

Who are site contamination auditors and what is their role?

The amendments to the Act established a system for the accreditation of site contamination auditors in SA. Site contamination auditors will be accredited under the Act to undertake independent audits in SA in accordance with legislative requirements and EPA guidance, and are considered experts in the assessment and remediation of site contamination.

The role of the site contamination auditor is to undertake an independent review of the assessment and remediation (usually undertaken by a site contamination consultant) carried out in relation to known or suspected site contamination. The auditor is responsible for certifying the findings of an audit as detailed in a site contamination audit report and summarised in a site contamination audit statement.

If a prescribed potentially contaminating activity (prescribed by regulation and has an increased likelihood of resulting in site contamination) has occurred on a site, or on any portion of a site proposed for a **sensitive use** (a residence, pre-school, childcare centre or primary school) a site contamination audit report will be required as part of the planning process pursuant to the anticipated amendments to the Development Act. In addition, it is anticipated a site contamination audit report will also be required for a site, or on any portion of a site proposed for a sensitive use where certain information is recorded by the EPA on the Public Register. This is to ensure the protection of human health and the environment as well as the suitability of the site for the proposed use. A report issued by a site contamination consultant is not acceptable to determine the suitability of land for a sensitive use where site contamination is suspected or known to exist at a site.

A site contamination audit may also be required as part of a Site Contamination Assessment Order or Site Remediation Order issued by the EPA. In addition, a voluntary/non-statutory audit may be undertaken.

Who can undertake assessment or remediation of site contamination?

The assessment and remediation of site contamination is a complex and specialised profession. Consequently, the assessment of site contamination should only be undertaken by site contamination consultants who have relevant qualifications and experience. Similarly, remediation should only be undertaken by experienced remediation contractors and/or site contamination consultants.

Information relating to environment protection

The EPA has obligations under South Australia's *Land and Business (Sale and Conveyancing) Act 1994* and Section 109 of the Act (Public Register) to provide and record certain information relating to environment protection, including site contamination. This information is made available to potential purchasers or persons with an interest in the land upon application to the EPA.

Further information

The EPA has developed an extensive series of publications in relation to site contamination. For a list of these publications refer to the EPA website <www.epa.sa.gov.au> or contact us via:

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Site Contamination

and the

Environment Protection Act (1993)

Vision

To provide for the adequate protection of human health and the environment wherever site contamination has been identified or suspected to have occurred.



Background

Site contamination has become an increasingly important environmental, health, economic and planning issue in South Australia. Accordingly, in 2007 the SA Government amended the *Environment Protection Act 1993* (the Act) to incorporate provisions for site contamination.

The legislation will be implemented in stages, with some sections commencing immediately and other sections up to 15 months later. This will allow the Environment Protection Authority (EPA) to develop and consult on regulations and guidelines as well as establish new systems and processes required to support the legislation.

The amendments to the Act and regulations, together with the proposed amendments to the *Development Act 1993*, allow historical site contamination to be addressed and provide measures for the effective management of site contamination.

What is site contamination?

Site contamination exists at a site if the following conditions are present:

- chemical substances are present on or below the surface in concentrations above the background level, and
- the chemical substances have come to be present as a result of an activity (at the site or elsewhere), and
- the presence of chemical substances has resulted in:
 - actual or potential harm to human health, or the environment, that is not trivial, taking into account the current or proposed land use, or
 - actual or potential harm to water (surface or underground) that is not trivial.

For the purpose of site contamination, chemical substances are defined as any organic or inorganic substance, whether a solid, liquid or gas (or combination thereof), and includes waste.

Site Contamination Assessment and Remediation Orders

If the EPA has evidence or suspects that site contamination exists at a site, it may negotiate to resolve this matter using voluntary measures. If these measures are not successful, the EPA may then issue a Site Contamination Assessment Order to determine the nature and extent of the site contamination. Similarly, if the EPA considers remediation of the site necessary, the EPA may issue a Site Remediation Order (remediation being treatment, containment, removal or management of the chemical substances).

Who is responsible for site contamination?

There is a clear hierarchy established within the Act regarding the determination of the appropriate person to be issued with a Site Contamination Assessment Order or a Site Remediation Order by the EPA and this is as follows:

- a) the person who caused the site contamination (ie **the original polluter**); or in the event that it is not practicable to issue the order to that person,
- b) the owner of the site (with limitation to their site), but only in the event that:
 - (i) they knew, or ought reasonably have known, that chemical substances were present, or likely to be present, at the site, or
 - (ii) before they acquired the site or whilst they owned the site, they knew, or ought reasonably have been aware, that the activity that caused the site contamination had been or was being carried on at the site and that the activity was a potentially contaminating activity as prescribed by regulations under the Act.

The original polluter can be ordered to assess and remediate any surrounding land affected by the migration of chemical substances. In all cases, reasonable attempts will be made to find and issue the order to the original polluter. If the site owner is not the original polluter, they can only be ordered to assess and remediate on or below the surface of their site.

If site contamination would not have resulted at a site except for certain changes in land use, the person who brought about the change of the use is to be taken as the person who caused the site contamination (ie the original polluter).

What are the main amendments to the Act?

The key features are:

- Retrospectivity to allow historical site contamination that occurred prior to the commencement of the Act to be addressed (before 1 May 1995).
- Establishment of a site contamination audit system.
- Recognition of voluntary proposals for the assessment and remediation of site contamination.
- The ability to allow the EPA to issue Site Contamination Assessment Orders and Site Remediation Orders.
- Establishment of a process for the legal transfer of liability for site contamination from vendor to purchaser with the sale or transfer of land.
- Establishment of a statutory framework to manage site contamination that may exist across a wide area known as a **Special Management Area**.
- Provision of powers to allow the EPA to restrict or prohibit the taking of water that may be affected by site contamination.
- Responsibility to notify the EPA in writing if a person* becomes aware of, or the potential for, site contamination of underground water.
- Establishment of reporting requirements for site contamination consultants and auditors.
- Establishment of enforceable standards for people who provide information to site contamination consultants and auditors in relation to the preparation of reports and site contamination audits.
- Recording of key site contamination information on the Public Register (including details of any Site Contamination Assessment Orders, Site Remediation Orders, Special Management Areas, restrictions or prohibitions on the taking of water, approved voluntary assessment or remediation proposals, site contamination audits, transfer of liability agreements and notifications of site contamination of underground water).

* The duty to notify applies to an owner or occupier of a site, a site contamination consultant or auditor.

