Site contamination—honesty in reporting*

EPA 829/08: This information sheet has been prepared to assist consultants and auditors who prepare reports in relation to site contamination. It is also intended for people who provide information to parties in the preparation of their reports.

Introduction

Site contamination can occur as the result of the introduction of chemical substances to a site. There are several factors that must be considered when determining whether or not the presence of the chemical substance(s) is deemed as site contamination. Section 5B of the Environment Protection Act 1993 (EP Act) details these factors. The Environment Protection Authority (EPA) recommends that only suitably qualified and experienced professionals be engaged to assess or remediate site contamination.

A site contamination consultant is defined by the EP Act as ‘a person other than a site contamination auditor who, for fee or reward, assesses the existence or nature or extent of site contamination’.

A site contamination auditor is defined by the EP Act as ‘a person accredited under Division 4 of Part 10A as a site contamination auditor’.

Consultant and auditor reports

Consultants and auditors are, in many cases, reliant on the accuracy and completeness of the information that is provided to them. The information is used to design and/or review

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* Sections 103ZA, 103ZB, 119 and 120A of the Environment Protection Act 1993.

1 See also EPA Guideline: Site contamination—what is site contamination?

2 Refer to EPA Guideline: Site contamination—selecting a site contamination consultant and Site contamination—using an environmental auditor.

3 Section 3, Environment Protection Act 1993.
assessment or remediation programs. If the information provided is misleading, incomplete or deficient, then the conclusions by the consultant or auditor may be significantly incorrect or flawed.

It would not be reasonable, economical or expected for a consultant or auditor to sample all soils or groundwater across an entire site at every depth for every possible chemical substance.

Instead consultants and auditors design sampling programs in accordance with the investigation objectives, industry standards and published guidelines. The programs result in the collection of samples from selected locations where chemical substances (of concern) are known or potentially known to exist. These samples are then subjected to analytical testing for the chemical substances that are likely to exist within the collected sample. The outcome of this testing is then used by the consultant and/or auditor to provide an opinion in relation to site contamination.

Hence, if the consultant or auditor is provided with false, misleading, incomplete or deficient information, then sampling and analytical program could be of little or no value. The subsequent report could be seriously flawed and serious consequences to human health and/or the environment could result from the use of the site.

Four sections of the EP Act require honesty in reporting. These sections are 103ZA, 103ZB, 119 and 120A. Detail for each section is provided below.

**S103ZA—Reports by site contamination auditors and consultants**

On 10 December 2007, the EP Act was amended to include section 103ZA. The legislation states the following:

> A site contamination auditor or site contamination consultant must, in any written report that the auditor or consultant prepares in relation to a site, clearly qualify any statement of the auditor's or consultant's opinion as to the existence of site contamination at the site by specifying the land uses that were taken into account in forming that opinion.

Penalty: Division 5 fine.

The current maximum Division 5 fine is $8,000.

**S103ZB—Provision of false or misleading information**

On 10 December 2007, the EP Act was amended to include section 103ZB. The legislation states the following:

> A person must not make a statement that the person knows to be false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information furnished to a site contamination auditor or site contamination consultant that might be relied on by the auditor or consultant in preparing a report relating to site contamination (whether or not required under this or any other Act).

Penalty:

(a) If the offender is a body corporate—Division 1 fine;

(b) If the offender is a natural person—Division 3 fine.
The current maximum Division 1 fine is $60,000 and the current maximum Division 3 fine is $30,000.

It should be noted that this section applies to all persons. The EPA anticipates that consultants and auditors will take all reasonable and practicable measures to ensure that persons provide information is in accordance with the EP Act.

**S119—False or misleading information**

S119 of the EP Act states the following:

A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information furnished, or record kept, under this Act.

**Penalty:**

(a) If the offender is a body corporate—Division 1 fine;

(b) If the offender is a natural person—Division 3 fine.

**S120A—False or misleading reports**

Section 120A of the EP Act states the following:

(1) A person who makes a false or misleading report to the Authority, another administering agency or a person engaged in the administration of this Act is guilty of an offence if—

(a) the person knows the report is false or misleading; and

(b) the report is of a kind that would reasonably call for investigation or action by the Authority or another administering agency.

**Penalty:** Division 4 fine.

The current Division 4 fine is $15,000.

**Information declaration form**

The EPA has prepared a form that is intended to assist those who provide information to consultants or auditors that are preparing reports in relation to site contamination.

It is expected that the use of this form will increase the reliability of the information provided to the consultant or auditor.

The EPA suggests that consultants and auditors will provide the form to the appropriate person(s), for completion, prior to the commencement of an assessment and/or remediation program.

It is recommended that consultants who provide information to auditors will complete this form in relation to the information that they provide to the auditor.

