

# CLM Regulatory Update

## NSW EPA

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Contaminated Land Management Section

CLM Framework and SEPP55

Consultant Certification and EPA Reporting

EPA Compliance Statement

Cost Recovery

Public Land Managers Procedures

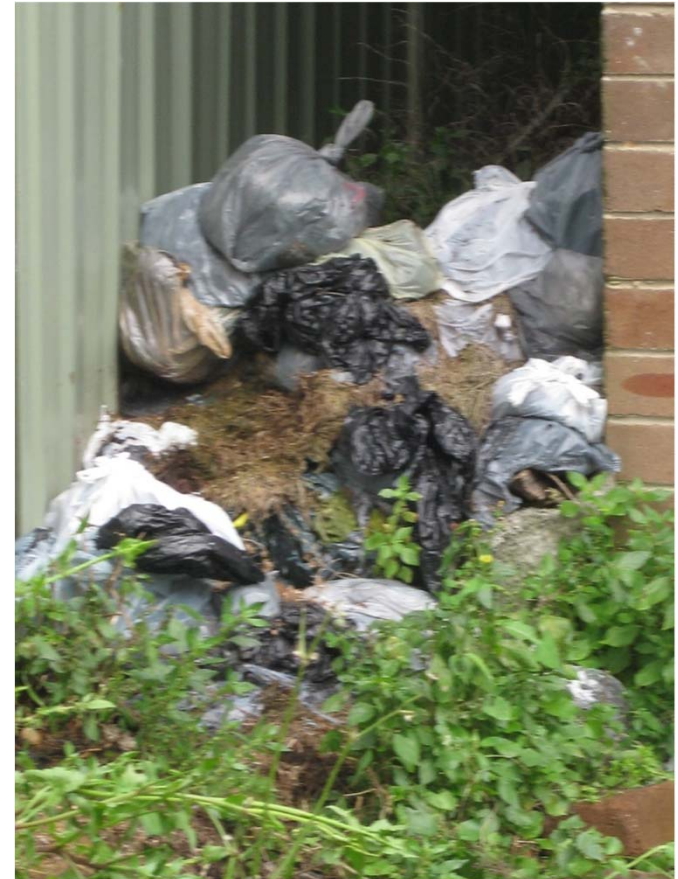
Contaminated Sites Updates

# CLM Regulatory Framework

- CLM Act 1997 – contaminated sites where intervention by the EPA is warranted.
- POEO Act - pollution events, scheduled activities, UPSS regulation. Creates rules/licences for protection of the public and environment during remediation
- EP&A Act, including SEPP 55 & Planning Guidelines – contaminated sites where remedial actions can wait for development control processes (rezoning/redevelopment)



- Accountabilities for managing contamination (polluter pays & hierarchy of responsibility)
- Role of EPA in assessment, supervision, investigation and management of contaminated sites
- Role of EPA in accreditation of site auditors – Part 4 CLM Act and *Guidelines for the NSW Site Auditor Scheme*
- Ensure contaminated land is managed according to ESD principles
- Role of EPA to maintain records



- Provides clear criteria for obligation to notify contaminated sites, includes a 'Duty to Notify'
- Focus/priority is on sites of significant contamination
- Provides a structure for regulation of sites for assessment and remediation
- Gives extensive and discretionary powers to the EPA to control the process
- Cost recovery component
- Now includes "Powers of Entry"



# POEO Act 2017 Amendments

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*Protection of the Environment Legislation  
Miscellaneous Amendments Act 2017*  
commencing on 1 June 2017

- CLM Act adopting 'Powers of Entry' (as per Chapter 7 POEO Act)
- POEO 1997 Extending the limitation period for groundwater offences from 1 year to 3 years
- Retain Management Orders/Voluntary Management Proposals – no change

# Duty to Notify

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- Person RESPONSIBLE for the contamination and OWNERS are obliged to notify EPA when:
  - the contamination exceeds criteria in guidelines
  - the contamination meets a criterion prescribed by the regulations
  - Off-site migration of contamination
- Any other person may notify the EPA about contamination but do not have a duty
- Duty to Notify Guidelines provide examples on scenarios not intended to be captured
- The EPA has a duty to examine and respond to the information it receives about actual or possible contamination of land

<http://www.epa.nsw.gov.au/resources/clm/contamform.doc>

The EPA assesses contamination to determine if it “Significant Enough to Warrant Regulation” (SEWR)

