

# Explanatory Report

*for the*

## Environment Protection (Site Contamination) Amendment Bill 2005

*Environment Protection Authority  
South Australia*

# Call for Comments

Consultation is being undertaken on the Environment Protection (Site Contamination) Amendment Bill 2005.

This explanatory report has been prepared to accompany the Bill and sets down the objectives of the Bill, the background to its development and an explanation of the individual clauses.

Your comments on the draft Bill are invited. You can respond on line on the EPA consultation web site ([www.epacomments.sa.gov.au](http://www.epacomments.sa.gov.au)), or you can download a Word-format template ([www.epa.sa.gov.au/consult.doc](http://www.epa.sa.gov.au/consult.doc)) that can be e-mailed to the Project Manager.

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**Submissions close at 5.00 pm on Monday 27 February 2006**

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## Foreword from the Minister

Site contamination is a significant health and environmental concern. The draft *Environment Protection (Site Contamination) Amendment Bill 2005* has been developed to strengthen the provisions in the *Environment Protection Act 1993* in relation to this issue. The draft Bill has been released for public consultation to enable your comments to be considered and the draft Bill to be amended as necessary.

The Bill is part of the Site Contamination Package being developed by the Environment Protection Authority to ensure that site contamination is well managed throughout South Australia. Its aim is to provide the legislative framework to protect human health and the environment, whether the activity that resulted in site contamination occurred before or after the commencement of the Act on 1 May 1995.

The Site Contamination Package will comprise the Bill and regulations under the Bill, appropriate amendments to planning processes under the *Development Act 1993*, amendments to other South Australian legislation (particularly the Regulations under the *Land and Business (Sale and Conveyancing) Act 1994*), and a series of EPA guidelines and/or codes of practice.

This explanatory report has been prepared to accompany the draft Bill and sets down the objectives of the Bill, the background to its development and an explanation of the individual clauses.

As Minister for Environment and Conservation, I invite you to consider the Bill and encourage your written submissions. An on-line response template is available on the EPA web site ([www.epa.sa.gov.au/](http://www.epa.sa.gov.au/)).

**JOHN HILL**  
**MINISTER FOR ENVIRONMENT AND CONSERVATION**



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## Summary

This explanatory report has been prepared to accompany the *Environment Protection (Site Contamination) Amendment Bill 2005* (the Bill), an amendment to the *Environment Protection Act 1993* (the Act).

The Bill defines site contamination. Under the definition in clause 5A of the Bill, for site contamination to exist chemical substances introduced to a site must be present on or below the surface in concentrations above the background level and must result in actual or potential harm to human health or safety, or to the environment, taking into account the current or proposed land use of the site. Site contamination is also said to exist if there is actual or potential harm to water (surface or underground) resulting from the chemical substances.

Site contamination, a matter of international and national concern, emerged as a significant health and environmental issue in South Australia in the 1980s when site contamination was identified at several sites in metropolitan Adelaide. Events since then have highlighted the need for an improved legislative framework and holistic management approach.

The Bill is part of a 'Site Contamination Package' to ensure that site contamination is well managed throughout South Australia. The purpose of the Bill is to provide the legislation to protect human health and the environment where the activities that resulted in site contamination occurred before the commencement of the Act on 1 May 1995.

As a holistic framework for managing site contamination, the Site Contamination Package will comprise the Bill and regulations under the Bill, appropriate amendments to planning processes under the *Development Act 1993*, amendments to other South Australian legislation (particularly the Regulations under the *Land and Business (Sale and Conveyancing) Act 1994*), and a series of EPA guidelines and/or codes of practice (Attachment 1).

The Bill uses as a basis, and builds upon, the *National Environment Protection (Assessment of Site Contamination) Measure* (NEPM), made in December 1999. A desired environmental outcome of this NEPM is consistent with the purpose of the Bill in seeking to provide adequate protection of human health and the environment where site contamination has occurred.

This explanatory report provides:

- the background to the development of the Bill
- the need for and purpose of the Bill
- an explanation of the interrelationship between the Bill and the planning process
- a list of the intended guidelines
- a preliminary benefit cost analysis and National Competition Policy assessment
- an explanation of the clauses of the Bill.



## Introduction

There are two components to the definition of site contamination under the Bill that must be satisfied before site contamination is said to exist. First, chemical substance (including waste) must have been introduced by an activity to the site in concentrations above the background concentrations and, second, this must result in:

- actual or potential harm to the health or safety of human beings that is not trivial, taking into account current or proposed land uses; or
- actual or potential harm to water that is not trivial; or
- other actual or potential environmental harm that is not trivial, taking into account current or proposed land uses.

The potential impacts of site contamination are a major concern. If they are not adequately recognised and addressed, they may pose significant health and/or environmental risks. Site contamination may also affect current or proposed site uses and may impact upon activities on surrounding land.

To address site contamination issues in South Australia, the Government through the Environment Protection Authority (EPA) has developed the draft Environment Protection (Site Contamination) Amendment Bill 2005, which will amend the *Environment Protection Act 1993*.

This explanatory report describes the concepts and principles of site contamination, provides the background, purpose and need for the Bill, and explains the clauses of the Bill. It also provides a summary of the proposal to amend planning processes under the *Development Act 1993* to manage site contamination, as well as a proposal that the EPA will develop guidelines to assist in the management of site contamination. This holistic and integrated legislative package is designed to address and manage site contamination in South Australia.

As this is an explanatory document only, the terms used in it are not legal. For the legal and binding terms, and for the complete text of the Bill, please read the Bill and the Act.

## Concepts of site contamination

Any activity that adds chemical substances to land or water above background concentrations could cause site contamination. Importantly, site contamination may result from past land use practices, in particular waste disposal and site management practices, that today would be regarded as unacceptable. For example, disposing or dumping of chemicals and other industrial waste directly onto the ground or into drains is contrary both to current legislation and to community expectations of good environmental practice. Other historical instances of site contamination include the long-term undetected leakage of fuels and solvents from underground storage tanks at petrol stations and other sites, and the repeated spraying of arsenic compounds on weeds over large areas of land.

Common forms of chemical substances include:

- heavy metals (e.g. lead, cadmium, mercury, chromium, zinc and other metals)

- inorganic non-metallics (e.g. cyanide, sulphides, fluorides)
- hydrocarbons (e.g. leaks from petrol station tanks)
- organic compounds including Polychlorinated biphenyls (PCBs), polycyclic aromatic hydrocarbons and pesticides
- other sources including acids and alkalis.

To determine whether those chemical substances may have an adverse effect on human health or the environment, a risk-based assessment should be made. This assessment should consider actual or potential impacts on health and on the environment taking into account current or proposed use of the land, and impacts on waters, particularly underground waters.

The risk-based assessment should be completed by appropriately experienced people using recognised processes and methodologies. The *National Environment Protection (Assessment of Site Contamination) Measure* (NEPM), which operates in South Australia, provides guidelines for assessing site contamination and the EPA is developing guidelines to further assist assessment processes and site contamination management (eg *Guideline on Soil Bioremediation* published in August 2005).

