

Passed by both Houses



New South Wales

Contaminated Land Management Amendment Bill 2003

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2003*



New South Wales

Contaminated Land Management Amendment Bill 2003

Act No , 2003

An Act to amend the *Contaminated Land Management Act 1997* with respect to the accreditation of site auditors; and for other purposes.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Contaminated Land Management Amendment Act 2003*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Contaminated Land Management Act 1997 No 140

The *Contaminated Land Management Act 1997* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Section 4 Definitions

Insert in alphabetical order:

accreditation panel means the accreditation panel convened by the EPA under Part 4.

guideline means a guideline made or approved by the EPA under section 105 and for the time being having effect under that section.

[2] Section 36 Recovery of costs of investigation or remediation

Omit “(including principal responsibility)” from section 36 (1).

[3] Section 36 (2)

Omit the subsection. Insert instead:

(2) Investigator or remediator is contaminator

If a person who, in relation to the contamination of land with a substance in such a way as to present a significant risk of harm, carries out the requirements of an investigation or remediation order had some responsibility for the contamination, the person may recover in a court of competent jurisdiction from each other person who also had responsibility for the contamination a portion of the first person’s costs in carrying out those requirements.

[4] Section 47 Definitions

Insert after paragraph (b) (ii) in the definition of *site audit* in section 47 (1):

(iia) whether the land is suitable for any specified use or range of uses,

[5] Section 47 (1)

Insert in alphabetical order:

site audit report means a site audit report prepared by a site auditor in accordance with this Part.

[6] Section 47 (1), definition of “site audit statement”

Omit the definition. Insert instead:

site audit statement means a site audit statement prepared by a site auditor in accordance with this Part.

[7] Section 47 (2)

Omit “a site audit carried out *for the purposes of a statutory requirement*”.

Insert instead “a *statutory site audit*”.

[8] Section 47 (2) (a1)

Insert after section 47 (2) (a):

- (a1) a voluntary investigation proposal that has been the subject of the EPA’s agreement under section 19 or a voluntary remediation proposal that has been the subject of the EPA’s agreement under section 26, or

[9] Section 48 Statutory site audits

Omit “a site audit for the purposes of a statutory requirement” wherever occurring.

Insert instead “a statutory site audit”.

[10] Sections 49–53D

Omit sections 49–53. Insert instead:

49 Accreditation panel

- (1) The EPA is to convene an accreditation panel.
- (2) The accreditation panel is to consist of 4 or more members appointed by the EPA, each having appropriate technical expertise, of whom at least:
 - (a) one is to be an officer of the EPA who is to be appointed by the EPA as the Chairperson, and
 - (b) one is to be a representative of community environmental groups appointed on the nomination of the Nature Conservation Council of NSW Incorporated, and

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- (c) one is to be a representative of industry, and
 - (d) one is to have tertiary qualifications in a discipline relevant to the contamination of land.
- (3) The functions of the accreditation panel are:
 - (a) to make recommendations to the EPA regarding the suitability of an applicant for accreditation, and
 - (b) to provide such other advice to the EPA as the EPA may request.
 - (4) The procedure of the accreditation panel is to be determined by the EPA or (subject to any determination of the EPA) by the accreditation panel.
 - (5) A member of the accreditation panel holds office for such period (not exceeding 5 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.
 - (6) The EPA may remove a member from the accreditation panel at any time by giving the member notice in writing.
 - (7) A member of the accreditation panel is entitled to such allowances in connection with the work of the panel as the EPA approves in respect of the member.
 - (8) Anything done or omitted to be done by a member of the accreditation panel in exercising the functions conferred or imposed on the panel or member by or under this or any other Act does not, if the thing was done or omitted to be done in good faith, subject the member personally to any action, liability, claim or demand.

50 Application for accreditation as site auditor

- (1) An individual may apply to the EPA for accreditation as a site auditor.
- (2) An application for accreditation as a site auditor must:
 - (a) be made in the manner and form approved by the EPA, and
 - (b) be supported by any information required by the EPA, and
 - (c) be accompanied by the application fee (if any) prescribed by the regulations.

