

INFORMATION BULLETIN NO. 101

NOTIFICATION OF A CONTAMINATED SITE

Site contamination may result from a range of industrial, commercial, agricultural and domestic activities including industrial and commercial. Site contamination may not prevent the use of the site for its current activity; however, in some cases clean up of the contamination is required in order to protect human health and the environment. The EPA Division has released this Bulletin to provide practical examples of when a notification of a 'contaminated site' may be required, what information must be provided and how to make a notification.

This Bulletin outlines the intent of the *Environmental Management and Pollution Control Act 1994* (EMPCA) regarding notification and should be read in conjunction with the Act itself. If there is any inconsistency between the information or definitions contained within this Bulletin and EMPCA, the Act prevails to the extent of the inconsistency.

This Bulletin may be amended; persons using this Bulletin should check with the Contaminated Sites Unit or the EPA's website to ensure that it is current. This Bulletin replaces "Information Bulletin 101 - Notification Obligations for Site Contamination due to Petroleum Hydrocarbons" which addressed Section 32 of EMPCA in the context of site contamination.

1. What circumstances should prompt a notification under Section 74B of EMPCA?

Section 74B notifications are required for sites with historical pollution where contaminants exist, or are likely to exist, at levels which constitute a 'contaminated site'. Section 32 of EMPCA also addresses notification obligations but is focussed on releases of a pollutant(s) occurring as a result of an incident such as an accident or process malfunction; reference to Section 32 is made in this document where it is specifically relevant to site contamination. Under Section 32 it is the person responsible for the activity that caused the incident that is required to notify the Director, EPA Division (Director) of such an incident. See Section 32 of EMPCA for more details on notification obligations relating to an incident.

Section 74B states that when a person knows or should reasonably believe that the land they own or occupy is or is likely to be a contaminated site, they must make a notification to the Director. In addition they must not commence or continue any activity that may cause or allow the continued release of a pollutant. "Contaminated site" is defined in Section 74A (2) but can be paraphrased as:

- land that contains a pollutant in a concentration above naturally occurring levels, which is (or is likely to be) causing serious or material environmental harm or environmental nuisance; or
- land that contains a pollutant in a concentration above naturally occurring levels, which is likely to cause serious or material environmental harm or environmental nuisance in the future if not managed appropriately.

Section 3 of EMPCA provides an interpretation of "environmental nuisance". Section 5 provides the provisions to be applied in determining whether environmental harm is "material environmental

harm” or “serious environmental harm”. It should be noted, particularly, that material environmental harm may be considered to have occurred where the actual loss or property damage exceeds \$5,000; “loss” includes the reasonable costs that would be incurred in taking measures to prevent or mitigate the environmental harm and make good the environmental damage.

In many cases the prompt to notify under section 74B will be the receipt of an environmental assessment which may have been commissioned for due diligence purposes or prior to redevelopment. In other cases there may be reasons for a site owner or occupier to believe the site is a contaminated site such as stained, discoloured or odorous soil or water or signs of stress in vegetation.

Some examples in which an owner or occupier might be required to provide notification include:

- In preparation for the redevelopment of a former service station, the vendor or purchaser of the land commissions an environmental site assessment. The assessment identifies soil and groundwater contamination, likely as a result of an historic leak from an underground storage tank;
- Where free phase petroleum is discovered on groundwater;
- Evidence is discovered that “unauthorised” hazardous waste disposal has occurred in the past. For example, leaking drums of waste oil or pesticides are found buried in a gully or pit;
- Where an accidental release of a pollutant (e.g. a fuel or chemical spill) occurs at a site or evidence of a previous release is discovered. The determination that this spill is likely to cause the site to be considered a “contaminated site” is site specific and is based on the mobility and toxicity of the pollutant and the land uses and receptors in the vicinity of the release;
- Where construction works conducted on a site (e.g. excavations, building works etc.) reveal the presence of contamination in the soil or groundwater;
- Where irrigation water at a park/school/sports oval is suddenly noted to have a fuel or other chemical odour;
- Where the site has historically hosted an industrial activity and there is widespread staining of soils or strong odours present that may indicate poor chemical management and pollution;
- Where a former service station has persistent fuel odours associated with soil or groundwater or visible widespread staining of soils/gravels is observed;

Section 74B relates to contamination on the site owned or occupied by the person notifying. In some cases an owner or occupier (if conducting an environmentally relevant activity) may be aware of contamination that is not causing their own site to be a contaminated site but is in fact causing serious or material environmental harm or nuisance on a neighbouring property due to transport of the contamination through soil or water. An example of this includes a service station located next to a residential site where the identified petroleum contamination may be acceptable for the commercial use (service station) but not for the neighbouring sensitive use. In this case, depending on the severity of the risk, notification under Section 32(1) to Council or Section 32(3) to the Director would be required.

