



Contaminated Land

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While every effort has been made to ensure the information is accurate, the EDO does not accept any responsibility for any loss or damage resulting from any error in this factsheet or use of this work.

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What is this factsheet about?

This factsheet sets out the types of contaminated land and how it is regulated in NSW. It will be useful for anyone who wants to report their concerns around activities which may contaminate land including dumping of hazardous materials.

Outline

1. [Contaminated land](#)
2. [What to do if you suspect contamination](#)
3. [Who can be held responsible](#)
4. [Regulation of contaminated land](#)
5. [Section 10.7 planning certificates](#)
6. [Development and remediation works](#)
7. [Contaminated land offences](#)
8. [Glossary](#)

Contaminated land

Contamination of land occurs where a substance (**Contaminant**) is present at a concentration higher than is normally found on land in the same area, and where the presence of that substance presents a risk of harm to human health or the environment.¹

This includes land that has become contaminated partly or entirely by the migration of Contaminants into, onto or under the land from other land.²

¹ *Contaminated Land Management Act 1997* (NSW), s. 5(1).

² *Contaminated Land Management Act 1997* (NSW), s. 5(4).

Land will not necessarily be contaminated land merely because a Contaminant is present in surface water standing or running on the land, or because a Contaminant is present on the Land.³

Contaminated land is usually the result of poor land use practices in which the storage, handling and disposal of chemicals has not been well-managed.

Contaminants that may pose a risk of harm to human health include asbestos, lead acid batteries, waste tyres, waste mineral oils, and certain industrial chemicals.

Visit: The EPA's [website](#) to find more information about the management of asbestos waste.⁴

In NSW, contaminated land is regulated under the *Contaminated Land Management Act 1997* (NSW) (**CLM Act**) and regulations;⁵ as well as the *Environmental Planning and Assessment Act 1979* (NSW) (**EPA Act**) and *State Environmental Planning Policy (Resilience and Hazards) 2021* (**Resilience and Hazards SEPP**).

The CLM Act is administered by the EPA. The Minister for the Environment is the Minister responsible for the CLM Act.

The EPA is only responsible under the CLM Act for regulating land that it declares to be 'significantly contaminated land'⁶. However, the EPA also has a general duty to examine and respond to any information that it receives of actual or possible contamination of land.⁷

In cases where the EPA does not consider the land to be 'significantly' contaminated, the responsibility for regulating the site falls to the relevant local council through the planning and development process.

Visit: The EPA has produced [guidelines](#) to assist landowners, developers, site auditors and the public to understand the methods for assessing and managing contaminated land under the CLM Act.

Information about the CLM Act and the regulation of contaminated land by the EPA can be accessed on the EPA's [website](#).⁸

³ *Contaminated Land Management Act 1997* (NSW), s. 5(3).

⁴ <https://www.epa.nsw.gov.au/your-environment/waste/industrial-waste/asbestos-waste>

⁵ *Contaminated Land Management Act 1997* (NSW), s. 3(1).

⁶ *Contaminated Land Management Act 1997* (NSW), Pt 3, Div 2.

⁷ *Contaminated Land Management Act 1997* (NSW), s. 8.

⁸ <https://www.epa.nsw.gov.au/your-environment/contaminated-land>

What to do if you suspect contamination

If you are concerned that a site might be contaminated or you wish to report a contaminated site, you should call the EPA [Environment Line](tel:131555) on 131 555, or notify the EPA in writing at contaminated.sites@epa.nsw.gov.au

Visit: The [Guidelines on the Duty to Report Contamination under the Contaminated Land Management Act 1997](#) provide information on the duty to report contamination under the CLM Act.

If a member of the public informs the EPA of the actual or possible contamination of a site, the EPA must:⁹

- respond to the complainant within a reasonable time; and
- state (in writing if the complainant notified them in writing) what the EPA has done in relation to the information and the reasons for doing it.¹⁰

Duty to report contamination

The CLM Act requires a person whose activities have contaminated the land, or the owner of land that has been contaminated, to notify the EPA in writing that the land has been contaminated.¹¹

Visit: The EPA's website for further information on contaminated land: [Contaminated Land](#)

A person must notify the EPA as soon as practicable after becoming aware of the contamination.¹²

A person is taken to be aware of contamination if they reasonably ought to have been aware of it.¹³ Failure to notify the EPA carries significant penalties.¹⁴

⁹ *Contaminated Land Management Act 1997* (NSW), s. 8(2).