- Declaration of sites considered to be SEWR
- Public notification of significantly contaminated sites
- Regulation of sites through voluntary agreements or Management Orders
- Notices recorded on s.149(2) property certificates





## SEPP 55

- Ensures land use is suitable for its future use
- Promotes remediation
- Part of integrated regulatory framework
- Under review as part of DPE's review of all SEPPs
  - EPA provided comments and feedback
  - Public consultation stage is imminent
- Managing Land Contamination Guidelines also under review

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## Contaminated Land Practitioner Certification

- EPA supports need for industry and regulators to have confidence in consultants competency levels
- Competency to be assessed and maintained by appropriate and independent bodies
- Separate to the EPA's accreditation of site auditors
- The EPA does not certify consultants

# Certification Schemes

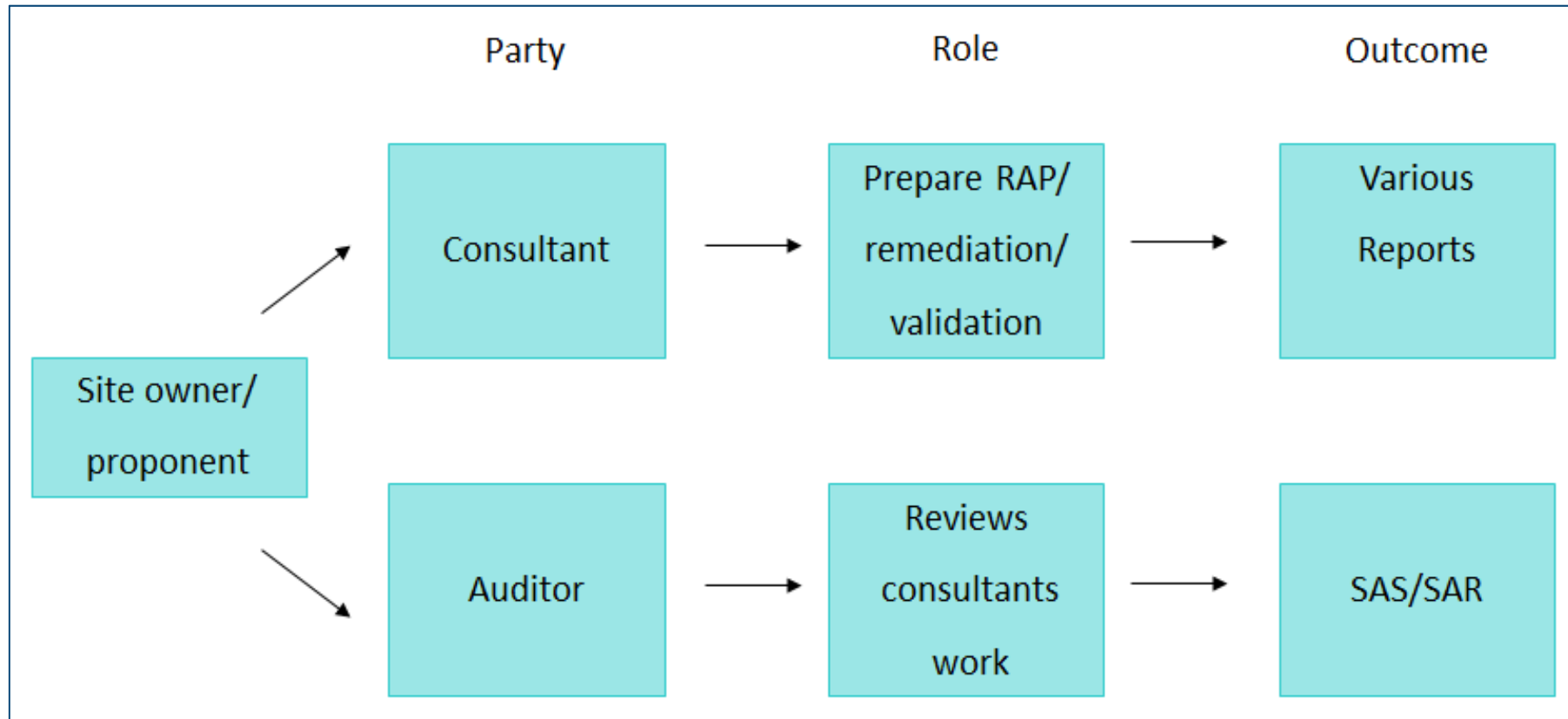
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There are three schemes recognised by the EPA :

- SCPA - Site Contamination Practitioners Australia
- CLA Specialist CEnvP - EIANZ's Contaminated Land Assessment Specialist Certified Environmental Practitioner
- CPSS CSAM - Soil Science Australia

These schemes provide a thorough assessment process for certifying consultants to an acceptable minimum standard of competency.