When assessment identifies site contamination, then remedial action may need to be taken. Remediation means the treatment, containment, removal or management of the chemical substances that have resulted in the adverse impacts.

The Bill defines site contamination on the interrelationship between chemical substances and their actual or potential effects on human health and the environment (taking into account the current or proposed land use) or waters. Under Clause 5A of the Bill both these factors need to be present before site contamination is said to exist, as demonstrated by the following scenario.

An activity results in the addition of chemical substances to a 'site' ( a defined area of land). These chemical substances, assessed in accordance with the NEPM, have been found to be non-volatile, immobile and non-leachable. A risk-based assessment, however, indicates that exposure to these chemical substances may represent, or potentially represent, an adverse health or environmental impact, when the current or intended land use is taken into account.

By definition, site contamination therefore exists at the site, and remediation is necessary to adequately protect human health and the environment.

Remediation options then need to be considered based on a range of issues of the site. For simplicity, it is decided to cover the site with a building or a relatively permanent hard cover (e.g. a large reinforced concrete slab). The assessment shows that this will effectively manage the chemical substances.

Even though the chemical substances are still present on the site and within the property, they no longer present an actual or potential threat to human health or the environment, and therefore by definition site contamination no longer exists.

However, because the chemical substances remain at the site, according to the definition there is the potential for site contamination to exist if the building or concrete slab is later removed.

Many site contamination issues are more complex than this scenario, particularly when the chemical substances may be volatile and/or mobile and migrate from the site. In the Bill, sites from which chemicals migrate are referred to as **source sites**. An example of this is a leaking underground petrol storage tank that may impact on groundwater off the site.

If it has been demonstrated that groundwater contains chemical substances that cause harm to the water, the groundwater may need to be remediated. The person responsible for causing site contamination can be ordered to remediate the site contamination, including groundwater. However, owners of properties located over a plume of contaminated groundwater, who do not own the land that is the source site of the contamination, have no responsibility under the Bill to assess or remediate the groundwater.

To prevent actual or potential harm to human health or safety, Clause 103Q of the Bill provides powers for the EPA to prohibit or restrict the taking of water. The EPA proposes to undertake measures to ensure that all relevant parties are adequately notified in this circumstance.

## The development of site contamination legislation

Major contamination was first identified in metropolitan Adelaide at an Albert Park property early in 1988. At that time, there were no procedures or mechanisms available to manage this problem, and an *ad hoc* committee was established by the South Australian government to coordinate the assessment and resolve the issues at this property.

In the ensuing years, publications and directions have been released to address site contamination but they are only advisory in nature.

In 1989, the Department of Environment and Planning issued Planning Practice Circular 17 on Land Contamination, advising of procedures that should be adopted by planning authorities when preparing supplementary development plans and assessing development applications. Practice Circular 2 in September 1997 and Planning Advisory Notice No 20 in December 2001 subsequently replaced this document.

In 1991 and 1992, the South Australian Government discussion paper, *Contaminated Land: A South Australian Legislative Approach* was issued followed by the Australian and New Zealand Environment and Conservation Council (ANZECC) and the National Health and Medical Research Council (NHMRC) *Guidelines for the Assessment and Management of Contaminated Sites*. These documents and later publications were used as the basis for the NEPM.

The Environment Protection Bill, introduced into Parliament in 1993, did not include provisions on site contamination because of the lack of a nationally agreed position on the issues of liability. At the time, the Minister for Environment and Land Management

gave an undertaking to prepare amendments to the Act that would deal effectively with site contamination issues.

In October 1995, the EPA issued *Special Bulletin No 1 – The Use of Environmental Auditors: Contaminated Land*, allowing the use of Victorian appointed auditors in South Australia. Auditors have been used extensively, particularly for sensitive land uses (mainly residential), since that time but the legislative framework to require the use of auditors had not been put in place.

In January 1996, the EPA established the Advisory Committee on Contaminated Sites (ACCS) with membership from the EPA, Australian Bankers Association, Australian Finance Conference, Business SA, City of Adelaide, Local Government Association, Conservation Council of SA, Real Estate Institute, Urban Land Development Institute of Australia, SA Health Commission and the Crown Solicitor's Office. The task of the ACCS was to make recommendations to the EPA for amendments to the Act.

The ACCS draft report, completed in early 1997, covered many contamination issues but it did not comprehensively review the measures required to address them. It was thus agreed that drafting instructions for preparing the legislation would be based on the ACCS report and on various discussion papers released by other Australian jurisdictions and the ANZECC and NHMRC *Guidelines for the Assessment and Management of Contaminated Sites*. The Government subsequently approved the preparation of the Bill in August 1999.

It was recognised in 1998 that, in addition to the proposed Bill, potential purchasers of properties must be informed about site contamination. Accordingly, amendments to the Regulations under the *Land and Business (Sale and Conveyancing) Act 1994* came into operation in that year.

The amendments provided for information to potential purchasers on site contamination from the vendor of a property and from the EPA. These amendments have proven to be useful but can be improved.

In 1999, the National Environment Protection Council (NEPC) made the *National Environment Protection (Assessment of Site Contamination) Measure* (NEPM,) which includes a recommended general process and a series of ten guidelines for assessing site contamination. It does not address management of site contamination (except for a preferred hierarchy for remediation), which remains the responsibility of each jurisdiction.

The Environmental Health Service of the Department of Health has had significant involvement in contamination issues. The department continues that involvement and is collaborating with the EPA in the development of this Bill and other matters relating to site contamination.

## Purpose and benefits of the legislation

The Bill aims to establish a legislative framework to provide for the adequate protection of human health and the environment, and to provide the benefit of certainty to industry and the development sector by enabling:

- the competent assessment and management of site contamination throughout South Australia
- the effective implementation of the *National Environment Protection (Assessment of Site Contamination) Measure 1999* (and any subsequent amendments) and other relevant national and South Australian guidelines, policies and principles
- powers for the EPA to order appropriate persons to competently assess, remediate and manage site contamination wherever this may be necessary and appropriate
- the development of a framework for determining the person responsible for site contamination
- the accreditation, administration and operation of a site contamination audit system in South Australia
- the effective operation of landuse planning processes in conjunction with this legislative framework to ensure that all new developments with a sensitive land use, and where site contamination is identified or suspected, are suitable for that use
- the legal transfer of full or partial responsibility for site contamination on the sale of land from vendor to purchaser subject to agreements
- the establishment of 'areas of special concern' of land and/or waters and to ensure their effective management
- the prohibition or restriction of taking of water affected by site contamination.

## Appropriate persons to be issued with Orders

A key issue in addressing and managing site contamination is determining who is the 'appropriate person' to be served with a site contamination assessment order or a site remediation order. A number of options in determining the hierarchy of the appropriate persons were considered.

The Bill states that, in the first instance, the appropriate person to be served with an order is the person responsible for the site contamination, the polluter. If the polluter is insolvent, is unidentifiable or has died, the owner of the source site is the appropriate to be served with an order.

