of EPI:

A development approval given under the *Planning and Development Act 2007*.

Approval authority:

Date approval granted:

Comments:

THIS STATUTORY AUDIT SITE AUDIT IS CONDUCTED FOR THE PURPOSE OF DETERMINING:

Land use suitability; and/or

Land use suitability subject to compliance with either an active or passive site management plan; and

The nature and extent of the assessment or remediation undertaken, as the case requires and/or

The nature and extent of any contamination or remaining contamination of the land and/or

What further assessment or remediation, as the case requires, is necessary before the land is suitable for any specified use or range of uses and/or

The suitability and appropriateness of an assessment proposal, remediation proposal, remedial action plan or environment management plan.

Estimated time within which audit will be completed:

I certify that the information supplied in this form and any attached pages is correct.

Signed:

Date:

ENVIRONMENT PROTECTION AUTHORITY, GPO BOX 158 , CANBERRA ACT 2601

APPENDIX C – AUDITOR’S ANNUAL RETURN COVERSHEET



ACT
Government

ENVIRONMENT PROTECTION AUTHORITY

AUDITOR’S ANNUAL RETURN COVERSHEET

SITE AUDITORS DETAILS:

Name:

Company:

Address:

Ph: Fax:

Accreditation No.: File Reference No.:

ANNUAL RETURN PERIOD:

NUMBER OF STATUTORY SITE AUDITS:

NUMBER OF NON-STATUTORY SITE AUDITS:

I certify that the information supplied in this form and any attached pages is correct.

Auditors Name or Signature: Date:

ENVIRONMENT PROTECTION AUTHORITY, GPO BOX 158 , CANBERRA ACT 2601



ENVIRONMENT PROTECTION AUTHORITY

AUDITOR'S ANNUAL RETURN – *Environment Protection Act 1997* section 76B

Under Section 76B of the *Environment Protection Act 1997*, the following must be completed for each audit conducted (whether completed or not) under this Act or another Act within the financial year. The completed form must be forwarded within 20 working days after the end of each financial year to: Environment Protection Authority, GPO Box 158, Canberra ACT 2601.

AUDITORS DETAILS:

Name:

Address:

Ph: Fax:

Accredited by (State Authority):

Accreditation No.: Audit Reference No.:

SITE LOCATION:

Block: Section: Suburb:

Address:

Size of the site:

LAND USE DETAILS:

Land uses permitted under the Territory Plan:

Uses permitted by the lease purpose clause:

Proposed lease purpose changes or changes to the Territory Plan:

ENVIRONMENT PROTECTION AUTHORITY, GPO BOX 158, CANBERRA ACT 2601

LESSEE(S)/OCCUPIER(S) DETAILS

Current lessee(s):

Current occupier(s):

Previous lessee(s):

Previous occupier(s):

AUDIT DETAILS

The name of the person who requested the audit:

The date when the auditor received the request:

The date of commencement of the audit:

The date or expected date of completion of the audit:

The use or uses of the site that have caused the contamination for which assessment or remediation was undertaken

The current and proposed uses for the site:

The auditor's opinion as to the suitability of the site for the current , proposed and permitted uses

The name of the person(s) who carried out the assessment or remediation works that were reviewed or is being reviewed by the auditor and the titles of the reports that were or are being reviewed:

Details of any impacts on land adjacent to the site (including groundwater):

I certify that the information supplied in this form and any attached pages is correct.

Auditors Name or Signature : Date:

ENVIRONMENT PROTECTION AUTHORITY, GPO BOX 158 , CANBERRA ACT 2601

APPENDIX D – CONTAMINATED LAND NOTIFICATION



ACT
Government

ENVIRONMENT PROTECTION AUTHORITY

CONTAMINATED LAND NOTIFICATION – *Environment Protection Act 1997* section 23A

A lessee or occupier of land shall notify the Environment Protection Authority in writing as soon as practicable after becoming aware that land which he or she is the lessee or occupier is contaminated in such a way as to present, or be likely to present:

- (a) a significant risk of harm to human health or
- (b) a risk of material environmental harm or serious environmental harm.

LESSEE OR OCCUPIER DETAILS:

Name:

Address:

Phone: Fax:

I am the lessee of the site.

I am the occupier of the site.

