

**Contaminated Sites Unit**

EPA DIVISION

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**INFORMATION BULLETIN No. 112****THE "SITE CONTAMINATION SIGN-OFF" PROCESS  
February 2011****1. INTRODUCTION**

The purpose of this document is to provide guidance to parties, particularly Planning Authorities, on the site sign-off process that relates to site contamination.

Site contamination sign-off (hereafter referred to as 'sign-off') is simply a written endorsement provided by the Director, EPA that appropriate works and investigations have been undertaken by a suitably qualified and experienced consultant and that it is reasonable to rely on the consultants' recommendation that the land is suitable for its intended use. The sign-off process is triggered by a request to the Director, EPA from a Planning Authority.

There are three situations in the Tasmanian planning process that trigger consideration of land contamination and ensuring the site is suitable for its intended use:

- Rezoning that would allow for more sensitive land uses to occur;
- Change of land use to a more sensitive use; or
- Development where the associated works may cause the creation of exposure pathways that could result in a risk to human health and the environment during development.

The sign-off defined under this document only relates to contamination of the land (including soil and groundwater). It does not consider any other matters that may affect the development of the land, such as ecological values, asbestos in buildings and climate change.

**2. BACKGROUND**

The *National Environment Protection (Assessment of Site Contamination) Measure 1999* (hereafter referred to as the NEPM) sets out a framework for assessment of contamination and the risk to human and ecological health, and the methods for managing contamination. The NEPM (and any variations to it) has effect as a State Policy in Tasmania under Section 12A of the *State Policies and Projects Act 1993*.

The *Land Use and Planning and Approvals Act 1993* (LUPAA) requires under Section 20(1)(B) that planning schemes must be prepared in accordance with State Policies. Planning Schemes should therefore contain specific requirements that relate to the assessment of potentially contaminated sites.

Section 6(5) of the NEPM states:

*"Planning Authorities should ensure a site which is being considered for a change in land use, and which planning authorities ought reasonably to have known to have a history of use that is indicative of potential contamination, is suitable for its intended use"*

The Tasmanian *Building Act 2000*, also states that a person must not carry out any building work on land that, in the opinion of the environmental health officer is "...contaminated, unhealthy and not suitable for the purpose until the land is cleaned or remedied..."

The sign-off process was established by the EPA to assist Planning Authorities in meeting the requirements of LUPPA, and subsequently the Tasmanian Building Act, in ensuring that land is suitable for its intended use in relation to site contamination.

### 3. WHAT IS POTENTIALLY CONTAMINATED LAND?

Potentially contaminated land means land which could have been contaminated by a *potentially contaminating activity* (PCA) which is currently occurring or was historically hosted on the land. The *Potentially Contaminating Activities, Industries and Land Uses List* Information Bulletin available on the EPA Division's website provides more information on PCA's, including a list of activities that have potential to cause contamination by virtue of the nature of the substances used, the processes undertaken, and/or the measures normally applied for the management of emissions and residues.

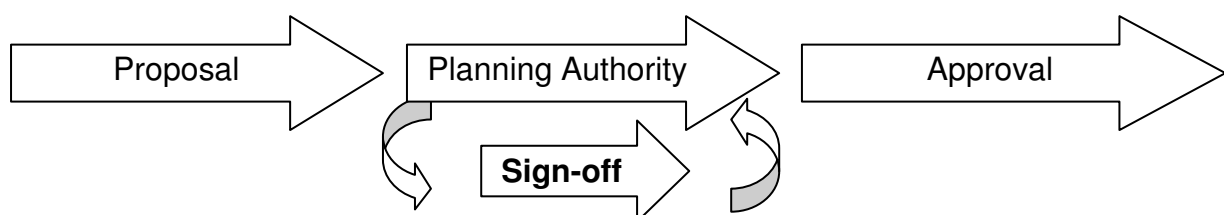
The potential for contamination to create a risk is dependent on the nature of the chemical substances used in the activity, the reactions and by-products from such substances, the extent and concentrations present on the land and on the nature of the proposed use and development. Accordingly, it is important to gain an understanding of the history of an activity and the nature of the operations undertaken when determining the potential for contamination.

Contamination may also occur due to migration from a neighbouring site through soil or groundwater; therefore surrounding activities need to be taken into account when determining the potential for a site to be contaminated.

Where there is the intention to use or develop potentially contaminated land, the person(s) seeking a permit (hereafter referred to as the applicant) should consider the need for a contaminated land assessment and sign-off through consultation with a suitably qualified and experienced consultant engaged to undertake the assessments, the appropriate Planning Authority, and where necessary the EPA Division.