Currently, the Bill excludes the 'innocent' owner of land with site contamination as an appropriate person, where an innocent owner is a person who owns land contaminated by the migration of chemical substances from a source site. The person who owns this land, and who has not contributed to the site contamination, is not responsible for the site contamination and cannot be served with an order.

A third option, which has not been included in the current draft of the Bill, is to make any owner of a contaminated site the appropriate person to be served with an order.

In determining the responsible person, the Bill adopts the 'polluter pays' principle. Under the 'polluter pays' principle, the person responsible for causing the site contamination should be responsible for implementing and paying for the assessment, remediation and independent auditing. However, in relation to site contamination, much contamination is historical in nature having occurred over many years. The person or company responsible for the contamination may not be the same person or company who currently own or occupy the site and the property may have changed hands since the original contamination took place.

This position is based on ANZECC's *Financial Liability for Contaminated Site Remediation*, which recommends that the polluter who caused the contamination, if solvent and identifiable, ultimately bears the cost of any necessary remediation. The ANZECC position was ratified by the South Australian Government in April 1994 and also exists in comparable legislation in other states of Australia.

A similar approach has been adopted in other countries. All countries reviewed allocate liability to the polluter in the first instance and most also can hold the owner/occupier liable for assessment and remediation. Most countries assign liability for historic pollution as far back in time as it was possible to determine a specific pollution event. The principle of strict liability in relation to responsibility for remediation was applied in most countries reviewed. The ANZECC position is also based on the principle of strict liability, that is liability without the need to prove intent, negligence or fault.

The Bill also proposes that a person who brings about a change of use of a site that 'results' in site contamination is responsible for the site contamination to the exclusion of others. For example, by definition, for a site that has chemicals above background levels but, for the current landuse, does not pose a health risk, site contamination is said not to exist. However, where a person wishes to develop the site which will involve a change to a sensitive use, that person will become responsible for ensuring the site assessment,

remediation and independent auditing is undertaken. The benefit of this part of the Bill is to provide certainty to the development sector, thereby avoiding civil action to determine liability.

The current Act applies, in the main, to pollution that has occurred since the Act came into operation on 1 May 1995. In order for a polluter to be held liable for historical site contamination, the proposed amendments to the Act need to be retrospective in their application; that is, the proposed amendments will enable site contamination that occurred before the commencement of the Act to be addressed.

The alternative to either the polluter, source site owner or developer covering the costs of assessment and remediation is that these costs fall either on the innocent owner or on government and hence the wider community. Measures that lessen the liability of the private sector for past site contamination will increase the need for government resources to fund the remediation. Addressing site contamination involves a choice between equity and efficiency, between making the polluter, owner or developer pay, or making the government and community pay.

## Site contamination audit system

The environmental audit system began in Australia during the late 1980s, following the discovery of serious lead contamination in a housing estate in Victoria. The Victorian Government commitment to address the issue resulted in the Victorian EPA instigating an independent audit system to provide certification that land was suitable for use.

The role of the auditor was to undertake:

*A total assessment of the nature and extent of any harm or detriment caused to, or the risk of any possible harm or detriment which may be caused to, any beneficial use made of any segment of the environment by any industrial process or activity, waste, substance (including any chemical substance) or noise.*

The statutory audit process thus instigated through the landuse planning system established a benchmark for providing the necessary assurance to developers, planning authorities, owners/occupiers and the community that land was suitable for the intended use. The statutory and robust appointment processes underpin a Victorian audit system that is recognised for its high integrity and independence. Other states, such as New South Wales, have processes in place to accredit site auditors.

The South Australian EPA endorsed the use of auditors appointed by the Victorian EPA for similar roles in South Australia in October 1995. This Bill provides the legal framework for establishing an audit system and, together with proposed amendments to planning processes, will ensure that all new developments involving a sensitive land use will be suitable for that use.

There is provision in the Bill to allow auditors accredited in other jurisdictions to become accredited in this state by Regulation.

## Proposed amendments to landuse planning processes

Planning authorities, developers and other stakeholders have an important role in managing site contamination. With the development of the Site Contamination Bill the opportunity has also been taken to consider consequential amendments to the planning system to facilitate integration between the audit process and the development assessment system. Planning SA has been assisting the EPA in achieving this integration. A flowchart detailing the integration proposal is provided in Figure 1 in the Attachments.

Under the *Development Act 1993*, when a Council or the Minister for Urban Development and Planning proposes to rezone land, it is proper practice that health, safety and environmental implications are given due consideration to ensure that the land is suitable for the type of land use proposed. This consideration would be given to site contamination.

Similarly, a reasonable level of care is required when the relevant authority, either the Council or the Development Assessment Commission, (pursuant to the *Development Act 1993*) is assessing a development application. When a relevant authority has a reason to suspect that the subject land is, or has the potential to be contaminated, it is essential that an applicant be requested to demonstrate to the authority that the site is suitable for the type of land use proposed.

Further, it is important that the advice provided to the relevant authority regarding the suitability of a site for the proposed use is given by an appropriately qualified and experienced person. The Bill provides for such expertise to be available through the auditor accreditation system.

It is proposed that the audit process will be triggered within the planning system when a new development proposal involves a change to a sensitive land use<sup>1</sup>, such as a residence or a child care centre, on land known where site contamination has been identified or is suspected. Site contamination is assumed to have occurred where that land has been used for a prescribed contaminating activity. These activities will be prescribed in the regulations under the *Environment Protection Act 1993* and mirrored under the *Development Act 1993*. They will be based on the examples of activities currently listed in Planning Advisory Notice 20, which include chemical manufacture and formulation, pesticide manufacture and formation, foundries and gas works.

Where a change to a sensitive land use triggers the audit process the relevant authority, either the Council or the Development Assessment Commission, will require the applicant to provide either a full audit report or initial advice from an auditor that indicates that a satisfactory level of remediation can be achieved. It is proposed that a relevant authority will not be able to issue a final approval until a full statutory audit has been provided and certifies that the land can be made suitable for its proposed sensitive land use.

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<sup>1</sup> includes residences, child care centres, pre-schools and primary schools

It will be possible for the relevant authority to consider the application and issue a Development Plan Consent leaving the site contamination matter to be resolved at a later date as a reserved matter pursuant to section 33(3) of the *Development Act 1993*. This process will enable the applicant to be confident that the proposal will be granted approval for planning and building matters before committing to the cost of a full site contamination audit report. Once a full site contamination audit report is lodged with the relevant authority and the site is deemed suitable for its proposed use a final development approval can be issued.

## National Competition Policy review

It is a requirement under Clause 5 of the National Competition Policy (NCP), as ratified by the Council of Australian Governments in April 1995, that:

*Legislation (including Acts, enactments, ordinances or regulations) should not restrict competition unless it can be demonstrated that:*

- *the benefits of the restrictions to the community as a whole outweigh the costs; and*
- *the objectives of the legislation can only be achieved by restricting competition.*

An initial assessment of the regulatory impact of the proposed amendments has been made in accordance with the requirements of NCP and the Competition Principles Agreement (CPA). Following an assessment of comments received through the consultation process, the draft Bill will be amended and a final NCP assessment of the Bill undertaken. Armed with this information, the Department of the Premier and Cabinet will evaluate whether the regulatory impacts are justified by the social, environmental, industry and community benefits of the proposed amendments before the Bill is introduced into Parliament.