SITE DETAILS:

Site or establishment name (if appropriate):

Block: Section: Suburb:

Address:

Owners(s) / Lessee(s):

Occupier(s):

CAUSE OF CONTAMINATION:

CONTAMINATION:

Contaminants of concern:

Source of information on contamination:

ENVIRONMENT PROTECTION AUTHORITY, GPO BOX 158 , CANBERRA ACT 2601

WHAT ASPECTS OF THE ENVIRONMENT ARE/MAY BE AFFECTED (Tick all that apply):

<input type="checkbox"/> Air	<input type="checkbox"/> Surface Water	<input type="checkbox"/> Sediments	<input type="checkbox"/> Drinking water
<input type="checkbox"/> Groundwater	<input type="checkbox"/> Soil	<input type="checkbox"/> Stormwater	<input type="checkbox"/> Wetlands
<input type="checkbox"/> Other (please specify)	<input type="text"/>		

WHO/WHAT IS POTENTIALLY AT RISK ?

<input type="checkbox"/> Residents	<input type="checkbox"/> Plants	<input type="checkbox"/> Aquatic life	<input type="checkbox"/> School/kindergarten children
<input type="checkbox"/> Threatened species	<input type="checkbox"/> Workers	<input type="checkbox"/> Animals	
<input type="checkbox"/> Other (please specify)	<input type="text"/>		

ARE ANY OTHER SITES EFFECTED OR AT RISK? (ie. outside the lease/sub lease boundary)

No Yes

If "Yes" is ticked, indicate which of the matters listed above apply to these other sites. Details of other sites affected:

ADDITIONAL PAGES ATTACHED (eg. Results of sampling, photographs, environmental reports, etc.)

If you have attached additional pages to this notification, indicate the number of pages. When the notification is certified, the person(s) who certify the notification must initial each page attached. Number of pages attached:

CERTIFICATION (in the case of a notice lodged on behalf of a body corporate):

I certify that:

- (a) I have personally examined and am familiar with the information contained in this notification
- (b) to the extent they are within my knowledge, the matters contained in this notification are true, accurate and complete.

Name : Position :

Signature : Date:

Name : Position :

Signature : Date:

SIGNATURE (in the case of a notice lodged by one or more individuals):

The matters contained in this notification are, to the best of my knowledge, true, accurate and complete.

Name or Signature: Date:

Name or Signature: Date:

If the notification is made by a corporation, the form must be signed by a person authorised to do so by the corporation.
If the notification is made by one or more individuals, the form must be signed by each individual concerned.

APPENDIX E – SITE AUDIT STATEMENT



ACT
Government

ENVIRONMENT PROTECTION AUTHORITY

SITE AUDIT STATEMENT – *Environment Protection Act 1997* section 76A

A site audit statement summarises the findings of a site audit. For full details of the site auditor's findings, evaluations and conclusions, refer to the associated site audit report.

PART I: SITE AUDIT IDENTIFICATION:

Site audit statement no.:

This site audit is a **statutory audit/non-statutory audit*** within the meaning of the *Environment Protection Act 1997*.

Site auditor details (approved under the *Environment Protection Act 1997*)

Name:

Address:

Phone: Fax:

SITE DETAILS:

Address:

Property description (attach a list if several properties are included in the site audit)

Block: Section: Division: District:

Area of site (e.g. hectares): Current zoning:

To the best of my knowledge, the site is/is not* the subject of an order or agreement under the *Environment Protection Act 1997*.

Order/Agreement * no(s):

SITE AUDIT COMMISSIONED BY:

Name:

Company:

Address:

Ph: Fax:

(*Strike out as appropriate)

ENVIRONMENT PROTECTION AUTHORITY, GPO BOX 158 , CANBERRA ACT 2601

Name and phone number of contact person (if different from above):

Name:

Ph: Fax:

A. To determine land use suitability (please specify intended use[s]) File Reference No.:

OR

- B(i) To determine the nature and extent of contamination, and/or
- B(ii) To determine the appropriateness of an investigation/remedial action/management plan*, and/or
- B(iii) To determine if the land can be made suitable for a particular use or uses by implementation of a specified remedial action plan/management plan* (please specify intended use[s])

INFORMATION SOURCES FOR SITE AUDIT

Consultancy(ies) which conducted the site investigation(s) and/or remediation

Title(s) of report(s) reviewed

Other information reviewed (including previous site audit reports and statements relating to the site)

SITE AUDIT REPORT

Title:

Report no.: Date:

(*Strike out as appropriate)

ENVIRONMENT PROTECTION AUTHORITY, GPO BOX 158 , CANBERRA ACT 2601

PART II: AUDITOR'S FINDINGS

Please complete either Section A or Section B, not both. (Strike out the irrelevant section.)

Use Section A where site investigation and/or remediation has been completed and a conclusion can be drawn on the suitability of land use(s).

Use Section B where the audit is to determine the nature and extent of contamination and/or the appropriateness of an investigation or remedial action or management plan and/or whether the site can be made suitable for a specified land use or uses subject to the successful implementation of a remedial action or management plan.