- (3) Each application for accreditation is to be referred by the EPA to the accreditation panel.
- (4) If the EPA considers it necessary in order to determine the suitability of an applicant for accreditation, the EPA may require the applicant to do one or more of the following:
 - (a) to furnish to the EPA, within a specified time, any further particulars that the EPA considers necessary,
 - (b) to appear before the accreditation panel for an interview,
 - (c) to undergo an examination as to his or her knowledge.
- (5) The accreditation panel is to make a recommendation to the EPA regarding the suitability of an applicant for accreditation.
- (6) The EPA may accept or reject the recommendation of the accreditation panel.

51 Grant of accreditation as site auditor

- (1) The EPA is to determine an application for accreditation as a site auditor by granting or refusing the application.
- (2) The EPA may refuse to grant the application:
 - (a) if the applicant fails to comply with section 50 or a requirement made under that section, or
 - (b) if, in the opinion of the EPA, the applicant fails to satisfy the requirements of the guidelines in relation to eligibility for accreditation as a site auditor, or
 - (c) if, within the period of 2 years before the date the application was made, the EPA revoked or refused to renew the applicant's accreditation as a site auditor, or
 - (d) for any other reason that the EPA considers sufficient.
- (3) The EPA must give notice in writing of the determination of the application to the applicant, including:
 - (a) if the application is granted, notice of the period for which accreditation is granted and any conditions to which the accreditation is subject, and
 - (b) if the application is refused, the reasons for the refusal.

- (4) An accreditation remains in force for the period specified by the EPA (not exceeding 3 years), subject to any revocation or suspension of the accreditation under this Act.
- (5) The regulations may require an accreditation fee to be paid to the EPA, in respect of a grant of accreditation, within the time determined by the EPA.
- (6) The accreditation fee is to be calculated on the basis of the period for which accreditation is granted.

52 Renewal of accreditation

- (1) An application for renewal of accreditation as a site auditor must:
 - (a) be made in the manner and form approved by the EPA, and
 - (b) be supported by any information required by the EPA, and
 - (c) be made within the time (if any) prescribed by the regulations.
- (2) The EPA may require an applicant to furnish to the EPA, within a specified time, any further particulars that the EPA considers necessary to determine the suitability of the applicant for renewal of accreditation.
- (3) The EPA is to determine an application for renewal of accreditation as a site auditor by granting or refusing the application.
- (4) The EPA may refuse to grant renewal of accreditation as a site auditor on any of the grounds referred to in section 56 (1) or if the applicant fails to comply with this section or a requirement made under this section.
- (5) The EPA must give notice in writing of the determination of the application to the applicant, including:
 - (a) if the application is granted, notice of the period for which the renewal of accreditation is granted and any conditions to which the accreditation is subject, and
 - (b) if the application is refused, the reasons for the refusal.

- (6) If an application for renewal of an accreditation that is in force is made to the EPA within the time (if any) prescribed by the regulations, the accreditation remains in force until notice in writing of the determination of the application is given to the applicant.
- (7) If the application is granted, the applicant's accreditation remains in force for the period specified by the EPA (not exceeding 3 years), subject to any revocation or suspension of the accreditation under this Act.
- (8) If the application is refused, the applicant's accreditation expires when notice in writing of the determination of the application is given to the applicant.
- (9) The regulations may require an accreditation fee to be paid to the EPA, in respect of a grant of a renewal of accreditation, within the time determined by the EPA.
- (10) The accreditation fee is to be calculated on the basis of the period for which accreditation is granted.