# Two-Tiered System



# EPA Accredited Site Auditors

- The NSW Site Auditor Scheme is administered by the EPA under Part 4 of the CLM Act
- An auditor is a highly experienced and qualified consultant who is accredited by the EPA
- An audit is a peer review – reviewing the work of other consultants



# Certifying EPA Accredited Auditors

- An accredited auditor may choose to be a certified consultant
- A consultant can only be an auditor and issue a Site Audit Statement whilst accredited
- An auditor may do consulting work but must not sign off as an auditor



Adapted from  
Google images

# New EPA Reporting Requirements

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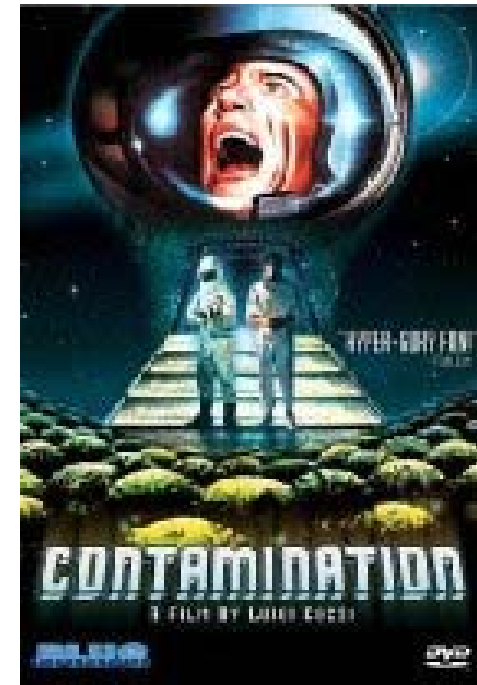
NEW EPA Policy on reporting from 1 July 2017

- *...All reports submitted to the EPA to comply with the requirements of the Contaminated Land Management Act 1997 to be prepared, or reviewed and approved, by a certified practitioner...*
- This will include all reports for Preliminary Investigation Orders, Voluntary Management Plans, Management Orders and Ongoing Maintenance Orders.





- Questions related to the NSW Site Auditor Scheme should be directed to [nswauditors@epa.nsw.gov.au](mailto:nswauditors@epa.nsw.gov.au)
- Questions related to consultant certification should be directed to the certifying bodies – links are available here:  
<http://www.epa.nsw.gov.au/clm/selectacImcons.htm>



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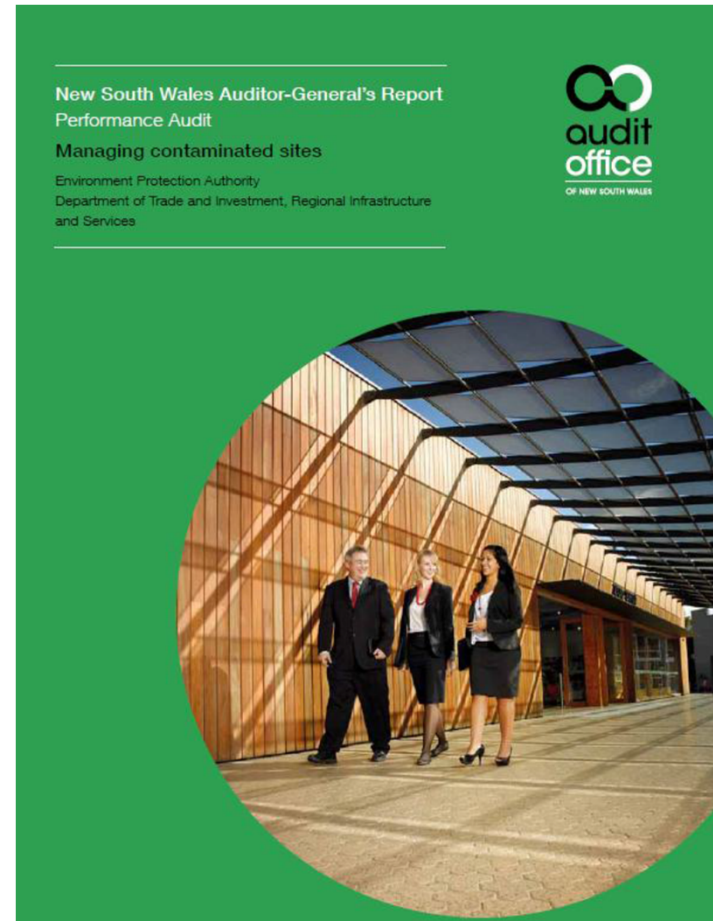
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Contaminated Sites Updates

