National Environment Protection (Assessment of Site Contamination) Amendment Measure 2013 (No. 1)

The NATIONAL ENVIRONMENT PROTECTION COUNCIL makes the following National Environment Protection Measure under subsection 20(1) of the National Environment Protection Council Act 1994 of the Commonwealth, the National Environment Protection Council (New South Wales) Act 1995 of New South Wales, the National Environment Protection Council (Victoria) Act 1995 of Victoria, the National Environment Protection Council (Queensland) Act 1994 of Queensland, the National Environment Protection Council (Western Australia) Act 1996 of Western Australia, the National Environment Protection Council (South Australia) Act 1995 of South Australia, the National Environment Protection Council (Tasmania) Act 1995 of Tasmania, the National Environment Protection Council (Northern Territory) Act 1994 of the Northern Territory, and the National Environment Protection Council Act 1994 of the Australian Capital Territory.

Dated: 11 April 2013

Mr Theo Hooy

National Environment Protection Council Executive Officer on behalf of the National Environment Protection Council
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1 Name of measure

This measure may be cited as the National Environment Protection (Assessment of Site Contamination) Amendment Measure 2013 (No. 1).

2 Commencement

This measure commences on the day after it is registered.

3 Authority

This measure is made under the National Environment Protection Council Act 1994 and the equivalent provision of the corresponding Act of each participating State and Territory.

4 Schedule(s)

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.
Schedule 1—Amendments

National Environment Protection (Assessment of Site Contamination) Measure 1999

1 Introductory note
   Omit “NEPC”, substitute “National Environment Protection Council”.

2 Section 3 (definition of Contamination)
   After “added”, insert “as a direct or indirect result of human activity”.

3 Section 3 (definition of Health Risk Management)
   Omit “alternative actions and selecting options in response to”, substitute “and implementing appropriate options to address risks identified from”.

4 Section 3 (definitions of Investigation level and Response Level)
   Repeal the definitions.

5 Section 3
   Insert:
   
   **Investigation or Screening Level** means the concentration of a contaminant above which further appropriate investigation and evaluation will be required.

6 Section 3 (definition of Risk)
   Omit “hazardous agent” (wherever occurring), substitute “chemical substance”.

7 Section 6 (principle 3)
   Omit “Levels or Response”, substitute “or Screening”.

8 Section 6 (principle 5)
   Repeal the principle, substitute:

   (5) Planning and development
   
   Authorities of participating jurisdictions (at local and State government level) that consent to developments, or changes in land use, should ensure a site that is being considered for development or a change in land use, and that the authorities ought reasonably know if it has a history of use that is indicative of potential contamination, is suitable for its intended use.

   (5A) Decommissioning of industrial activities
   
   Industries, including mining and mineral processing industries, are responsible for ensuring that, when equipment on a site is dismantled or a site is otherwise decommissioned, appropriate measures are taken to leave the site in a safe and stable condition in order to prevent or, as far as practical, minimise adverse long-term environmental (physical, social and economic) impacts.
9 Section 6 (principle 7)
Repeal the principle, substitute:

(7) Community engagement

If a community could reasonably have an interest in the potential site contamination, community engagement should start at an early stage of, and continue throughout, the process of assessment of site contamination.

10 Section 6 (principle 10)
Repeal the principle, substitute:

(10) Site assessment process

The recommended general process for the assessment of site contamination is shown in Schedule A. The assessment should be conducted by professionals who have the relevant qualifications, competencies and experience.

11 Section 6 (principle 11)
Omit “a contaminant”, substitute “contamination”.

12 Section 6 (principle 12)
Repeal the principle, substitute:

(11A) Work health and safety

There should be appropriate work health and safety measures (including training) in place for any personnel involved in the assessment of site contamination, in accordance with the applicable work health and safety legislation.

(12) Environmental impact

The assessment of site contamination should include a consideration of risks to water resources and other ecological risks.

During the assessment, the on-site and off-site impacts of contaminants should be appropriately managed to prevent adverse impacts, particularly impacts relating to air emissions, surface water and groundwater.

13 Section 6 (principle 13)
Omit “implement data quality objectives, and”, substitute “develop data quality objectives and implement”.

14 Section 6 (principle 13)
Omit “equivalent organisation”, substitute “organisation recognised under NATA’s Mutual Recognition Agreement (MRA) Network”.

15 Section 6 (principle 14)
Repeal the principle, substitute:
(14) Risk assessment

The initial assessment of human health risks and ecological risks may be undertaken by comparing levels of contaminants on the site with appropriate investigation or screening levels or, if necessary, by undertaking a site-specific risk assessment. The initial assessment may be followed by a more detailed assessment of human health risks and ecological risks.

An assessment of human health risks and ecological risks should, if practicable, take into account any additive, synergistic and antagonistic effects of mixing chemical substances.

16 Section 6 (principle 15)

Omit “the need to adequately protect”, substitute “adequately protecting”.

17 Section 6 (principle 15)

After “wherever they live;”, insert:

• that the environmental values of water are maintained for future generations;

18 Section 6 (principle 16)

Omit “if practicable,”.