2. How promptly must notification occur and what are the penalties?

Notification under Section 74B of EMPCA must occur within 24 hours of the person becoming aware that their site is a contaminated site or of when the person should reasonably have believed that the land they own or occupy is, or is likely to be, a contaminated site. However, an owner or occupier is not required to make a notification if the person has reasonable grounds for believing that the fact that the area of land is likely to be a contaminated site has already come to the notice of the Director.

It is important to note that the owner or occupier of the land must not commence or continue any activity that may directly or indirectly further cause or continue the exposure, escape, discharge, emission or release of the pollutant that the owner or occupier knows, reasonably believes or should reasonably believe has made the area of land a contaminated site.

Failure to make a notification as required under Section 74B of EMPCA may result in a fine of up to 1200 penalty units as specified in this Section; the current value of a penalty unit is \$130 and this is subject to annual review.

If in doubt about whether or not a notification is required under EMPCA it is suggested that an officer of the Contaminated Sites Unit be contacted by phoning the number given at the end of this Bulletin to discuss the situation. If the site is regulated by the EPA Division because it hosts a Level 2 activity then the appropriate regulatory officer should firstly be contacted.

3. What action does the Director take following a Notification?

When a Notification is received under Section 74B the Director will consider whether it is appropriate to serve a Notice under Part 5A, Division 3 of EMPCA. The following notices can be served by the Director:

- **Investigation notice:** can require work to determine whether land is contaminated, the type and extent of contamination, the extent of environmental harm and appropriate management options.
- **Remediation notice:** can require clean up to ensure that people and the environment are protected from harm, or further harm, caused by contamination.
- **Site Management notice:** can be issued to ensure the safe management of a contaminated site.

When serving an *Investigation* or *Remediation* notice the first party in the culpability hierarchy is the person responsible for having caused the area to be a contaminated site (i.e. the polluter). This can include a person who owned or occupied land at the time a pollutant escaped and where the person knew or should have known the escape occurred. If the Director cannot locate the above persons or they are unable to pay for works, a notice may be served on the owner of a site but only if it was purchased after 29 November 2007 and if, when purchasing it, the owner knew, suspected or should have reasonably suspected that the area of land was or was likely to be a contaminated site.

A *Site Management* notice may be served on a person responsible for contaminating the site, and/or an owner, occupier or person in charge of the site.

Notices may also be served on a person who has accepted responsibility for the contamination. Future purchasers of a site may be responsible for complying with a notice where this is specified in the notice.

Anyone served a notice has 14 days in which to lodge an appeal with the *Resource Management and Planning Appeal Tribunal*. However, in the interim, the notice must still be complied with unless the Director agrees to its suspension.

In some cases the Director may consider that the contamination on a site does not warrant it being considered a contaminated site for the purposes of EMPCA. Even if this is the case it may still be necessary to complete an investigation of site contamination for the purposes of redevelopment, if this is proposed. The Planning Authority will advise if this is necessary when a planning application is made.

4. How is a notification made?

Notifications should be made using the Reporting a Contaminated Site Form available from the EPA's website.

Notifications may be posted, hand delivered or faxed to the following address:

Director, EPA
Level 6,
134 Macquarie Street
Hobart TAS 7000
AUSTRALIA

Fax: (03) 6233 3800

Or emailed to:

EnvironmentEnquiries@environment.tas.gov.au

Include a subject heading "Notification of a contaminated site under S 74B EMPCA"

Where the situation requires urgent attention, an after hours report of pollution or an environmental incident can be made to the Incident Response Officer on 1800 005 171.

5. Further information

For further information regarding the content of this Bulletin contact:

Contaminated Sites Unit	
EPA Division	Telephone (03) 6233 6518
Department of Primary Industries, Parks, Water & Environment	
GPO Box 1550	Facsimile (03) 6233 3800
HOBART TASMANIA 7001	

Relevant legislation (e.g. EMPCA) may be viewed on the internet at <http://www.thelaw.tas.gov.au>.

General information can be viewed on the EPA's website at <http://www.epa.tas.gov.au>. Follow links to "Land", "Land Contamination" and "Publications" to access this Bulletin or others on this subject.