53 Conditions of accreditation

- (1) The EPA may grant accreditation or a renewal of accreditation unconditionally or subject to conditions.
- (2) In addition, at any time while the accreditation is in force or suspended, the EPA may by notice in writing given to the site auditor:
 - (a) impose conditions or further conditions on the accreditation, or
 - (b) vary or revoke any of the conditions to which the accreditation is subject.
- (3) A condition imposed by the EPA, or the variation or revocation of a condition, takes effect on the date specified in the notice or on the date on which it is given to the site auditor, whichever is the later.
- (4) The regulations may impose a condition on an accreditation or class of accreditation.
- (5) Subject to the regulations, a condition imposed by the regulations cannot be varied or revoked by the EPA and prevails to the extent of any inconsistency over a condition or direction imposed or given by the EPA under this Part.

- (6) A condition imposed by the EPA may also be varied by a direction given under section 53A.

Note. Contravention of a condition is not an offence but is grounds for non-renewal, revocation or suspension of accreditation.

53A Directions

- (1) The EPA may, by notice in writing given to a site auditor, direct the site auditor:
- (a) to take specified action, or refrain from taking specified action, relating to the conduct of a site audit or class of site audits, or the making of site audit reports and site audit statements, or
 - (b) to refrain from conducting a particular site audit or class of site audits for a specified period or until further notice by the EPA.

- (2) A direction takes effect on the date specified in the notice or on the date on which it is given to the site auditor, whichever is the later.

Note. Contravention of a direction is not an offence but is grounds for non-renewal, revocation or suspension of accreditation.

53B Site audit reports and site audit statements

- (1) A site auditor must make a site audit report in writing whenever he or she carries out a site audit and furnish that report to the person who commissioned the site audit.
- (2) The site audit report must contain a critical review of the information collected in relation to the site audit and must clearly set out the reasons for the findings proposed to be contained in the relevant site audit statement.
- (3) After completing the site audit report, the site auditor must make a site audit statement in a form approved by the EPA and must:
- (a) furnish that statement to the person who commissioned the site audit, and
 - (b) if the site audit is a statutory site audit, at the same time furnish a copy of the statement to the EPA and the local authority for the area in which any land the subject of the site audit is situated.

- (4) The site audit statement must contain the site auditor's findings in relation to the site audit and must be consistent with the reasons set out in the site auditor's site audit report.
- (5) A site auditor must promptly furnish the EPA with any further information, in support of or otherwise relating to a site audit report or a site audit statement, or concerning any site audit carried out by the site auditor, as the EPA may, by notice in writing to the site auditor, require.
- (6) A site audit is to be carried out, and a site audit report and site audit statement are to be prepared and furnished, by a site auditor:
 - (a) in compliance with the provisions of this Act and the regulations, and
 - (b) in accordance with the guidelines, and
 - (c) having regard to the provisions of any environmental planning instruments applying to the site.

53C Notification to EPA of statutory site audit

A site auditor must, within 7 days of being commissioned to carry out a statutory site audit by any person other than the EPA, give to the EPA a notice in writing specifying the name of the person commissioning the site audit and the location of the land to which the site audit relates.

53D Annual returns and other notifications

- (1) A site auditor who is accredited for the whole or part of a return period must furnish the EPA with a return showing site audits commenced or completed during that period.
- (2) The return must be furnished not later than the 31 March next following the end of the return period.
- (3) The return must include particulars of a kind (if any) prescribed by the regulations in respect of each site audit mentioned in the return.
- (4) A site auditor must, within 14 days of any material change in the circumstances of his or her employment or of any other change that may affect the site auditor's accreditation or work as an accredited site auditor, give the EPA notice in writing containing details of the change.

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- (5) Without limiting subsection (4), a site auditor must, within 14 days of any of the following matters occurring, give the EPA notice in writing of the details of the matter:
- (a) any change to the site auditor's team,
 - (b) any change to the site auditor's professional indemnity insurance,
 - (c) the commencement of any legal or disciplinary action against the site auditor:
 - (i) in his or her professional capacity as a site auditor, or
 - (ii) in relation to the site auditor's work in relation to the investigation, remediation or management of actual or possible contamination of land, or
 - (iii) in relation to the site auditor's accreditation in another jurisdiction (including a condition or restriction placed on the accreditation),
 - (d) any other matter prescribed by the regulations.