The EPA Division maintains a number of databases which record instances of site contamination, environmental complaints, environmental incidents, prosecutions, notices, environmental permits and licences against properties. This information is often useful to in determining the site history. Information Bulletin 103 available on the EPA Division's website provides details on how to submit a Property Information Request to the Division, and discusses the type and limitations of the information that a PIR search may yield. Follow the links "Land Contamination" and then "Information Bulletins". Planning Authorities may request this information through an informal request to the Contaminated Sites Unit.

### 4. SITE CONTAMINATION SIGN-OFF



The Planning Authority is responsible for ensuring that a site is suitable for the proposed use or development. The Planning Authority can either refer a site to the Director, EPA for sign-off, or make an independent decision on whether the information provided by the applicant is appropriate to determine that the site is suitable, and appropriate management controls can be implemented through permit conditions to manage any contamination and the associated risks to human health and the environment.

Sign-off can often be a time consuming and costly process, which reflects the often complex contamination assessment and remediation process, and should not be undertaken without careful consideration or consultation between the applicant and the Planning Authority.

Where a known or potentially contaminated site (e.g. a site that has or may have hosted PCAs) is being considered, the applicant should discuss the proposal with the Planning Authority prior to the formal submission of the proposal. Where a Planning Authority determines that sign-off is required, the request to the Director, EPA should be submitted prior to an application being made and the application should not be accepted until sign-off is provided from the Director, EPA. This will create significant efficiencies in the planning assessment and allow an appropriate determination of the lands suitability for its intended use at the time of assessment.

#### **4.1 When is sign-off used?**

The EPA Division recommends that Planning Authorities consider the implementation of the sign-off process in the following instances:

1. the proposal relates to a change of use to a sensitive use or allows for a sensitive use and:
  - the land has or may have historically hosted a PCA such as those listed in the *Potentially Contaminating Activities, Industries and Land Uses List* Information Bulletin available on the EPA Division's website; or
  - The Planning Authority has been unable to determine –
    - i. that the land is suitable for its intended use, or
    - ii. that appropriate management controls can be implemented through the planning permit to manage any contamination and the associated risks to human health and the environment; or
  - land or groundwater contamination is known on an adjacent site and it is unknown if the subject land is affected; or
2. in the case where land *is not* changing to a sensitive use, sign off may still be warranted when:
  - the land has hosted a highly potentially contaminating activity (for instance sites that store large volumes of environmentally mobile or volatile contaminants like petrol, chemicals in liquid form), or
  - where the development of a potentially contaminated site involves significant worker exposure to soil or significant excavation or earthworks (including installation of basements, footings, underground car parks).

Where sign-off is related to a rezoning, a copy of the sign-off letter along with any relevant assessment and remediation reports should be provided to the Tasmanian Planning Commission with the certified draft planning scheme amendment.

Where sign-off from the Director, EPA is not completed prior to an application to the Planning Authority being made, the Planning Authority must consider the appropriate options available under the relevant Planning Scheme for the assessment of the proposal. This may include the requirement for further information or consideration of appropriate permit conditions.

Where a permit condition requires the Planning Authority to be satisfied that the site is suitable for its intended use in relation to contamination, and a request for sign-off has been submitted to the Director EPA by the Planning Authority, the sign-off then works as an internal process between the Planning Authority and the EPA. Sign-off from the Director, EPA then satisfies the Planning Authority and subsequently the relevant permit condition.

#### **4.2 Alternatives to sign-off**

Where a Planning Authority determines, based on the information provided, that the site is suitable for its intended use and does not require sign-off from the Director, EPA, but there needs to be appropriate management of the site, appropriate conditions should be included in the planning permit.

Management measures may include, but are not limited to:

- Development and implementation of a Contamination Management Plan to manage human health and environmental risks during construction.
- Erection and maintenance of signage to identify the site as a contaminated site and ensure appropriate management of the site (access control, personal protective equipment requirements, etc).
- The erection and maintenance of a fence, bund or other barrier to control access.

For further guidance on the options for management, Planning Authorities should contact the EPA Division.

#### **4.3 What information must be provided to obtain sign-off?**

When information relating to an area of contaminated land is submitted to the Director, EPA for sign-off, the information must include:

- a letter from the Planning Authority stating their intention to require sign-off by the Director, EPA for the area and the reason(s) for this decision (e.g. historical PCA, unknown contamination status, proposed sensitive use);
- information on the proposed use or development; and
- an Environmental Site Assessment (ESA) Report – at a minimum this must be a Preliminary Site Investigation undertaken in accordance with the relevant policy and standards applied by the EPA Division, which includes the *National Environment Protection (Assessment of Site Contamination) Measure, 1999* (or as varied).