- Audit Office conducted a performance audit on the management of contaminated sites in NSW
- Audit covered the EPA and Department of Trade Investment Regional Infrastructure and Services (DTIRIS)



## Audit Report Key Recommendations

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- Implement a clear escalation compliance policy that covers the issuing of warning letters, management orders and penalty notices
- Develop and implement a combined database to better manage the monitoring of progress on contaminated sites
- Eliminate the backlog of notified sites yet to be assessed and implement a streamlined process for prioritising and assessing sites notified under the CLM Act
- Implement a standardised approach to the declaration of contaminated sites
- Begin recovering costs for those sites requiring additional administrative work due to complexity or non-cooperation of owners/polluters

# EPA Compliance Statement

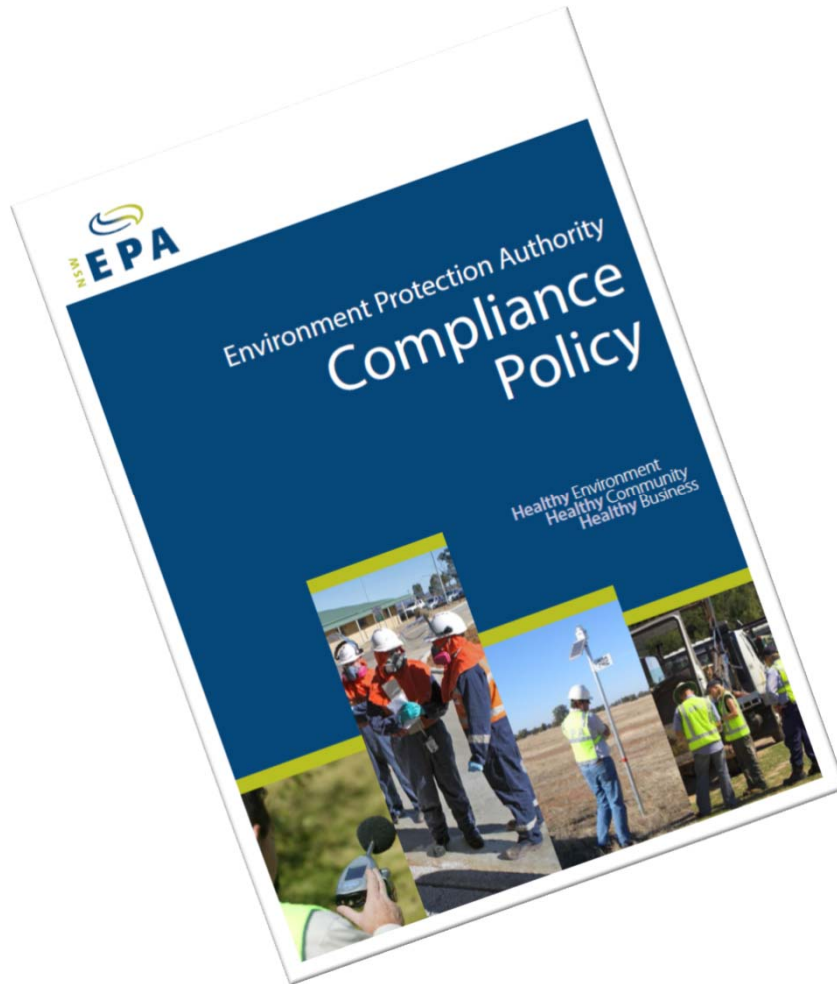
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Auditor General's recommendation:

*...the EPA should implement a clear escalation policy that covers the issuing of warning letters, management orders and/or penalty notices for failure to meet certain conditions (proportional to severity of failures) by December 2015 ...*



# EPA Compliance Policy and Statement



# EPA Regulatory Response - Escalation



- EPA Contaminated Sites database
- Developed as internal regulatory tool by the EPA
- For monitoring and reporting compliance and progress of regulating contaminated sites



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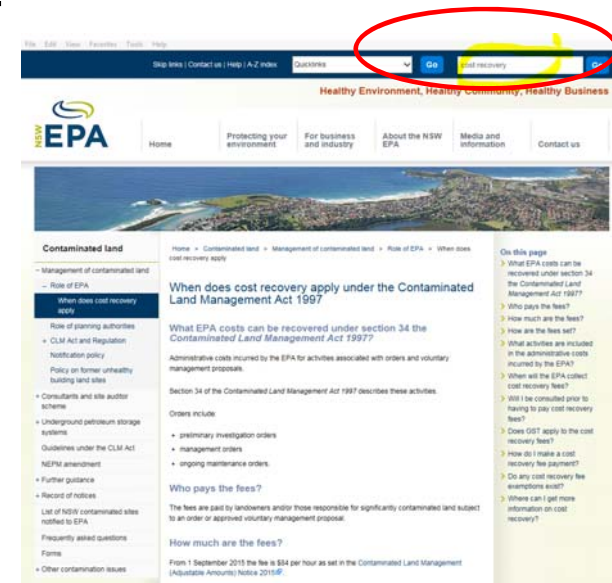
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# Auditor Generals Recommendation

*...EPA should recover costs for those sites requiring additional administrative work due to complexity or non-cooperation...*



- EPA is implementing cost recovery
  - provisions under CLM Act
- EPA can recover certain regulatory costs
  - relating to the management of contaminated land from landowners and/or persons responsible
- EPA website for more details



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Auditor General's Report for Management of public land found:

- Management of contaminated sites could be improved
- Procedures for managing contaminated sites vary across public landholders
- EPA had guidelines but not procedures for the management of land contamination



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*...develop a set of model procedures for the identification and management of contaminated sites in consultation with key landholding agencies ...*



# Public Land Managers (PLM)

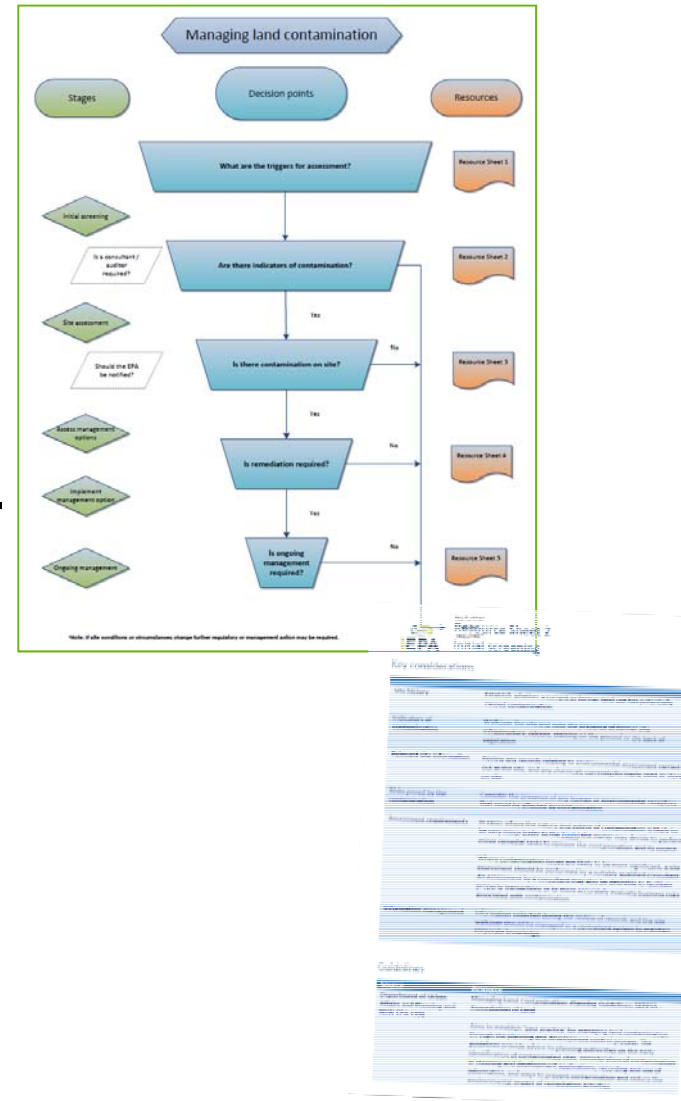
- Same obligations under the CLM Act as any other land owner
  - Duty to Notify (s.60)
  - If significant contamination, must appropriately manage the contamination