¹⁰ Further, if the EPA makes a decision that it does not have reason to believe that land is significantly contaminated, the EPA must provide a written statement of the reasons for its decision to any person who makes written request for those reasons in relation to that land within 30 days of receiving the request: *Contaminated Land Management Act 1997* (NSW), s. 106; *Contaminated Land Management Regulation 2022* (NSW), cl. 14.

¹¹ *Contaminated Land Management Act 1997* (NSW), s. 60.

¹² *Contaminated Land Management Act 1997* (NSW), s. 60(4).

¹³ *Contaminated Land Management Act 1997* (NSW), s. 60(5).

¹⁴ *Contaminated Land Management Act 1997* (NSW), ss. 60(1) and (2).

N.B. If you are unsure about whether you should report contamination to the EPA, you should seek legal advice.

The EPA must inform the local council if land in their local government area:¹⁵

- is declared to be significantly contaminated (or ceases to be);
- is subject to a management order (or such order is revoked);
- is subject to a voluntary management proposal (or approval of the proposal is revoked); or
- is subject to an ongoing maintenance order (or such order is revoked).

Who can be held responsible

Generally, the CLM Act applies the ‘polluter-pays’ principle by imposing responsibility on the person who caused the contamination.¹⁶

However, a person can also be held responsible for the contamination of land if any one or more of the following is true:¹⁷

- they carried out an activity which converted a benign substance into a substance that caused contamination;
- they are the owner or occupier of the land and failed to take reasonable steps to prevent the contamination;
- they carried out activities on the land that generate or consume the same substances as those that caused the contamination, unless it is established that the contamination was not caused by the person;
- they disturb contamination on a site by an activity that results in a change in pre-existing contamination of land so that the contamination becomes significant;
- through an activity that results in a change of the approved use of the land and the consequent increase in the risk of harm causes the EPA to identify the land as significantly contaminated land (even if the contamination itself did not change).

¹⁵ *Contaminated Land Management Act 1997* (NSW), ss. 59(1).

¹⁶ *Contaminated Land Management Act 1997* (NSW), s. 6.

¹⁷ *Contaminated Land Management Act 1997* (NSW), s. 6(1).

A person who is responsible for causing contamination cannot contract out of their liability.¹⁸

In determining whether a person is responsible for contamination of land, it is irrelevant that the contamination did not arise at the same time as the contaminating act, activity or omission of the person that caused the contamination of the land.¹⁹

Public authorities, such as local councils, are also bound by the CLM Act and must comply with any order or direction of the EPA.²⁰

Regulation of contaminated land

‘Remediation’ refers to the process of addressing contamination by removing, dispersing, destroying, reducing or mitigating the contamination of land. It can also include eliminating or reducing any hazard arising from the contamination of the land or preparing a long-term management plan for the land.²¹

Investigation and remediation procedures

The EPA can issue orders and directions to ensure that contaminated land is identified and, if necessary, remediated.²² It is an offence not to comply with these orders and directions, and there are significant penalties for any failure to comply.²³

Once the EPA becomes aware that a site may be contaminated, it may order in writing a person to conduct a preliminary investigation of that land within a specified time.²⁴ This is known as a ‘preliminary investigation order’.

If the EPA has reason to believe that contamination is significant enough to warrant regulation under the CLM Act, it may declare the land to be ‘significantly contaminated land’.²⁵

Visit: The [Contaminated Land Register](#) to find land that has been declared significantly contaminated.

¹⁸ *Contaminated Land Management Act 1997* (NSW), s. 6(6).

¹⁹ *Contaminated Land Management Act 1997* (NSW), s. 6(3).

²⁰ *Contaminated Land Management Act 1997* (NSW), s. 31.