19 Section 6 (principle 16)

After “appropriate management strategy.”, insert:

When deciding which option to choose, the sustainability (environmental, economic and social) of each option should be considered, in terms of achieving an appropriate balance between the benefits and effects of undertaking the option.

20 Section 6 (principle 17)

Omit the first sentence, substitute:

In the assessment of site contamination the following sources are recognised as requiring specialised forms of assessment and initially, information should be sought from the relevant environmental protection agency for advice on assessing sites with:

(a) unexploded ordnance;
(b) radioactive substances;
(c) pathogenic materials and waste;
(d) contaminated sediments;
(e) explosive gas mixtures.

21 Section 6 (principle 18)

Omit “Aboriginal and Torres Strait Islander Commission, the Australian Heritage Commission”, substitute “National Congress of Australia’s First Peoples, the Australian Heritage Council”.

22 Subsection 7(1)

Omit “recommended”, substitute “general”.

4 National Environment Protection (Assessment of Site Contamination) Amendment Measure 2013 (No. 1)
23 **Subsection 7(2)**
Omit “that form part of this Measure”.

24 **Section 8**
Omit “which indicates”, substitute “indicating”.

25 **Section 8**
Omit the second sentence, substitute:

The preliminary investigation usually involves:

(a) establishing a site history to identify the characteristics of the site (such as the location and layout of the site, the building construction on the site, the geological setting, current and past activities at the site, current and past uses of the site, and heritage considerations); and
(b) inspecting the site; and
(c) interviewing representatives for the site.

26 **Section 8**
Omit “definition.”, substitute “evaluation.”.

27 **Section 8**
Omit “and staining”, substitute “or staining”.

28 **Section 8**
Omit “investigation levels in Schedule B(1)”, substitute “applicable investigation or screening levels”.

29 **Section 8**
Omit “incorporate the”, substitute “involve both”.

30 **Subsection 9(2)**
Omit “next following”, substitute “immediately after”.

31 **Section 10**
Omit “five years from the date of commencement”, substitute “every 10 years after the measure was last amended”.

32 **Schedule A**
Repeal the Schedule, substitute:
Schedule A—Recommended general process for assessment of site contamination

Schedules relevant to particular stages of assessment are identified in the flowchart below. The following Schedules are also relevant to assessment and remediation of site contamination:
- Community engagement and risk communication Schedule B8
- Competencies and acceptance of environmental auditors and related professionals Schedule B9

Trigger for assessment

Tier 1 Preliminary site investigation

- Preliminary investigation and laboratory analysis Schedules B2, B3

- Develop initial CSM¹

- Are investigation levels or screening levels for intended land use exceeded?
  - NO
  - Are petroleum hydrocarbon management limits exceeded?
    - Schedule B1
  - YES

- Is there sufficient information to devise risk-based remediation strategies?²
  - NO
  - Further refine CSM¹
  - YES

- Is there sufficient information to develop and apply site-specific criteria for intended land use and undertake site specific risk assessment? Schedules B4, B5a, B5b, B6, B7
  - NO
  - No further action
  - YES

Tier 1 Detailed site investigation

- Detailed investigation and laboratory analysis Schedules B2, B3

- Refine CSM¹

- Are investigation levels or screening levels for intended land use still exceeded?
  - NO
  - Are petroleum hydrocarbon management limits exceeded?
    - Schedule B1
  - YES

- Is there sufficient information to devise risk-based remediation strategies?²
  - NO
  - Further refine CSM¹
  - YES

- Is there sufficient information to make a risk-based decision for intended land use?²
  - NO
  - Develop initial CSM¹
  - YES

- Is remediation required to manage site risks?
  - NO
  - No further action
  - YES

Tier 2 or 3 Site specific risk assessment

- Additional investigation and laboratory analysis Schedules B2, B3

- Is there sufficient information to develop and apply site-specific criteria for intended land use and undertake site specific risk assessment? Schedules B4, B5a, B5b, B6, B7
  - NO
  - Develop a site remediation plan
  - YES

- Undertake remediation and validation

- Is a site management plan required?
  - NO
  - No further action
  - YES

- Develop and implement site management plan with monitoring, reporting and response requirements

Note

¹ Conceptual site model.
² Remediation and/or management can be considered at this point for sites with localised or low-level exceedance.

Assessment of asbestos contaminated sites (in the absence of other contaminants) may proceed directly to preparation of a Site Management Plan based on the results of a reliable site history, site walkover and qualitative assessment.

The shaded area indicates activities which are outside the scope of this Measure.

33 Schedule B

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OPC50357 - B

Federal Register of Legislative Instruments F2013L00768
Repeal the Schedule, substitute:

Schedule B—General guidelines for the assessment of site contamination

The following general guidelines provide guidance on the possible ways of achieving the desired environmental outcome (PART 3 of the Measure) for the assessment of site contamination and should only be considered in relation to the assessment of site contamination.

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| Schedule B3—Guideline on Laboratory Analysis of Potentially Contaminated Soils |
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