An NCP review aims to identify the impact of the proposed legislation upon competition in markets. Restrictions on competition are of three types:

- barriers to entering or re-entering the market
- restriction on competition within markets
- discrimination between market participants.

Legislative restrictions are classified as follows:

- 1) Trivial restrictions have minimal impacts on competition within a market.
- 2) Intermediate restrictions have substantial impacts on competition within a market.
- 3) Serious restrictions prevent entry or re-entry into a market or prohibit certain conduct within a market.

The proposed amendments were examined in accordance with the obligation contained in clause 5 of the CPA—in particular, that the benefits to the community as a whole outweigh the costs, and that the objectives of the legislation/regulation cannot be achieved more efficiently through other means, including non-legislative approaches. Clause 5 of the CPA also states that when a restriction is justifiable on the basis of public benefit, it is necessary to consider whether there are practical alternative means of achieving the objectives of the legislation.

A comprehensive NCP review of the Act in 1999 found:

*that the restrictions contained in the Act, and the regulations and policies made under the Act, are justified in terms of the public benefits achieved by these restrictions outweighing any costs generated by these restrictions.*

The review panel also concluded:

*that while there is a role for non-legislative mechanisms to be employed to ensure environmental protection these mechanisms are not alternatives to legislative regulation, and*

*that there are no unnecessary or onerous administrative burdens imposed by the Act, regulations or policies.*

## **Impact of markets and restrictions on competition**

The review of the proposed amendments has identified the main restrictions as:

- the accreditation and use of auditors
- the requirement to assess and remediate site contamination.

## **Auditors**

The requirement for site contamination auditors to be accredited under Division 4 of the Bill is a restriction on entry or re-entry to the market. The illustrative market for the activity is the environmental auditor market. As for any professional body (e.g. lawyers, teachers, doctors), the right to practice in the relevant market is based on qualifications and some form of initial registration or accreditation that is re-evaluated on a regular basis at the time of renewal. The proposed accreditation system is considered to be a trivial restriction on entry into the market and participation in the market, and does not discriminate between participants in the market.

As for authorisation fees under the Act, costs for accreditation will comprise an application fee and an accreditation fee that is charged on the initial accreditation and at subsequent renewal. These fees are to be prescribed by regulation and will be aimed at cost recovery. In Victoria, the fee is set at 170 fee units, where the current value of the fee unit is \$10.49 (\$1783). NSW has an initial application charge of \$285 and an annual fee of \$3500.

Many of the other states (e.g. Victoria, NSW and Western Australia) either have a legislative base that requires auditors to be accredited, or require audits to be undertaken by an auditor accredited in another jurisdictions (e.g. Northern Territory). As similar legislative provisions covering site contamination exist or are proposed in other states and territories, no competitive advantage or restriction on competition within a market can be implied from the proposed accreditation of auditors in South Australia.

The benefits to the community, industry and the environment from the accreditation and use of auditors are:

- independent assurance that the assessment of site contamination undertaken by a consultant for a client (e.g. a property developer) is accurate and correct
- that the proposed remediation is carried out
- that the land is suitable for its intended use.

These benefits will also have significant economic benefits associated with avoiding the need to remediate sites where development has occurred, and the need to relocate residents while remediation is being undertaken.

In summary, restrictions are considered to be trivial and are justified in terms of the community and environmental benefits.

## **Requirement to assess and remediate site contamination**

The ability of the EPA to issue site assessment orders (clause 103J) and site remediation orders (clause 103K) is an extension of the current ability of the EPA to serve environment protection orders (section 93), clean-up orders (section 99) and clean-up authorisations to deal specifically with site contamination matters.

The review of the Environment Protection Act in 1999 found that the serving of environment protection orders, clean-up orders and clean-up authorisations would cause the person to whom the order is issued to incur costs in complying with the order.

While the impact of issuing such an order may be severe for the individual, if the EPA uses its power to issue such orders to achieve competitive ends then the environment protection orders are not restrictive of conduct in relevant markets generally.

The review panel also concluded that neither the issuing of environmental protection orders, nor the issuing of clean-up orders or clean-up authorisations, has a detrimental impact upon competition.

The benefits to the community, industry and the environment through the ability to serve orders is that the responsible person – the polluter or the owner – is required to either assess the nature and extent of site contamination, or to undertake remediation of the site contamination. For new developments, this will ensure that land is suitable for its intended use, and actual or potential harm to human health or the environment is minimised. For sites where there is no change in land use but there is actual or potential threat to human health from site contamination, the ability to serve orders will enable the EPA to have the nature of site contamination assessed and remediation to be undertaken where necessary.

There are examples, from South Australia and elsewhere in Australia, of site contamination being detected in residential areas and residents being relocating while remediation was undertaken to protect their health and safety. For example, in the late 1980s in Ardeer, Victoria, site contamination was discovered at a former lead smelter and battery recycling factory. The site had not been assessed or remediated before residential development proceeded.

The site was not remediated fully until the late 1990s. Many residents were relocated and eight houses under construction were demolished at a cost of several million dollars to the Victorian government.

In summary, restrictions are considered to be trivial and are justified in terms of the community and environmental benefits.

## Benefit cost analysis

An initial benefit cost analysis of the proposed legislation has been undertaken but it is anticipated that more detailed information will be provided through submissions received during the consultation period.

Site contamination may arise from activities such as petrol service stations, chemical manufacturing and storage, railway yards and gas works. The range of chemical substances involved include petroleum hydrocarbons, benzene, organochlorine pesticides, cyanide, nitrates, and heavy metals such as arsenic, cadmium and lead.

Leakage from underground petroleum storage tanks is a common activity that may result in site contamination. Such leakages not only pose a threat to human health but are also a significant safety issue, as they may lead to explosion or fires. The Victorian EPA has estimated that the cost of treatment of soil contaminated by petroleum hydrocarbons is \$30–\$50 per cubic metre, plus assessment and auditing costs, and ranges from tens of thousands of dollars to millions of dollars.

The actual total costs will vary with the extent of site contamination and the characteristics of the soils and hydrogeology at a site. For example, assessment and remediation of two sites near Port Phillip Bay cost \$1 million and \$500,000 respectively. The benefits of the remediation included the protection of people on the beach (a safety issue) in one instance, and the ability to continue using groundwater for domestic purposes in the other.

Based on information available to the EPA, the cost of assessment and remediation for six properties in South Australia is presented below:

**Site 1** - broadacre agricultural land - no previous significant contaminating activity - check on possible broadacre chemicals - \$10,000 for 57 lots = \$175 per lot.

**Site 2** - broadacre agricultural land - some contaminating activities requiring some remediation - \$770,000 to assess/remediate and audit for 3,500 lots = \$220 per lot.