²¹ *Contaminated Land Management Act 1997* (NSW), s. 4(1).

²² *Contaminated Land Management Act 1997* (NSW), Part 3.

²³ *Contaminated Land Management Act 1997* (NSW), Part 3.

²⁴ *Contaminated Land Management Act 1997* (NSW), s. 10.

²⁵ *Contaminated Land Management Act 1997* (NSW), s. 11.

Management orders

If the EPA makes a declaration that land is significantly contaminated, it may:

- issue a management order directing the recipient to carry out management actions; or
- submit for the EPA's approval a plan of management of the land.²⁶

Examples of action that the EPA may direct a recipient to take include, but are not limited to:²⁷

- investigate the significant contamination of the land;
- investigate the nature and extent of any harm caused by the significant contamination;
- investigate the most appropriate means for undertaking remediation of the land;
- carry out remediation of the land;
- monitor the effectiveness of the remediation;
- erect a fence, wall, bund or other barrier on the land;
- treat, store, contain or remove any solids or liquids, including any soil, sand, rock or water;
- vacate the land or cease carrying on activities on it;
- refrain from further disturbing the land below a certain depth.

A management order may also require the recipient to provide financial assurance to secure or guarantee funding for or towards the carrying out of an action required by or under the order.²⁸

The management order must specify the matters in s 15(1) of the CLM Act, including the land to which the order applies, the nature of the significant contamination at the land, the action that the recipient must take, and a reasonable period for taking the action.

Remediation works may require development consent under the EPA Act and *Resilience and Hazards SEPP*.

²⁶ *Contaminated Land Management Act 1997* (NSW), s. 14.

²⁷ *Contaminated Land Management Act 1997* (NSW), s. 16.

²⁸ *Contaminated Land Management Act 1997* (NSW), s. 14(1A).

The EPA cannot serve a management order unless it has considered any submissions as to whether it should be made, unless it is in the public interest to do so.²⁹

Failure to comply with a management order, without a reasonable excuse, is an offence which carries a significant maximum penalty of:

- for a corporation: \$1,000,000 (if responsible for the contamination) or otherwise \$137,500; or,
- for an individual: \$250,000 (if responsible for the contamination) or otherwise \$66,000.³⁰

Voluntary management proposals

A person can approach the EPA with a voluntary management proposal setting out how they propose to manage a significantly contaminated site, which the EPA can approve unconditionally or subject to conditions.³¹

The EPA can only approve the voluntary management proposal if it is satisfied that the terms of the proposal are appropriate, the parties to the proposal have taken all reasonable steps to identify and find every owner and notional owner and every person responsible for the significant contamination, and the parties have given those persons reasonable opportunity to participate in the formulation and carrying out of the proposal on reasonable terms.³²

Ongoing maintenance orders

The EPA can issue a landowner or occupier an ongoing maintenance order if the land has been the subject of a management order or an approved voluntary management proposal, requiring the recipient to do actions specified in the order within a reasonable time specified in the order.³³

For example, an ongoing maintenance order can require a person to carry out ongoing management of the land, to notify the EPA of any change in ownership or occupancy of the land, or can restrict uses on a site.³⁴

Failure to comply with an ongoing management order is an offence. The maximum penalties are:

²⁹ *Contaminated Land Management Act 1997* (NSW), ss. 14(4) and (5).

³⁰ *Contaminated Land Management Act 1997* (NSW), s. 14(6).

³¹ *Contaminated Land Management Act 1997* (NSW), ss. 17(1) – (3).

³² *Contaminated Land Management Act 1997* (NSW), s. 17(4).

³³ *Contaminated Land Management Act 1997* (NSW), ss. 28(1) and (2).

³⁴ *Contaminated Land Management Act 1997* (NSW), s. 28(2).