- (6) In this section:

accreditation in another jurisdiction includes the appointment, registration, licensing, approval, admission, certification (including by way of practising certificates), or any other form of authorisation, of a person required by or under legislation of another jurisdiction for the carrying out of audits relating to the actual or possible contamination of land.

return period means a year commencing on 1 March and ending on the last day of February.

site auditor's team means those persons that the site auditor has identified, in his or her application for accreditation or renewal of accreditation or in a notice in writing given to the EPA, as providing expertise or technical resources to the site auditor.

[11] Section 54 Site auditor to avoid conflicts of interest

Insert at the end of section 54 (1) (b):

, or

- (c) if it involves the site auditor reviewing any aspect of work carried out by, or a report written by, the site auditor or a person to whom the site auditor is related.

[12] Section 54 (3) (d)

Insert at the end of section 54 (3) (c):

, or

(d) is employed by the same employer as the person.

[13] Sections 55 and 56

Omit the sections. Insert instead:

55 False audits or information

A person must not, in or in connection with a site audit, a site audit report or a site audit statement, make any statement that the person knows to be false or misleading in a material particular.

Maximum penalty:

- (a) in the case of a corporation—1,250 penalty units, or
- (b) in the case of an individual—600 penalty units or imprisonment for 2 years, or both.

56 Revocation, suspension or refusal to renew accreditation

- (1) The EPA may, by notice in writing given to a site auditor, suspend, revoke or refuse to renew the site auditor's accreditation if it is of the opinion that one or more of the following grounds exist:
 - (a) the site auditor no longer satisfies the requirements of the guidelines in relation to eligibility for accreditation as a site auditor,
 - (b) the site auditor has contravened:
 - (i) any of the provisions of this Part, or
 - (ii) any of the provisions of the regulations, or
 - (iii) a condition to which the accreditation is subject, or
 - (iv) a direction given to the site auditor by the EPA under this Part,
 - (c) the site auditor is not carrying out sufficient bona fide site audits to justify continued accreditation,

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- (d) the site auditor's accreditation in another jurisdiction has been changed because of conduct that would (if it occurred in New South Wales) authorise revocation or suspension of the person's accreditation under this Act,
Note. Section 33 of the *Mutual Recognition Act 1992* of the Commonwealth states that if a person's registration in an occupation in a State is cancelled, suspended or subject to a condition in relation to criminal, civil or disciplinary proceedings, then the person's registration in the equivalent occupation in another State is affected in the same way. See also section 32 of the *Trans-Tasman Mutual Recognition Act 1997* of the Commonwealth which has a similar provision in relation to disciplinary proceedings occurring in New Zealand.
- (e) the site auditor provided false or misleading information in connection with an application for accreditation or renewal of accreditation,
- (f) the site auditor fails to pay an accreditation fee within the time determined by the EPA, or such further time as the EPA may allow,
- (g) any other ground prescribed by the regulations,
- (h) the action is justified having regard to:
- (i) the quality of the site auditor's work in relation to site audits in recent accreditation periods, or
 - (ii) any formal or informal disciplinary action taken against the site auditor under this Act, or
 - (iii) any other matter that the EPA considers to be relevant to the site auditor's suitability for accreditation.
- (2) A suspension of accreditation may be for a specified period, until completion of specified conditions, or until further notice by the EPA.
- (3) If a site auditor's accreditation is suspended until the fulfilment of specified conditions, the EPA must give the site auditor notice in writing that the accreditation is reinstated as soon as practicable after it is satisfied that the specified conditions have been fulfilled.
- (4) A suspension of accreditation has effect:
- (a) for the period specified in the notice effecting the suspension, or