**Site 3** - land with substantial filling and underground storage tanks - \$280,000 to assess, remediate and audit for 200 lots = \$1,400 per lot

**Site 4** - land with uncontrolled fill and including former residential land with white ant treatment (includes site development works and geotechnical issues - \$550,000 to assess/remediate and audit for 49 lots = \$11,250 per lot.

**Site 5** - land parcel filled with wastes from former sulfuric acid plant - \$2,230,000 to assess/remediate and audit for 140 lots = <\$16,000 per lot.

**Site 6** - land former pugholes to 9m deep (includes geotechnical issues) - \$7,750,000 for 200 lots = \$38,750 per lot.

In the final analysis the costs of assessment and remediation of site contamination are, to an extent, borne by the consumer. However, the proposed amendments will establish a regulatory framework that enables liability for assessment and remediation to be assigned in the first instance to the person or entity responsible for the site contamination.

In conjunction with the planning process, the amendments will ensure that land is suitable for its intended use. For sensitive land uses on land that has a history of a past contaminating activity, this will require the use of accredited auditors. A developer will need to make an economically rational decision as to whether the costs of assessment and remediation are offset by the revenue raised through development. The proposed legislation does allow the transfer of all or partial liability from the vendor to the purchaser in a genuine arms length sale. This transfer of liability and potential remediation costs can be reflected in the purchase price.

The EPA believes that the benefits of assessment and remediation, in terms of safeguards for human health and environment protection as well as realising the commercial benefits of remediating degraded land, should in most instances outweigh the costs of assessment and remediation.

The no-change alternative to the proposed legislation will continue to allow land where site contamination exists to be sold, with the health, safety and economic costs passed solely to the purchaser or the government. Moreover, it continues the current uncertainty experienced by the development sector.

# Explanation of the Site Contamination Bill

**Note: The EPA is referred to as ‘the Authority’ in the Bill.**

## Part 1—Preliminary

### *Clause 1: Short title*

Clause 1 names the Act.

### *Clause 2: Commencement*

Clause 2 provides for the Act to commence on a date to be fixed by proclamation.

### *Clause 3: Amendment provision*

Clause 3 provides the usual mechanism for amending a specified Act.

## Part 2—Amendment of *Environment Protection Act 1993*

### *Clause 4: Amendment of section 3—Interpretation*

Clause 4 amends section 3 of the Act by adding several terms and their definitions, and changing one definition.

Some of the more important definitions are as follows:

**Prescribed contaminating activity** – the Regulations that accompany the Act will list a range of known activities that are likely to give rise to site contamination. The list will be based on Appendix 1 of the Planning SA Advisory Notice No 20, Site Contamination (see [www.planning.sa.gov.au/advisory\\_notices/index.html](http://www.planning.sa.gov.au/advisory_notices/index.html)) and other recognised lists of relevant activities and industries.

**Remediate** – remediate means to treat, contain, remove or manage chemical substances that may cause any actual or potential harm to the health or safety of human beings, or to water, or other environmental harm so that there is no longer any resulting harm. The level of remediation depends on the nature of the chemical substances and the current or proposed use of the land. Thus remediation might not necessarily require the removal of all chemical substances introduced to a site.

**Site** – an area of land that may include various pieces of land (with different certificate of titles) owned and/or occupied by different people.

**Source site** – the source site is the area of land where an activity, such as a gas works or a chemical manufacturing plant, has occurred that has resulted in chemical substances being deposited or discharged onto, or escaping from the land.

### *Clause 5: Insertion of section 5A – Site contamination*

Section 5A sets out the circumstances that constitute site contamination.

Site contamination exists if introduced chemical substances are present on or below the surface of the site in concentrations above background concentrations that result in

actual or potential harm to the health or safety of human beings, or to water or other actual or potential environmental harm.

Current or proposed site uses must be taken into account when determining harm and the harm specified must not be trivial in nature.

Effects that are the results solely of natural deposits of chemical substances (e.g. of actual or potential acid sulfate soils or rocks, or mineralised soils or rocks that may contain higher than normal concentrations of chemical substances) are not site contamination.

Subclause 5A(2) sets down the circumstances when environmental harm is caused as a result of the presence of introduced chemical substances.

Site contamination does not exist (subclause 5A(3)) in certain circumstances prescribed by regulation, for example the proper application of agricultural chemicals to land.

***Clause 6: Amendment of section 10 – Objects of Act***

Section 10 sets down the Objects of the Act. Subsection 10(1)(b)(ia) is to be included in the Objects to ensure the amendments are in accordance with the Objects by enabling the EPA to establish processes for undertaking assessments of known or suspected site contamination and the remediation of certain sites where necessary.

***Clause 7: Amendment of section 84 – Defence where alleged contravention of Part [9]***

Section 84 sets out defences to contraventions of the general offences under Part 9 of the Act. These include a defence when it is proved that the pollution resulted in harm only to the polluter, the polluter's property, or some other person's property with that other person's consent (subsection 84(1)(c).

Subsection 84(1a) limits the use of this defence in situations (a) where the property harmed comprises water occurring naturally at ground level or underground water. The proposed subsection 84(1a)(b) takes this qualification one step further and limits the use of the defence when the pollution results in site contamination.

Proposed subsection 84(1a)(a) also removes the redundant term 'aquifer'; from the phrase 'in an underground aquifer' as all aquifers are underground.

***Clause 8: Amendment of section 87 – Powers of authorised officers***

This insertion gives an authorised officer the power to enter premises to assess the existence or causes of known or suspected site contamination.

***Clause 9: Amendment of section 88 – Issue of warrants***

Subsection 88(1)(c) facilitates the issue of a warrant to enter a place where site contamination may exist or where evidence of a cause of site contamination may be found.

***Clause 10: Insertion of Part 10A – Special provisions and enforcement powers for site contamination***

## Division 1—Interpretation and application

### *Clause 103A: Interpretation*

This section further defines the terms *occupier* and *owner*. A tenant with long-term occupancy rights is defined as an owner to cover a long-term tenant whose activities have resulted in site contamination.

### *Clause 103B: Application of this Part to site contamination*

Much site contamination involves historical pollution—contamination that has occurred at some time in the past, either wilfully, through neglect or through poor practices. Liability for the costs of assessment and remediation of site contamination should not be exempted because the circumstances that resulted in site contamination occurred before the *Environment Protection Act 1993*. The Bill addresses site contamination occurring before the commencement of the Act by requiring historical pollution that has caused site contamination to be subject to the provisions of the Act. Thus, the provisions of the Act will be applied retrospectively to past actions.

## Division 2—Appropriate persons to be issued with orders

### *Clause 103C General provisions as to person to be issued with order*

This section defines the appropriate person to be served with a site contamination assessment order (SCAO) or site remediation order (SRO). It is based on the policy position that the person responsible for the contamination, the polluter, when solvent and identifiable, ultimately bears the cost of any assessment and necessary remediation. When the polluter is insolvent, is unidentifiable or has died, the owner of the source site should be liable, as a general rule, for the costs of any necessary assessment and remediation.

Under subsection 103C(2), when there is only a suspicion of site contamination, the owner of the source site is the appropriate person to be issued with a site assessment order, as the polluter may be unidentifiable without further investigation and assessment.