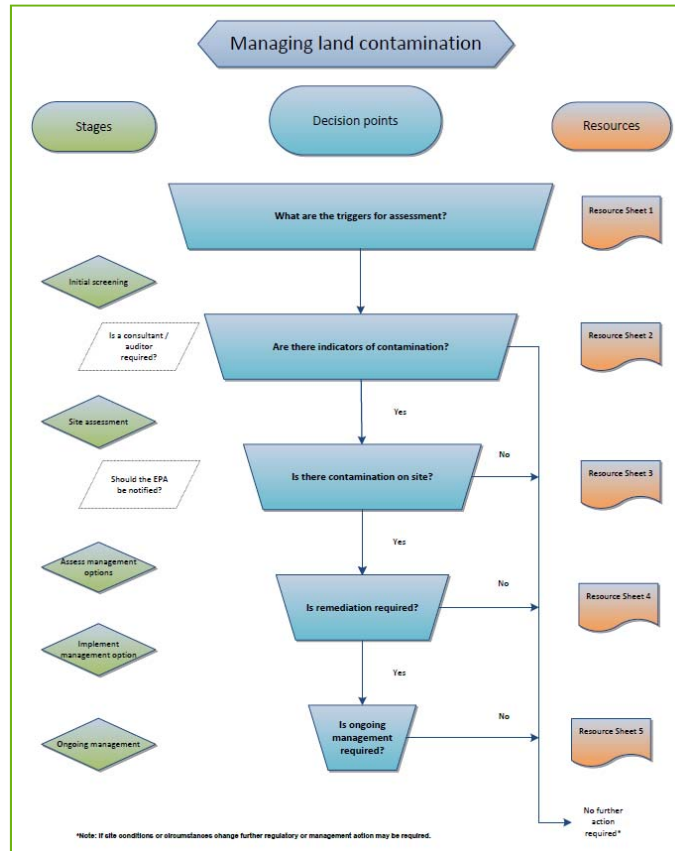
EPA Public Land Managers Procedures developed and available online.

- Decision tree with general procedures and stages for assessing contaminated sites.
- Five Steps and Resource Sheets



## STEPS

- Triggers for assessment
- Initial screening
- Site assessment
  - Assess and implement remediation options
- Ongoing management

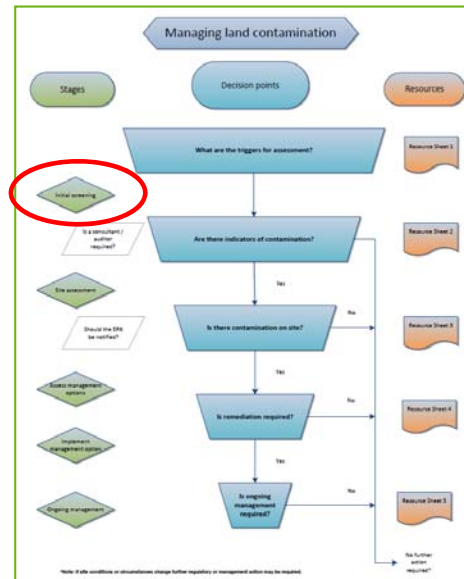
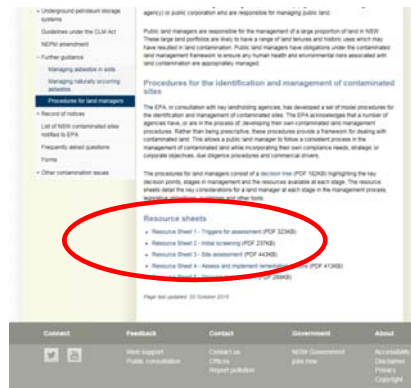


## DECISION POINTS

- What are the triggers for assessment?
- Are there indicators for contamination?
- Is contamination on site assessment?
- Is remediation required ?
- Is ongoing management required?