Where the sign-off process is being undertaken during the assessment period of a development application and it is determined that further investigation or information is required, the Director, EPA will request the information through the Planning Authority. However, where the sign-off process is undertaken outside of the assessment period, the Director, EPA will request the information directly from the applicant with correspondence copied to the Planning Authority.

Where a report submitted as part of the sign-off process clearly does not meet the minimum reporting standards the Director, EPA may at his/her discretion, reject the report and return it without comment.

Where remediation is required, the Director, EPA will correspond directly with the applicant to provide guidance on the development and implementation of remediation goals and clean up criteria for the site in order for the site to obtain sign-off, with correspondence copied to the Planning Authority.

For further information on the policy and standards that the EPA Division applies to contamination assessment and remediation please contact the EPA Division.

#### **4.4 When does the Director, EPA provide sign off?**

Sign off is provided when the Director, EPA is satisfied that:

- the information provided is of an appropriate standard and has fully delineated the nature and extent of contamination on- and off-site;
- where remediation is required, the remediation has been completed and the validation program has determined that remediation has been successful (i.e. it has met the remediation goals and clean up criteria);
- risk assessments have been conducted to an appropriate standard and have identified that the site is appropriate for its intended use;
- the consultant has provided a statement regarding the suitability of the land for its proposed use; and
- the management actions proposed for the site are appropriate to manage any remnant contamination.

Where sign-off from the Director, EPA for a proposed use or development is provided the Planning Authority should ensure that any conditions associated with the sign-off (e.g. development of a Site/Contamination Management Plan) are in the planning permit.

For further information on the policy and standards that the EPA Division applies to contamination assessment and remediation please contact the EPA Division.

#### **4.5 Limitations of the sign-off process**

Sign-off from the Director, EPA provides additional assurance regarding information in an ESA, but is constrained by a number of limitations, namely: that the EPA does not necessarily carry out independent, parallel investigations to verify the information presented in the documentation submitted, nor does it necessarily verify the sampling, testing or analytical protocols and procedures followed by the site assessor. The sign-off process does not guarantee all risks to human health and the environment have been identified or will be managed appropriately. Sign-off is based upon the state of the site as reported to the EPA in the documents provided. The EPA accepts no responsibility for the consequences of any inaccuracy in the documents provided, nor does it accept responsibility for any contamination arising from future activities.

## **5. NOTIFICATION**

If the applicant or the Planning Authority identify that contamination on the land is likely to cause environmental harm then the Director, EPA must be notified of this in accordance with Section 74B(1)(a) of the *Environmental Management and Pollution Control Act 1999* (the EMPCA). Further information relating to these provisions is provided in the EPA Division's Information Bulletin 101 which can be found on the EPA Division's website by following the links "Land Contamination" and then "Information Bulletins".

Where the site is determined to be a contaminated site under the EMPCA, the Director, EPA may decide to regulate the site under Section 74C through the issue of an Investigation, Remediation or Site Management Notice.

## **6. CHARGING**

Officer time associated with the sign-off will be recovered by an invoice issued to the applicant (in the first instance). Please note that the ultimate cost of report review and site sign off will depend on the quality of the consultant's work and the complexity of the site.

## **7. FUTURE CHANGES TO THE "SITE CONTAMINATION SIGN OFF" PROCESS**

Currently, changes are being considered that will formalise an "independent review system" thus enabling appropriately qualified environmental consultants to provide definitive statements in relation to the contamination status of a site. This system will primarily be used to satisfy Planning Authorities in relation to a use or development proposed for a potentially contaminated site, but may also be used during property transactions or to satisfy the Director, EPA in relation to the requirements of a Notice.

In addition, a Planning Schedule/Code is being developed to assist Planning Authorities to determine when the requirement for a site contamination assessment should be triggered. A draft has been developed through a working group consisting of Local Government representatives.

## **8. FURTHER INFORMATION**

Further information relating to the management of contaminated land and groundwater can be viewed on the EPA Division's website by going to <http://www.environment.tas.gov.au> and then following the "Land Contamination" link.

Information on Underground Petroleum Storage Systems (UPSS), including the UPSS Regulations and guidance on the decommissioning and removal of UPSS can be viewed by going to <http://www.environment.tas.gov.au> and then follow the links "Land Contamination" then "Regulation of Underground Fuel Tanks".

Relevant legislation may be viewed on the Internet at [www.thelaw.tas.gov.au](http://www.thelaw.tas.gov.au).

For further information relating to this bulletin contact the Contaminated Sites Unit:

<b>Telephone</b>	(03) 6233 6518
<b>Facsimile</b>	(03) 6233 3800
General Switch Board	1300 368 550

## **9. CURRENCY OF THIS BULLETIN**

This bulletin may be subject to amendment and persons relying on this Bulletin should check with the EPA Division to ensure that it is current at any given time.

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