Where chemical substances have migrated from a source site so that site contamination exist at other adjacent locations, the person who owns this land, and who has not contributed to the site contamination, is not responsible for the site contamination and cannot be served with an order. The 'innocent' owner of land with site contamination is, therefore, protected.

Subsection 103C(3)(c) protects people who would, in the opinion of the EPA, be unable to carry out, or meet the costs of, the action required under an order.

### *Clause 103D: Responsibility for site contamination*

Subclause 103D(1) states that the person responsible for site contamination is the person who was the occupier of the source site when there was an activity that caused or contributed to the site contamination, that is, the 'polluter'.

Subclause 103D(1) also differentiates between the source site and land that has become contaminated through the migration of chemicals from the source site. As noted above, the owner of land where site contamination exists as a result of the migration of chemicals is not the appropriate person to be served with an order.

Subclause 103D(2) aims to capture situations where site contamination is created as a result of a change of use (see clause 5A on the definition of site contamination), for example:

- any change in land use in accordance with the *Development Act 1993*
- any change in the use of the land that alters the conditions specified by a site contamination auditor
- any other changes to a site that may introduce a health or environmental risk from chemical substances pre-existing on the site.

Under such circumstances, the EPA may determine that the person responsible for the change in land use is responsible for the site contamination. Subclause 103(D)(3) ensures that the relevant authority under the *Development Act 1993* does not become the responsible person through granting a consent or approval under that Act.

#### ***Clause 103E: Responsibility for site contamination subject to certain agreements***

This section aims to set up a process for the legal transfer of responsibility for site contamination from vendor to purchaser with the sale of land, or when land is transferred by a public authority at no cost. When a purchaser or recipient of land has agreed in writing to assume full or partial responsibility for any site contamination, the question of responsibility for the purposes of Parts 10A and Part 11 (Civil Remedies) is determined by the terms of the agreement.

There may, however, be situations when a person other than a public authority has purchased land with site contamination in a transaction that was not in a genuine arms-length sale<sup>2</sup>. Subsection 103E(2) allows the EPA to apply to the Environment, Resources and Development (ERD) Court for a finding that the purchaser did not purchase the land in a genuine arms-length sale and is therefore not responsible for the site contamination.

#### ***Clause 103F: Responsibility for site contamination subject to determination by Authority***

This section enables a person to apply to the EPA to be held not responsible for the site contamination. The EPA must be satisfied that the person sold the site at genuine arms length to a purchaser before the provisions of this Bill began, and that the price paid for the land reflected that the purchaser would have to pay for any possible assessment and remediation.

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<sup>2</sup> An arms-length sale is a transaction between a willing seller and a willing buyer, both of whom understand all the uses to which the property is adapted and for which it could be used.

***Clause 103G: Order may be issued to one or more appropriate persons***

Section 103G allows for more than one person to be subject to an SCAO or SRO. If more than one person could be issued with an order, the EPA may determine that the order be issued to any one or more of them. Two or more people issued with an order are jointly and severally liable to comply with the requirements of the order.

***Clause 103H: Authority may determine that public authority is appropriate person***

This section gives the EPA the power – after appropriate consultation and with approval of the Minister – to issue an order to a public authority.

***Clause 103I: Court may order that director of body is appropriate person in certain circumstances***

This provision only applies when there is reason to believe that a body corporate was wound up as part of a scheme to avoid being issued with an SCAO or SRO, or complying with an order.

The ERD Court, on application by the EPA, can deem directors or persons otherwise involved with management of the body corporate or of a holding company<sup>3</sup> to be the appropriate people to be issued with an order.

Subsection 103I sets out the circumstances in which a court will find that a scheme has been devised to enable a body corporate to avoid its obligations. For example, the body corporate has reason to believe that site contamination exists, and:

- has been wound up and carried out certain transactions; or
- has transferred the site to a related body corporate which, it was anticipated, would be unable to pay its debt if it attempted to remediate the site contamination.

The court must not make an order against a person who:

- had no knowledge of the scheme, or
- was not able to influence the conduct of the body corporate, or
- used all due diligence to prevent the pursuit of the scheme.

## **Division 3—Orders and other action to deal with site contamination**

***Clause 103J: Site contamination assessment orders***

An SCAO gives the EPA the power to require the assessment of land with actual or suspected site contamination in order to ensure the adequate protection of human health and the environment.

When the EPA is satisfied, or suspects that site contamination exists because a prescribed contaminating activity has taken place on land, it may issue an SCAO requiring the appropriate person to determine the nature, extent and level of site

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<sup>3</sup> A body corporate of which the first body corporate is a subsidiary; see section 9 of the *Corporations Act 2001*

contamination. The appropriate person may then be required to develop a plan of remediation, comply with this plan and remediate within a specified period.

Subclause 103J(2) lists the requirements for the content of an SCAO.

When an SCAO is served on an owner of the source site as the appropriate person, that person cannot be required to assess land of which they are not an owner. When an SCAO is served on the person responsible for the activity that resulted in site contamination, the order can require assessment of land other than the source site. The permission of the occupier of that land must be obtained before entering the property and assessing it.

Subclause 103J(4) requires the EPA to give notice to the authority ('the Minister, a catchment water management board, a water resources planning committee, a municipal or district council or a controlling authority') under the *Natural Resources Management Act 2004* in situations when an SCAO requires a person to undertake an activity for which a permit would, but for section 129 of that Act, be required. The EPA is required to invite the water resources authority to make a submission on the proposal outlined in the SCAO.

SCAOs can be varied or revoked (subclause 103J(5)) and are appealable to the ERD Court. It is an offence under subclause 103J(6) to fail to comply with the requirements of an SCAO without a reasonable excuse.

#### ***Clause 103K: Site remediation orders***

An SRO is a regulatory tool that gives the EPA the power to require the remediation of site contamination. Remediation does not necessarily have to remove all trace of chemical substances (which may be very expensive and in some situations unnecessary or impossible) but must manage the risk to humans and the environment from the effects of these substances. It may entail treatment, containment, removal or management of the chemical substances.

When the EPA believes that site contamination exists and that remediation is required, it may issue an SRO to the appropriate person which specifies the requirements for action to prevent or mitigate further environmental harm and/or harm to human health.

Subclause 103K(2) lists the requirements for the content of an SRO.

The SRO may also authorise remediation, or any other related action, on the EPA's behalf, by authorised officers (under the Act) or other persons authorised by the EPA according to the requirements set out under subclause 103K(10). An authorised officer may also issue an emergency SRO.

Subclause 103K(4) requires the EPA to give notice to the authority (see above) under the *Natural Resources Management Act 2004* in situations when an SRO requires a person to undertake an activity for which a permit would, but for section 129 of that Act, be required. The EPA must invite the water resources authority to make a submission on the proposal outlined in the SRO.

When an SRO is served on an owner of the source site as the appropriate person, the order must be limited in its application to site contamination on or below the surface of the source site (subclause 103K(3)) and other land affected by the source site that is

owned by the person. This is intended to protect landowners who did not contribute to the site contamination, by limiting their responsibility for remediation to their own land.