- (b) if no period is specified in the notice, or if accreditation is suspended until the fulfilment of specified conditions, for the period:
 - (i) commencing on the date specified in the notice or on the date on which it is given to the site auditor, whichever is the later, and
 - (ii) finishing on the date the EPA gives the site auditor notice in writing that the site auditor's accreditation is reinstated or revoked.
- (5) An accreditation is taken not to be in force during the period in which a suspension has effect.
- (6) A revocation of accreditation takes effect on the date specified in the notice given by the EPA or on the date on which it is given to the site auditor, whichever is the later.
- (7) The EPA may revoke an accreditation that is suspended.
- (8) The EPA must not suspend, revoke or refuse to renew accreditation on a ground specified in this section unless before doing so:
 - (a) it has given notice in writing to the site auditor that it intends to do so, and
 - (b) it has specified in that notice the reasons for its intention to do so, and
 - (c) it has given the site auditor a reasonable opportunity to make submissions in relation to the proposed revocation, suspension or refusal to renew, and
 - (d) it has taken into consideration any submissions made by the site auditor.
- (9) In this section:
accreditation in another jurisdiction includes the appointment, registration, licensing, approval, admission, certification (including by way of practising certificates), or any other form of authorisation, of a person required by or under legislation of another jurisdiction for the carrying out of audits relating to the actual or possible contamination of land.

[14] Section 57 Holding out

Insert after section 57 (1):

- (1A) An individual must not make any representation, or cause or allow any representation to be made, to the effect that the individual is authorised by his or her accreditation to carry out a statutory site audit, or class of statutory site audits, if the individual is prohibited from carrying out that site audit or class of site audits by a condition of his or her accreditation.

Maximum penalty: 600 penalty units.

[15] Section 105 Guidelines

Insert after section 105 (4):

- (5) The EPA is to give each site auditor accredited under Part 4 notice in writing of the following:
- (a) the making or approval of a guideline under this section,
 - (b) the amendment or revocation of any such guideline or approval.
- (6) Without limiting subsection (1), the guidelines may make provision for or with respect to eligibility for accreditation as a site auditor under Part 4, including in relation to the following matters:
- (a) relevant experience and expertise in contaminated site work,
 - (b) proven high standards of integrity and objectivity,
 - (c) understanding of the impact of contaminated sites on the environment, public health and safety,
 - (d) understanding of relevant legislation and associated policies,
 - (e) understanding of the methods for assessing and managing contaminated sites,
 - (f) access to relevant areas of expertise and resources,
 - (g) knowledge of relevant scientific literature,
 - (h) insurance,
 - (i) any other matter prescribed by the regulations.

[16] Section 112 Regulations

Omit section 112 (2) (b). Insert instead:

- (b) the circumstances in which a fee, or part of a fee, payable under Part 4 may be waived or refunded by the EPA,

[17] Schedule 2 Savings and transitional provisions

Insert at the end of clause 1 (1):

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[18] Schedule 2, clauses 7–10

Insert after clause 6:

7 Recovery of costs

Section 36, as amended by the *Contaminated Land Management Amendment Act 2003*, extends to costs incurred before the amendment of that section by that Act if those costs were incurred on or after 1 September 1998.

8 Existing accreditation as a site auditor and suspension

- (1) An accreditation (including any conditions to which the accreditation is subject) in force immediately before the commencement of Schedule 1 [10] to the *Contaminated Land Management Amendment Act 2003* (the **amending Act**), continues in force for the balance of the term for which it was granted.
- (2) An accreditation referred to in subclause (1) is taken to have been validly granted or renewed, and any condition to which the accreditation is subject is taken to have been validly imposed, under Part 4 of this Act as amended by the amending Act.
- (3) A suspension in effect immediately before the commencement of Schedule 1 [10] to the amending Act, continues to have effect until further notice by the EPA. The suspension is taken to have effect under Part 4 of this Act as amended by the amending Act and section 56 applies accordingly.

9 Revocation, suspension or refusal to renew accreditation

Section 56, as substituted by the *Contaminated Land Management Amendment Act 2003*, extends to acts or omissions occurring before the substitution of that section by that Act.

10 Members of accreditation panel

A member of the accreditation panel holding office immediately before the commencement of section 49 (as substituted by the *Contaminated Land Management Amendment Act 2003*), is taken, on that commencement, to be appointed under section 49 as substituted and this Act applies accordingly.