- for a corporation: \$1,000,000 (and a further \$120,000 for each day the offence continues); and
- for an individual: \$250,000 (and a further \$60,000 for each day the offence continues).³⁵

Director and manager responsibility

The Land and Environment Court has the power to make orders requiring compliance with a management order, at the recipients own expense, in the following circumstances:³⁶

- a director of, or a person concerned in the management of, a body corporate that has been wound up within the 2 years before the court's order is made, and has failed to comply with the management order;
- a director of, or a person concerned in the management of, a body corporate that transferred land, to which the management order related, within the 2 years before the court's order is made, and the person to whom the land was transferred has failed to comply with the management order; and
- a corporation that was the holding company of a company that has been wound up within the 2 years before the Court's order is made, and has failed to comply with the management order.

The purpose of these orders is to ensure that the above persons cannot avoid responsibility for remediating contaminated land simply by winding up the company which owns the land or by selling the land.

Statutory site audits

A site audit must be carried out by a person accredited as a site auditor under Part 4 of the CLM Act.³⁷

The EPA can require a site audit for the purpose of complying with a requirement under the CLM Act, approved voluntary management proposal, the Resilience and Hazards SEPP or another environmental planning instrument, or any development consent or approval.³⁸

³⁵ *Contaminated Land Management Act 1997* (NSW), s. 28(4).

³⁶ *Contaminated Land Management Act 1997* (NSW), ss 63-5.

³⁷ *Contaminated Land Management Act 1997* (NSW), s. 48.

³⁸ *Contaminated Land Management Act 1997* (NSW), s. 47.

Whenever a site auditor carries out a site audit, he or she must prepare a written site audit report and furnish that report to the person who commissioned the site audit.³⁹

The report must include a critical review of the information collected in relation to the site audit and must clearly set out the reasons for the findings proposed to be contained in the relevant site audit statement.⁴⁰

After completing the site audit report, the site auditor must also make a site audit statement and furnish it to the person who commissioned the site audit, the EPA, and relevant local authority (if the site audit is a statutory site audit).⁴¹

The statement must contain the site auditor's findings in relation to the site audit and be consistent with the reasons set out in the site audit report.⁴²

Public register

The EPA is required to maintain a record that consists of:⁴³

- All declarations by the EPA that land is significantly contaminated, or has ceased to be contaminated;
- All preliminary investigation orders;
- All management orders;
- Any active voluntary management proposals;
- Any ongoing maintenance orders; and
- Any site audit statement that relates to land that is significantly contaminated.

Visit: The EPA's [public register](#) to view records of the above.

Section 10.7 planning certificates

Any person can obtain a planning certificate for a parcel of land which identifies the planning constraints on that land. A planning certificate also identifies whether, to a local Council's knowledge, the land is:⁴⁴

³⁹ *Contaminated Land Management Act 1997* (NSW), s. 53B(1).

⁴⁰ *Contaminated Land Management Act 1997* (NSW), s. 53B(2).

⁴¹ *Contaminated Land Management Act 1997* (NSW), s. 53B(3).

⁴² *Contaminated Land Management Act 1997* (NSW), s. 53B(4).

⁴³ *Contaminated Land Management Act 1997* (NSW), s. 58.

⁴⁴ *Contaminated Land Management Act 1997* (NSW), s. 59(2).

- significantly contaminated (either all or part of the land);
- subject to a management order;
- the subject of an approved voluntary management proposal;
- subject to an ongoing maintenance order; or
- the subject of a site audit statement.

Development and remediation works

Resilience and Hazards SEPP sets out when development consent is required for remediation work or redevelopment of a contaminated site.⁴⁵ The *Resilience and Hazards SEPP*:⁴⁶

- specifies when consent is required (category 1 remediation work)⁴⁷, and when it is not required (category 2 remediation work)⁴⁸;
- specifies certain considerations that are relevant in rezoning land and determining development applications in general and development applications to carry out remediation work; and
- requires that remediation work meet certain standards and notification requirements.

Before granting development consent to carry out development on land, a consent authority must consider matters regarding contamination and remediation.⁴⁹ Before determining an application for development consent to change the use of certain land, the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.⁵⁰

Case study: Failure of developer's site assessment to provide detailed history of land use results in consent being refused⁵¹

⁴⁵ *Resilience and Hazards SEPP*, s 4.7.

⁴⁶ *Resilience and Hazards SEPP*, s 4.1.