SECTION A

I certify that, in my opinion, the site is SUITABLE for the following use(s) permitted by its zoning 'XXXXXXX' as detailed in the ACT Territory Plan 2008 updated on DATE:

List Uses:

Subject to compliance with the following environmental management plan (insert title, date and author of plan) in light of contamination remaining on the site:

OR

I certify that, in my opinion, the site is NOT SUITABLE for any use due to the risk of harm from contamination.

Overall comments

SECTION B

Purpose of the plan which is the subject of the audit

I certify that, in my opinion:

the nature and extent of the contamination HAS/HAS NOT* been appropriately determined

AND/OR

the investigation/remedial action plan/management plan* IS/IS NOT* appropriate for the purpose stated above

AND/OR

the site CAN BE MADE SUITABLE for the following use(s) permitted by its zoning 'XXXXXXX' as detailed in the ACT Territory Plan 2008 updated on DATE:

(*Strike out as appropriate)

ENVIRONMENT PROTECTION AUTHORITY, GPO BOX 158, CANBERRA ACT 2601

If the site is remediated/managed* in accordance with the following remedial action plan/management plan*
(insert title, date and author of plan)

Subject to compliance with the following condition(s):

Overall comments:

PART III: AUDITOR'S DECLARATION

I am accredited as a site auditor by the
(applicable State Authority, ie NSW Environment Protection Authority)

under the
(the applicable Act under which accreditation provided ie *Contaminated Land Management Act 1997*)

Accreditation No.
and therefore approved as an Environmental Auditor under the Environment Protection Act 1997.

I certify that:

- I have completed the site audit free of any conflicts of interest and have not carried out an assessment or remediation of the land to which the audit relates, and
- with due regard to relevant laws and guidelines, I have examined and am familiar with the reports and information referred to in Part I of this site audit, and
- on the basis of inquiries I have made of those individuals immediately responsible for making those reports and obtaining the information referred to in this statement, those reports and that information are, to the best of my knowledge, true, accurate and complete, and
- this statement is, to the best of my knowledge, true, accurate and complete.

I am aware that there are penalties under the *Environment Protection Act 1997* for wilfully making false or misleading statements

Signature:

Date:

(*Strike out as appropriate)

ENVIRONMENT PROTECTION AUTHORITY, GPO BOX 158 , CANBERRA ACT 2601

APPENDIX F – CONTAMINATED LAND SEARCH



ENVIRONMENT PROTECTION AUTHORITY

CONTAMINATED LAND SEARCH - *Environment Protection Act 1997* section 76A

IMPORTANT: Please supply all information requested below to ensure your search is completed without undue delay. Search forms sent without the correct payment will be returned unprocessed unless prior arrangements have been made.

CONTAMINATED LAND SEARCH FEE \$43.00 PER BLOCK

(Fee effective from 1 July 2015. Payment and collection options overleaf)

The Contaminated Land Search has also been incorporated into the Lease Conveyancing Enquiry through ACT Planning and Land Authority (ACTPLA).

For those customers undertaking a Lease Conveyancing Enquiry for conveyancing purposes through ACTPLA there will be no need to separately undertake a Contaminated Land Search through the Environment Protection Authority unless the Lease Conveyancing Enquiry indicates further information is available from the Environment Protection Authority in relation to the land.

If you require further information on the Lease Conveyancing Enquiry, provided by ACTPLA, please contact their Customer Service Centre on (02) 6207 1923 or visit the ACTPLA home page at www.actpla.act.gov.au where you will find a full listing of fees and charges.

DETAILS OF COMPANY/INDIVIDUAL:

Name:

Address:

Phone: Fax:

Email:

Contact Name: Phone:

DETAILS OF SEARCH REQUEST:

Block: Section: Division: District:

Address:

ENVIRONMENT PROTECTION AUTHORITY, GPO BOX 158 , CANBERRA ACT 2601

SEARCH AND RETURN DETAILS (PLEASE INDICATE PREFERENCE):

E-mail

A search lodged with the Environment Protection Authority will be e-mailed in 10 working days from receipt of the application and required payment.

Postage

Searches posted to the Environment Protection Authority will be forwarded within 15 working days from receipt of the application and required payment.

PAYMENT OPTIONS:

Credit Card — online at <http://www.accesscanberra.act.gov.au>

Cheques — make payable to
Environment Protection Authority
GPO Box 158 Canberra ACT 2601

OFFICE USE ONLY:

Date:

Amount paid:

Receipt no.:

ACCESS CANBERRA ON 13 22 81

WWW.ACCESSCANBERRA.ACT.GOV.AU

ENVIRONMENT PROTECTION AUTHORITY, GPO BOX 158 , CANBERRA ACT 2601