When an SRO is served on the appropriate person principally responsible for the site contamination, the order can require remediation in areas other than the source site. The appropriate person must first obtain the permission of the occupier of that land to enter the property and remediate it.

SROs can be varied or revoked and may be appealed through the ERD Court. It is an offence under subclause 103K(11) to fail to comply with the requirements of an SRO without a reasonable excuse.

***Clause 103L: Entry onto land by person to whom order is issued***

In some circumstances the chemical substances or waste introduced to a site may migrate beyond the site and onto nearby properties (e.g. groundwater containing introduced chemical substances migrating under one or more properties).

When an order has been served that requires assessment or remediation of land that the person does not own or occupy, the order does not give the person the power to enter land for assessment or remediation without the permission of the occupier of that land. Under clause 103L such a person must obtain permission of the occupier of this land to gain access to carry out the necessary assessments or remediation.

If permission is refused, the EPA can issue an order against the occupier as if they were the appropriate person but only once the occupier has been warned of the possible consequences of withholding or withdrawing permission.

***Clause 103M: Areas of special concern***

Clause 103M aims to provide a statutory framework within which relevant parties can work together to address and manage site contamination of a particular kind that may exist in a wide area, or areas, and ensure the adequate protection of human health and the environment. This includes assigning responsibility for the assessment and management of the site contamination and any associated costs. The provision enables a more broad-based integrated solution to be negotiated between relevant parties than if the issue was dealt with on a property-by-property basis.

As an example of an 'area of special concern', air pollution arising from a specific industrial activity may have, historically, deposited particulate matter over an area. The site contamination may be more efficiently dealt with on a whole-area basis, rather than property by property.

Section 103M provides the EPA with the power to declare an 'area of special concern', defined at the discretion of the EPA, by notice in the Gazette. The EPA must then publicise the issue, consult with relevant parties and the public, and endeavour to undertake remediation and the long-term management of the site contamination.

This section proposes the use of environment performance agreements (under section 59 of the Act) as a means by which parties can set out roles, responsibilities and frameworks for addressing and managing site contamination issues. The EPA welcomes comments and suggestions on the use of these agreements as the means of achieving the aims of section 103M.

***Clause 103N: Registration of site contamination assessment orders or site remediation orders in relation to land***

Clause 103N is similar in structure and effect to section 94 of the Act, Registration of Environment Protection Orders in Relation to Land. The EPA may apply to the Registrar General to register SCAOs and SROs on the title to the land. Such orders are binding on subsequent owners of the land and/or operate as the basis of a charge imposed on the land.

Clause 103N empowers the EPA to apply to the Registrar General for registration of an SCAO or SRO for a site owned by the person to whom the order was issued. If that person ceases to be the owner of a site, they must notify the EPA in writing of the name and address of the new owner. Failure to comply is an offence.

The EPA can also apply to cancel registration in varying circumstances (e.g. on revocation of the order or compliance with the requirements of the order).

***Clause 103O: Action on non-compliance with site contamination assessment order or site remediation order***

Clause 103O is similar in structure and effect to section 102 of the Act, Action on Non-Compliance with Clean-up Order. An authorised officer, or other person authorised by the EPA, may take any action required under an order subject to the provisions set out in subclause 103O(3). The EPA then has the power to recover the costs and expenses of that action from the person to whom the order was issued.

***Clause 103P: Recovery of costs and expenses incurred by Authority***

Clause 103P is similar in effect to section 103, Recovery of Costs and Expenses Incurred by Authority. The EPA has the power to recover costs and expenses incurred as a result of taking action on non-compliance with an SCAO or SRO, from the person to whom the order was issued. Until the debt is paid, it is a charge in favour of the EPA on any land owned by the person to whom the SCAO or SRO is registered. A charge imposed under Clause 103P has priority over any:

- prior charges imposed on the land operating in favour of a person who is an 'associate of the owner of land'
- charge registered after the registration of the SCAO or SRO on the land.

***Clause 103Q: Prohibition or restriction of taking of water affected by site contamination***

This clause aims to allow the EPA to prohibit or restrict the taking of water that may be affected by site contamination. This may be necessary where the chemical substances introduced to a source site migrate from the site.

The remediation of water, particularly underground water and water involving long-standing historical contamination by chemical substances, is complex, expensive and long-term. In some cases, the technology for effective remediation may not be available in South Australia. It may thus be necessary, in certain areas, to prohibit or restrict the taking of water for a period of time.

It is intended that the EPA will employ such powers after consultation with the Department of Health and other relevant authorities under the *Natural Resources Management Act 2004*.

The EPA intends to ensure relevant owners and occupiers of land in affected areas are notified of any prohibitions or restrictions. The EPA also intends to consult with the Department of Health, the local council for the area and the Local Government Association on notification processes and procedures.

## **Division 4—Site contamination auditors and audits**

Division 4 of the Bill sets up a legal framework for establishing a site contamination audit system in South Australia, formalising a system that has been in operation since October 1995. The background to the audit system is outlined earlier in this paper.

Site contamination auditors will need to be accredited to operate within South Australia. Provision is made for auditors accredited interstate, particularly those currently operating in SA, to be eligible for accreditation through regulation. Accreditation is for a period not exceeding five years and thereafter subject to re-accreditation. Only individuals, not bodies corporate, are eligible for accreditation as site contamination auditors.

### ***Clause 103R: Requirement for auditors to be accredited***

A person must not carry out a site contamination audit or refer to themselves as being an accredited site contamination auditor unless they have been authorised by an accreditation under Division 4 of Part 10A. To do so is an offence under this provision.

### ***Clause 103S: Persons taken to be accredited***

Clause 103S is a broad framework provision that allows the EPA to develop regulations for certain people, including interstate auditors, to be accredited subject to specified requirements. The EPA is currently developing EPA Guidelines for a system of accreditation and conduct of auditors.

### ***Clause 103T: Grant or renewal of accreditation***

An application for accreditation or renewal of accreditation must be made to the EPA in the manner and form required, supported by specified information and accompanied by a specified fee.

Auditors are to be accredited by an accreditation committee established by the EPA.

Applicants may be required to appear before the committee and be examined on their knowledge. If an applicant is determined to be eligible for accreditation or renewal of accreditation, the EPA must grant the person accreditation and notify them in writing.

Accreditation is for a period of up to five years and may be renewed.

### ***Clause 103U: Grounds for revocation, suspension or refusal of accreditation***

The EPA may revoke, suspend or refuse to renew a person's accreditation under the conditions listed in Clause 103U.

***Clause 103V: Conflict of interest and honesty***

A site contamination auditor cannot audit a site if they have any personal connection with the owner or occupier of the site or any pecuniary interest in the site or activities carried out on it, unless authorised by the EPA in writing to do so. Neither may an auditor make any statement that they know to be false or misleading about an audit, site contamination report or site contamination audit statement (whether by reason of inclusion or omission of any information).