The EPA further recommends that the completed form be included as part of the consultant or auditor’s report irrespective of whether or not the report is intended for provision to the EPA. Consultants and auditors are advised to accurately record and retain information provided by relevant persons.
A copy of the form is attached and is also available for electronic download from the EPA website <www.epa.sa.gov.au>.

**Enforcement**

It is a criminal offence to not comply with sections 103ZA, 103ZB, 119 or 120A of the EP Act.

If the EPA determines that a person has made a statement that the person knows to be false or misleading through inclusion or omission, in any information furnished to a site contamination consultant or auditor, that might be relied on by the consultant or auditor in preparing a report relating to site contamination, it can be expected that the EPA will investigate and may commence criminal proceedings against that person.

Further information on compliance and enforcement is provided in the *EPA Guidelines for Compliance and Enforcement of the Environment Protection Act 1993* available on its website.

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**FURTHER INFORMATION**

**Legislation**

Legislation may be viewed on the internet at: <www.legislation.sa.gov.au>

Copies of legislation are available for purchase from:

<table>
<thead>
<tr>
<th>Service SA Government Legislation Outlet</th>
<th>Telephone:</th>
<th>Facsimile:</th>
<th>Internet:</th>
</tr>
</thead>
<tbody>
<tr>
<td>101 Grenfell Street</td>
<td>13 23 24</td>
<td>(08) 8204 1909</td>
<td>&lt;shop.service.sa.gov.au&gt;</td>
</tr>
</tbody>
</table>

**For general information please contact:**

<table>
<thead>
<tr>
<th>Environment Protection Authority</th>
<th>Telephone:</th>
<th>Facsimile:</th>
<th>Freecall (country):</th>
<th>Internet:</th>
</tr>
</thead>
<tbody>
<tr>
<td>GPO Box 2607</td>
<td>(08) 8204 2004</td>
<td>(08) 8124 4670</td>
<td>1800 623 445</td>
<td>&lt;www.epa.sa.gov.au&gt;</td>
</tr>
<tr>
<td>Adelaide SA 5001</td>
<td>Email:</td>
<td></td>
<td></td>
<td><a href="mailto:epainfo@epa.sa.gov.au">epainfo@epa.sa.gov.au</a></td>
</tr>
</tbody>
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The EPA welcomes written comments on and suggestions for improvements to any of its site contamination publications. These should be addressed to the Manager, Site Contamination at the above address.
Site contamination—honesty in reporting

1  Site contamination consultant/auditor contact details *(this section is to be completed by the consultant or auditor)*

<table>
<thead>
<tr>
<th>Form completed whilst engaged as a consultant [ ] or auditor [ ] <em>(tick only one box)</em></th>
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<tbody>
<tr>
<td>Consultant/auditor company:</td>
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<tr>
<td>Auditor accreditation number (if applicable):</td>
</tr>
<tr>
<td>Postal address:</td>
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<tr>
<td>Telephone:                             Facsimile:</td>
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<tr>
<td>Email:</td>
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<tr>
<td>Consultant/auditor reference:</td>
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<td>EPA reference number (if applicable):</td>
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Declaration:

I understand that it is an offence to provide false or misleading information to the Authority (section 120A of the Environment Protection Act 1993).

I understand that I must clearly qualify any statement of my opinion as to the existence of site contamination at the site by specifying the land uses that were taken into account in forming that opinion (section 103ZA of the Environment Protection Act 1993).

*Maximum penalties range up to $15,000 for individuals to $60,000 for corporations.*

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<tr>
<th>Position of signatory:</th>
<th>Date:</th>
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## 2 Site information *(this section is to be completed by the consultant or auditor)*

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<th>Details</th>
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<tbody>
<tr>
<td>Site name (if applicable):</td>
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<td>Site address:</td>
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<td>Certificate of Title number(s):</td>
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<td>Date(s) of assessment:</td>
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<td>Site owner and contact details:</td>
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<td>Site occupier and contact details:</td>
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<tr>
<td>Name, address and position of person requesting report:</td>
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<tr>
<td>Existing or proposed land use:</td>
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<tr>
<td>Consultant/auditor reference:</td>
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</table>
3 Person(s) providing information to site contamination consultants or auditors (this section is to be completed by each person who provides information to a consultant or an auditor)

Section 103ZB of the Environment Protection Act 1993 states that:

A person must not make a statement that the person knows to be false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information furnished to a site contamination auditor or site contamination consultant that might be relied on by the auditor or consultant in preparing a report relating to site contamination (whether or not required under this or any other Act).

*Maximum penalties range from $30,000 for individuals to $60,000 for corporations.*

Declaration:

I hereby declare I have read and that I understand section 103ZB of the Environment Protection Act 1993 printed above.

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