

Information for licensees

November 2009

EPA885/09: This information sheet is for those who hold environmental authorisations (licensees), to help them understand their obligations concerning site contamination under the Environment Protection Act 1993.

Introduction

Site contamination is an important environmental, health, economic and planning issue in South Australia. Chemical substances that cause site contamination can be odourless, colourless and, in many cases, remain undetected for a long time.

In 2007 the South Australian Government amended the *Environment Protection Act 1993* (EP Act) to incorporate provisions for the effective management of site contamination. The various site contamination provisions commenced on or before 1 July 2009 and are retrospective to allow historical pollution to be appropriately managed.

There are various aspects of the legislation that are likely to be of interest to licensees. Those aspects are discussed in detail below. If you would like further information please contact your Environment Protection Authority (EPA) licence coordinator or the EPA Site Contamination Branch.

Legislative framework

Site contamination can occur as a result of the introduction of chemical substances that are above background concentrations to a site. There are several factors that must be considered when determining whether or not site contamination exists. Section 5B of the EP Act provides the definition of site contamination. For further information in relation to the definition of site contamination, refer to the relevant EPA publication¹.

Sections 103A to 103ZB of the EP Act provide most of the site contamination provisions. There are also regulations² that support these provisions.

Appropriate persons

Once it has been determined that site contamination exists, a determination is then made as to who is the 'appropriate person'³. The appropriate person has liability for implementing and funding the assessment and remediation of site contamination and, if necessary, independent auditing by a site contamination auditor⁴. If it is not practicable to assign

¹ Site contamination: What is site contamination (2009)

² Environment Protection Regulations 2009

³ Refer to EPA publication, Site contamination: Responsibility for assessment and remediation of site contamination (2009)

⁴ Refer to EPA Information sheet, Overview of the site contamination audit system (2009).

responsibility to the person who caused the site contamination, the site owner may, in certain circumstances, be deemed to be the appropriate person.

As an authorisation holder (licensee) you may be the person who caused the site contamination or you may be undertaking an activity that can cause site contamination. You may need to demonstrate that measures have been, and will be, in place to prevent site contamination from occurring when the activity is undertaken.

EPA powers

Most of the site contamination provisions are retrospective. The date that the site contamination occurred (whether the date is known or unknown) does not limit the EPA's powers.

Once the appropriate person is determined, the EPA can require that person to assess and/or remediate the site contamination. To achieve this, the EPA can amend licence conditions (subject to the EP Act) or enter into an informal (ie non-statutory) arrangement with the person.

The EPA may also enter into a Voluntary Proposal with the person or issue orders against them, as discussed below. The option selected to address site contamination at licensed sites will depend on the specific circumstances and will be based on the environmental risk involved.

A Voluntary Proposal is a statutory agreement that an appropriate person provides to the EPA for approval. The EPA may agree not to take the further step of issuing an order if that person makes an undertaking to carry out remediation or assessment according to a Voluntary Proposal.

Two types of orders can be issued by the EPA under the site contamination provisions:

- site contamination assessment orders requiring an appropriate person to determine the nature and extent of the site contamination both on-site and, in certain circumstances, off-site; and
- site remediation orders requiring an appropriate person to remediate⁵ (manage, remove, treat, contain) the site contamination so that it is no longer a risk to human health, water or the environment.

It is a criminal offence to not comply with an order. There are significant penalties for non-compliance. In addition, the EPA may take action itself to fulfil the requirements of an order and register the order and the associated costs against any land owned by the person. Appeal provisions are included in the legislation.

Transfer of liability

Section 103E of the EP Act allows a person to transfer liability for site contamination. In order for liability to be transferred however, the site contamination must be defined (as in the EP Act). The details of this process are described in the relevant EPA publication⁶.

The EPA recommends that a person should determine the nature and extent of site contamination before selling or leasing their property or transferring their EPA licence to another person. Similarly a person should undertake the same process before acquiring land that is potentially contaminated.

A person who sells property (vendor) has an obligation under the *Land and Business (Sale and Conveyancing) Act 1994* to inform prospective purchasers of any knowledge of site contamination and activities that may cause site contamination. For further information refer to the relevant EPA publication⁷.

Any licensee who is unsure of the legal implications of section 103E of the EP Act should seek their own legal advice.

⁵ Refer to section 3 of the EP Act.

⁶ Transfer of liability (2009).

⁷ Section 7, Land and Business (Sale and Conveyancing) Act 1994 and the role of the EPA (2009).

Duty to notify of site contamination of underground water

Underground water is utilised extensively throughout South Australia for a wide variety of purposes. Chemical substances introduced to the environment can migrate to underground water. The substances in groundwater can migrate away from the source site through natural processes. This has the potential to impact on the surrounding properties.

Section 83A of the EP Act requires an owner, occupier, site contamination consultant, or a site contamination auditor to notify the EPA of the existence of site contamination that affects or threatens underground water.

As a licensee, you will be an owner or an occupier and have a statutory duty of notification under this section of the legislation.

A person is not required to notify the EPA of a matter if the person has reason to believe that the matter has already come to the notice of the EPA or an officer engaged in the administration or enforcement of the EP Act.

It is a criminal offence to not comply with section 83A of the EP Act. There are significant penalties for non-compliance.

For further information see the relevant EPA publication⁸.

Surrendering your authorisation

The EPA may require a licensee to assess or remediate site contamination, if found, prior to approving the surrender of an authorisation. After surrender of a licence, if site contamination is suspected or identified, the EPA may also require assessment or remediation.

Disclaimer

This publication is a guide only and does not necessarily provide adequate information in relation to every situation. This publication seeks to explain your possible obligations in a helpful and accessible way. In doing so, however, some detail may not be captured. It is important, therefore, that you seek information from the EPA itself regarding your possible obligations and, where appropriate, that you seek your own legal advice.

⁸ Notification of site contamination that affects or threatens underground water pursuant to section 83A of the Environment Protection Act 1993 (2008)

Further information

Legislation

Legislation may be viewed on <www.legislation.sa.gov.au>

Copies of legislation are available for purchase from:

Service SA Government Legislation Outlet	Telephone:	13 23 24
Adelaide Service SA Centre	Fax:	(08) 8204 1909
108 North Terrace	Web:	< shop.service.sa.gov.au >
Adelaide SA 5000		

For general information please contact:

Environment Protection Authority	Telephone:	(08) 8204 2004
GPO Box 2607	Fax:	(08) 8124 4670
Adelaide SA 5001	Freecall (country):	1800 623 445
	Web:	< www.epa.sa.gov.au >
	Email:	< epainfo@epa.sa.gov.au >

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.