# Resource Sheets

- Resource Sheets available for each Step
- See EPA website



**Resource Sheet 2**  
Initial screening

**Key considerations**

<b>Site history</b>	Establish whether a current or former land use has potentially caused contamination.
<b>Indicators of contamination</b>	Walkover the site and note the presence of former site infrastructure, odours, staining on the ground or die back of vegetation.
<b>Relevant site information</b>	Review any records relating to environmental assessment carried out at the site, and any chemicals currently/formerly used or stored on site.
<b>Risks posed by the contamination</b>	Consider the presence of any human or environmental receptors that could be affected by contamination.
<b>Assessment requirements</b>	In cases where the nature and extent of contamination is likely to be very minor (refer to the <i>Tools</i> ) the owner may decide to perform minor remedial tasks to remove the contamination and its source.  Where contamination issues are likely to be more significant, a site assessment should be performed by a suitably qualified consultant. An assessment by a consultant may also be desirable to facilitate property transactions or to more accurately evaluate business risks associated with contamination.
<b>Information management</b>	Information collected during the review of records and the site walkover should be managed in a centralised system to maintain corporate knowledge.

**Guidelines**

<b>Source</b> Department of Urban Affairs and Planning and NSW EPA 1998	<b>Resource</b> <i>Managing Land Contamination: Planning Guidelines: SEPP55 - Remediation of Land</i>  Aims to establish 'best practice' for managing land contamination through the planning and development control process. The guidelines provide advice to planning authorities on the early identification of contaminated sites, consideration of contamination in zoning and development applications, recording and use of information, and ways to prevent contamination and reduce the environmental impact of remediation activities.
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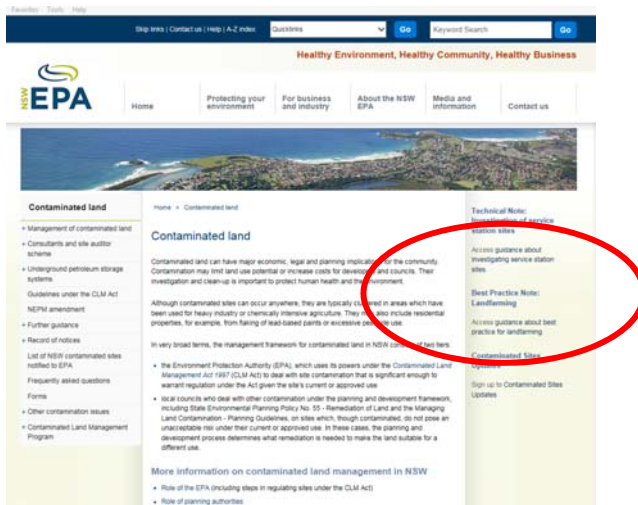
## Recent publications

- Technical Note – LNAPL Assessment and Remediation 2015
- Best Practice Note: Landfarming 2015 – Bioremediation method
- Guidelines on the Duty to Report Contamination under the CLM Act 1997 updated Sept 2015 in relation to NEPM 2013 and requirements in relation to asbestos and NAPL
- Guidelines for the NSW Site Auditor Scheme due soon
- Technical Note – Designing Sampling Programs for Sites Potentially Contaminated by PFAS
- Environmental Guidelines: Solid Waste Landfills, 2016

[www.epa.nsw.gov.au/clm/otherguidance.htm](http://www.epa.nsw.gov.au/clm/otherguidance.htm)


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EPA's Contaminated Sites Update

To




### Contaminated Sites Updates

- [EPA's Contaminated Sites Compliance Statement](#)
- [Procedures for land managers](#)
- [Requirements for reporting to the EPA](#)
- [Duty to report contamination guidelines](#)

#### EPA's Contaminated Sites Compliance Statement

The EPA has published its [Contaminated Sites Compliance Statement](#) on the EPA website. The [Compliance Statement](#) details the approach taken to compliance and enforcement of the *Contaminated Land Management Act 1997* and Contaminated Land Management Regulation 2013.

The overall objective of the EPA's compliance activities in relation to contaminated land is improving environmental and human health outcomes. Consistent with the EPA's overall [Compliance Policy](#), a risk-based approach and an escalated regulatory response to compliance is taken to the regulation of contaminated land.



# Thank you

**EPA Contaminated Land Management**

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**Phone 131 555**