⁴⁷ *Resilience and Hazards SEPP*, s 4.8.

⁴⁸ *Resilience and Hazards SEPP*, s 4.11. However, note that some specified Category 1 remediation work may be Category 2 remediation work in certain circumstances.

⁴⁹ *Resilience and Hazards SEPP*, s 4.6.

⁵⁰ *Resilience and Hazards SEPP*, s 4.6(2). The relevant land is specified in s 4.6(4).

⁵¹ *Wallarah Minerals Pty Ltd v Mulwaree Shire Council* [2000] NSWLEC 238

Warrarah Minerals (the Company) wanted to build a dwelling on land located at Marulan which was zoned 1(a) (General Purposes) and lodged a development application with the local council.

The land had been used as a crushing and screening plant for refractory materials for more than 40 years.

The now-repealed *SEPP 55 - Remediation of Land*⁵² required the council to consider a report specifying the findings of a preliminary investigation of any contamination of the land before granting development consent.

A preliminary site assessment report was carried out by the Company, but it focused only on recent uses of the land and did not consider what the site had been used for before 1990.

The Council refused development consent and the Company appealed to the Land and Environment Court.

The LEC refused to grant development consent. It held that the requirements of *SEPP 55 - Remediation of Land* had not been met because a *full* investigative report into the past uses of the land had not been carried out.

The Court could not grant development consent until a full report was done to determine whether any remediation was required.

Standard of remediation

All remediation work, whether carried out under a development consent or not, must be carried out in accordance with the *Managing Land Contamination – Planning Guidelines* by the EPA and any guidelines in force under the CLM Act.⁵³

A notice of completion of remediation work on any land must be given to the local council within 30 days of the work being completed.⁵⁴

Visit: The EPA's [Managing Land Contamination – Planning Guidelines](#) for more information.

Contaminated land offences

The CLM Act does not contain any offence provisions which prohibit a person from causing land to become contaminated. However, there are offences in the [Protection](#)

⁵² SEPP 55 – Remediation of Land has been replaced by the Resilience and Hazards SEPP.

⁵³ *Resilience and Hazards SEPP*, s 4.14(1). The EPA provides a list of statutory guidelines under the CLM Act here: <https://www.epa.nsw.gov.au/your-environment/contaminated-land/statutory-guidelines>

⁵⁴ *Resilience and Hazards SEPP*, ss 4.14(2) and (3).

[of the Environment \(Operations\) Act 1997 \(NSW\)](#) which may relate to causing contamination of land including:

- wilfully or negligently disposing of waste in a manner that harms or is likely to harm the environment without lawful authority;⁵⁵
- using land as a waste facility without lawful authority;⁵⁶
- wilfully or negligently causing any substance to leak, spill or escape in a manner that harms or is likely to harm the environment;⁵⁷
- polluting land, without lawful authority;⁵⁸ and
- polluting water, including groundwater.⁵⁹

There are also a number of offences under the CLM Act for failing to comply with investigation and other requirements under that act.

Read: Our other factsheets for more information:

[Water, Air and Noise Pollution in NSW](#)

[Enforcing Environmental Offences in NSW](#)

[Regulation of Chemicals and Pesticides in NSW](#)

Glossary

CLM Act means the *Contaminated Land Management Act 1997* (NSW).

Minister means the NSW Minister for Climate Change, Energy and Environment.

EPA means the NSW Environment Protection Authority.

Regulation means the *Contaminated Land Management Regulation 2022* (NSW).

SEPP means State Environmental Planning Policy.

Evaluate this resource

EDO welcomes feedback on this factsheet. Your feedback will help us ensure we are providing useful information.

⁵⁵ *Protection of the Environment Operations Act 1997* (NSW), s. 115.

⁵⁶ *Protection of the Environment Operations Act 1997* (NSW), s. 144.

⁵⁷ *Protection of the Environment Operations Act 1997* (NSW), s. 116.

⁵⁸ *Protection of the Environment Operations Act 1997* (NSW), ss. 142A-E.

⁵⁹ *Protection of the Environment Operations Act 1997* (NSW), s. 120.

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