

Making Sense of Mandatory Reporting of Land Contamination

For asset owners or managers with properties in different states of Australia, it is important to remain up to date with mandatory reporting obligations in the various jurisdictions. In recent years a number of states have adopted the mandatory reporting of contaminated land. Some states have changed their trigger levels since the original introduction of these requirements. This update is aimed at consolidating the current requirements and clarifies a number of misunderstandings regarding these obligations.

NSW Requirements

NSW introduced The Contaminated Land Management Act 1997 (CLMA 1997) which first imposed the requirement for mandatory reporting of contaminated sites that posed a "Significant Risk of Harm". Guidelines were published in 1999 that prescribed trigger levels for the reporting of contamination and included a flowchart for determining if the contamination posed a Significant Risk of Harm.

The NSW CLMA 1997 was amended, and as of 1st July 2009 new Guidelines were adopted which reclassified sites which are subject to mandatory reporting. The following summarises the key changes:

- The obligation to report previously applied where the owner or polluter was "aware of the contamination". The current guidelines apply where the owner or polluter "ought reasonably be aware" by reason of, for example, their resources or expertise available to them.

- The trigger has been changed from "Land which posed a Significant Risk of Harm" to "Significantly Contaminated Land".
- Prescribed levels for soil contamination include the Health Investigation Levels (HIL's) for soil in the National Environmental Protection Measure (NEPM) 1999.
- Prescribed levels for water contamination are provided in Appendix A of the guidelines.



The current Legislation applies to owners and polluters and the duty to notify applies as soon as reasonably practicable after the person becomes aware.

The current legislation provides for owners to enter into a voluntary management proposal with the DECC or where the risks are greater the DECC may impose Preliminary Investigation Orders, Management Orders or Maintenance Orders.

Victorian Requirements

In Victoria the obligation of mandatory reporting of contaminated land is limited to auditors appointed under the Environment Protection Act 1970. This requirement is the same in all states where the Statutory Environmental Audit or Third Party Reviewer system is in place (VIC, NSW, WA, SA, ACT QLD).

In Victoria, an accredited EPA auditor may be engaged by any individual or organisation from private or public sectors. Where an auditor is appointed they must notify EPA within 7 days of engagement or where they become aware of significant environmental risk.

No mandatory reporting obligations exist for owners of contaminated land under the Victorian Environment Protection Act.

Queensland Requirements

Part 8 of the Environmental Protection Act 1994 details obligations replacing the repealed Contaminated Land Act 1991. This part specifies the requirement for mandatory reporting of contaminated land and applies to the owner or occupier of the land.

If the owner or occupier of land becomes aware the land has been, or is being, contaminated and if improperly treated, stored, disposed of or otherwise managed, the contaminant is likely to cause a material or serious environmental harm, the owner or occupier must notify the relevant authority.

The notification must occur within 22 business days after becoming aware. The Act defines a hazardous contaminant as a contaminant that is likely to cause serious or material environmental harm. Serious environmental harm is defined (amongst other things) as being harm requiring greater than \$50,000 to remediate while material harm has a \$5,000 threshold.

If land is privately owned the relevant authority is the council and if land is state owned it is DERM.

ACT Requirements

In the Australian Capital Territory, the lessee or occupier of land must notify (under Section 23A of the Environment Protection Act 1997) when they become aware that land is contaminated such that there is, or likely to be, a significant risk of harm to human health. The same obligation exists where the contamination poses a serious or material risk of environmental harm.

Guidelines have been produced to determine what constitutes harm and examples are provided. These guidelines are consistent with other states where material environmental harm would result if the remediation costs exceed \$5,000.



Tasmania

Section 74B of Tasmania's Environmental Management and Pollution Control Act 1994, requires a person to notify the authority, as soon as reasonably practicable, after becoming aware or reasonably believing the existence of serious or material environmental harm or environmental nuisance. Notification must occur within 24 hours of knowing or believing the land is contaminated.

Material environmental harm is defined as >\$5,000 property damage or remediation costs.

Notification is required where the person knows of the contamination or reasonably believes or should reasonably believe that contamination exists.

South Australian Requirements

On 1st July 2009 the Environment Protection (Site Contamination) Amendment Act 2007 extended the mandatory Notification requirements to owners, occupiers and consultants who become aware of non trivial site contamination that affects or threatens groundwater. This amendment was introduced in line with South Australia's focus on protecting a diminishing natural resource and the EPA has published guidelines on the determination of whether actual or potential harm to groundwater has occurred.

In South Australia the notification must be made as soon as reasonably practicable after becoming aware of the contamination.

Northern Territory

Section 14 of the Northern Territory Waste Management & Pollution Control Act 2009 details a duty to report incidents causing or threatening to cause pollution. There are, however, no specific duties dealing with the reporting of contaminated land.

Western Australia Requirements

The Contaminated Sites Act 2003 requires that land owners, occupiers and people known or suspected to have polluted are to notify contaminated land to the DEC. Where the contamination is suspected this must be done as soon as is reasonably practicable after the contamination occurs. For known contamination this must occur with 21 days.

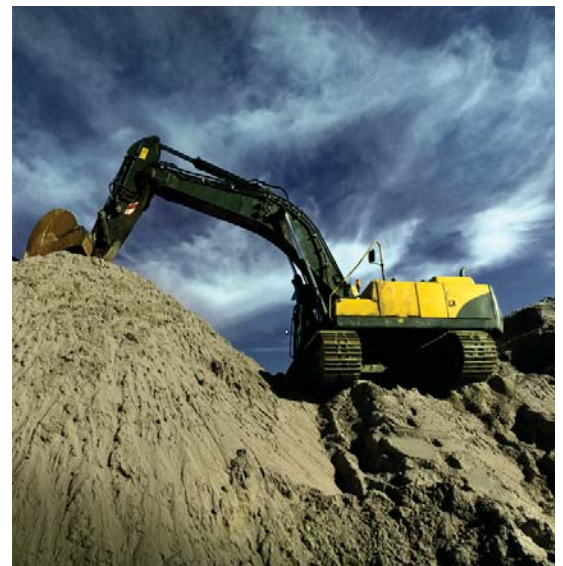
The DEC provide Guidelines for Reporting of a Known or Suspected Contaminated Site and defines Known Contaminated Sites as those where contamination poses, or has the potential to pose, a risk of harm to human health, the environment or any environmental value.

The guidelines state that where contaminant concentrations exist above documented assessment levels AND there is a known pathway AND a known receptor, the site is contaminated for the purposes of reporting.

Implications of Mandatory Reporting

Most land owners are generally aware of these reporting obligations, however, asset owners and managers of national portfolios may be more familiar with reporting obligations which apply in one state and therefore fail to observe obligations for properties located in other jurisdictions. Where obligations have changed (such as those in NSW) asset owners and managers need to review the status of what information they have (or ought to have) on their properties to ensure they are compliant with the most recent guidelines. Consideration needs to be given to mandatory reporting where land contamination is routinely assessed such as in due diligence audits and asset sales.

It should be remembered that all states have mandatory reporting of pollution and releases into the environment which are separate from the notification requirements associated with owning or occupying contaminated land. Some states also have mandatory reporting of underground petroleum storage systems or the decommissioning of such systems.



For more information on this topic please call Cameron Hunter (0488 555 460) or William Meszaros (0488 555 461).

To receive a tabulated summary of reporting obligations across jurisdictions please email admin@prensa.com.au.