***Clause 103W: Annual returns and notification of change of address, etc.***

Each year a site contamination auditor must, at a set time, lodge a return with the EPA listing particulars required by the Regulations and information on site contamination audits begun, in progress or completed by the auditor during the reporting period.

Auditors are also required to notify the EPA of a change in address or other details within 14 days of the change.

***Clause 103X: Requirements for notification, reports and statements relating to audits***

A site contamination auditor must notify the EPA in writing within 14 days of agreeing to audit a site, and include name of the person who commissioned the audit and the location of the site to be audited. It is an offence to fail to comply with these requirements.

An auditor must provide a site contamination audit report to the person who commissioned the report, the EPA, any prescribed body and the council for the area in which the audited land is situated. It is also an offence to fail to comply with these requirements.

**Further amendments—sections 104, 106 and 109**

***Clause 11: Amendment of section 104—Civil remedies***

Section 104 of the Act allows a person to make an application to the ERD Court for various orders and civil remedies. The Bill proposes to insert subsection 104(1)(ea) into the Act to allow a person who has been issued with an SCAO or SRO to apply for an order to recover costs from any other party who may have contributed to the site contamination. This provides a remedy to those who are not responsible for the site contamination in question but who, because of circumstance, are required to assess or remediate site contamination.

***Clause 12: Amendment of section 106—Appeals to Court***

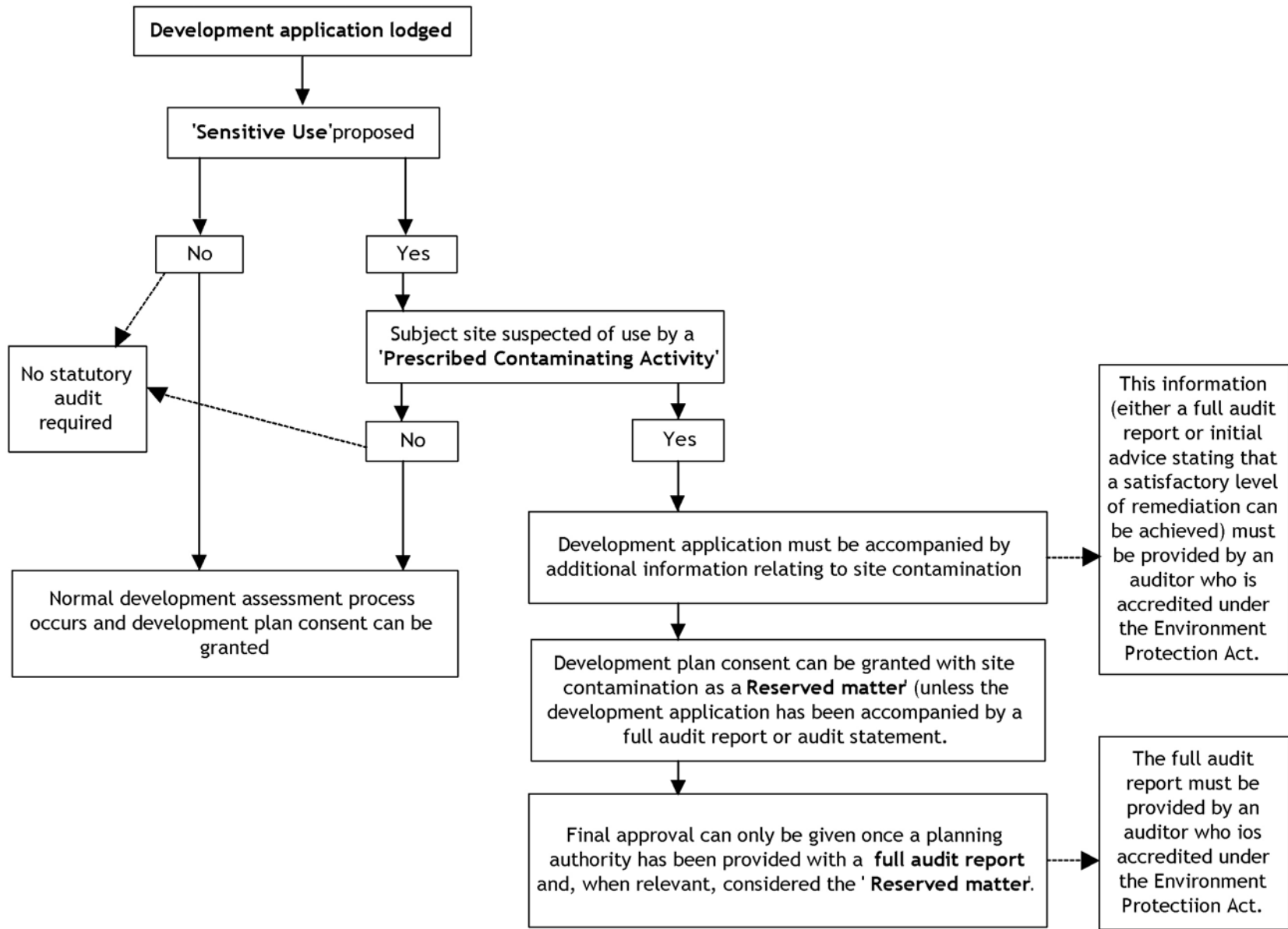
Section 106 provides for appeals against orders that have been issued by the EPA. A person can make an appeal to the ERD court in specified circumstances, including when a person has refused a works approval by the EPA. Subsection 106(1)(d) of the Act allows a person to whom an environment protection order, information discovery order or clean-up order has been issued to appeal against the order.

The proposed amendment to this section extends a person's right of appeal to SCAOs and SROs. Appeals could also be lodged against the EPA's determination of the person responsible for site contamination.

***Clause 13: Amendment of section 109 – Public Register***

The Public Register is established under the Act to provide a public record of significant information about environmental authorisations, development authorisations, incidents of environmental harm, and details of environment protection orders, clean-up orders and clean-up authorisations.

The proposed amendment extends the requirement to include information of SCAOs, SROs and any consequent action taken by the person to whom the order was issued. It is also proposed that site contamination audit reports prepared by site contamination auditors and submitted to the EPA will be included in the Register.





## Attachment 1

Site Contamination Codes of Practice and Guidelines			
Name	Type	Description	Status
Soil Bioremediation	Guideline	Technical guideline setting down the standards and practices acceptable to the EPA in the on-site and off-site bioremediation of soils	Published August 2005
Composite Soil Sampling in Site Contamination Assessment and Management	Guideline	Technical guideline setting down the standards and practices acceptable to the EPA in the use of composite sampling of soils	Published March 2005
Assessment of Underground Storage Systems	Guideline	Identifies the major issues to be considered in the assessment of sites containing underground storage systems	Published February 2005
Design, Installation and Management of Underground Storage Systems	Code of Practice	Addresses the design, installation and management of all underground storage systems	In preparation
Environmental Management of On-site Remediation	Guideline	Technical guideline setting down the standards and practices acceptable to the EPA in respect to the environmental management of on-site remediation	In preparation
Design, Installation and Management of Underground Storage Systems	Information Sheet	Information sheet providing a summary of the Code of Practice	In preparation