

Explanatory Statement

Issued by the authority of the Executive Officer of the National Environment Protection Council

National Environment Protection Council Act 1994

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

Amendment of the National Environment Protection (Assessment of Site Contamination) Measure 1999

Section 14(1)(d) of the *National Environment Protection Council Act 1994* (the NEPC Act) provides, in part, that the National Environment Protection Council (NEPC) may, by instrument in writing, make a measure, to be known as a national environment protection measure that relates to general guidelines for the assessment of site contamination.

Section 20(1) of the NEPC Act provides that NEPC may vary or revoke a national environment protection measure.

Background

Site contamination is recognised as a major environmental issue for Australia. In addition to posing a potential threat to public health and the environment, sites affected by contamination can have significant economic, legal and planning implications.

Australia has tens of thousands of potentially contaminated sites distributed across every state and territory. These sites include former factories and tanneries, smelters, town gas plants, oil and chemical refineries, fuel depots and service stations, chemical stores, timber treatment plants, livestock dips, landfills and the sediment of rivers, estuaries and coastlines where waste has been piped in the past from industrial sites for disposal. Contamination occurs in a wide variety of forms, but commonly comprises inorganic compounds such as metals and asbestos and organic compounds such as petroleum hydrocarbons.

The National Environment Protection (Assessment of Site Contamination) Measure (the NEPM) was made in 1999 and has been recognised by stakeholders as the primary national guidance document for the assessment of site contamination in Australia.

The NEPM includes two Schedules: Schedule A comprises a flowchart of the recommended general process for the assessment of site contamination and its relationship to the management of site contamination and Schedule B consists of ten technical guidelines about site assessment criteria; site investigation procedures; laboratory analyses; human health risk assessment; ecological risk assessment; groundwater assessment; community consultation; competencies and acceptances of consultants and auditors and workers health and safety.

Given the NEPM provides technical guidance and like every other technical guidance, the NEPM is required to be updated from time to time to take account of new developments in scientific knowledge and technology.

Purpose

The purpose of the NEPM is to *'establish a nationally consistent approach to the assessment of site contamination to ensure sound environmental management practices by the community which includes regulators, site assessors, environmental auditors, landowners, developers and industry'*.

The desired environmental outcome for this NEPM is *'to provide adequate protection of human health and the environment, where site contamination has occurred, through the development of an efficient and effective national approach to the assessment of site contamination'*.

Review and variation processes

The NEPM was gazetted on 22 December 1999. Clause 10 of the NEPM specifies that the NEPM would be subjected to a review five years from its commencement.

The review of the NEPM was carried out in 2005 – 2006 and resulted in 27 recommendations for changes to update the NEPM by addressing technological, scientific and health risk issues raised by site assessors, consultants, land developers, auditors, the public and jurisdictions. In December 2006, the NEPC accepted the report of the review and, in June 2007, the NEPC agreed to initiate a variation to the NEPM.

The draft NEPM as varied and consultation impact statement were released for public consultation between 24 September and 26 November 2010. The consultation process involved public meetings in the capital city of every state and territory. The meetings were attended by over 600 people in total from state and territory governments, local governments, industry, environmental consultants, analytical laboratories, specialist remediation companies, legal representatives and members of the public.

A total of 47 written submissions were received from industry, industry peak bodies, environmental consultants, local and state government and others on the draft variation to the NEPM. The majority of submissions (over 90 per cent) supported the draft variation of the NEPM. A small number of submitters did not support specific aspects of the draft released for public consultation. The submissions received were summarised and responses provided in The Summary of Public Submissions and National Environment Protection Council Response, available from the Standing Council of Environment and Water's website.

The draft released for public consultation has been revised to address the identified concerns. A Decision Regulation Impact Statement (DRIS) has also been prepared to support the amendment (formerly referred to as a variation) of the NEPM and to communicate the potential impacts, costs and benefits arising from the amendment. The

DRIS included details of the key changes to the NEPM and evaluated whether the proposed changes to the NEPM were cost effective in delivering improved outcomes (net benefit) to the community as a whole. The DRIS has been provided in Attachment A.

The application of the updated NEPM guidelines may result in an increase in site assessment costs of up to 10-15% for site owners/the person responsible for the site assessment costs. However, it was acknowledged in the public submissions that this increase in costs would be offset by improved health and environmental outcomes and in many cases reduced remediation costs. The analysis in the DRIS indicated that when potential savings at the remediation and management stage are taken into account, the application of the updated guidance is likely to reduce the overall direct costs to industry and regulators (and indirect costs to society from flow-on effects), as well as providing greater social justice and equity for the community.

Amendment

The National Environment Protection (Assessment of Site Contamination) Amendment Measure 2013 (No. A) as made under section 20 of the *National Environment Protection Council Act 1994* involves:

1. **Amendment** of the Measure (Attachment B):

- Revision of definitions in Section 3
 - revision of the definition of contamination, to make it clear that contamination results from human activities
 - revision of the definition of health risk management, to clarify that risk management actions are undertaken to address risks identified in health risk assessments
 - revision of the definition of investigation level to include reference to screening level
 - deletion of the definition of response level as this is not referred to in the guidelines
 - revision of the definition of risk to specifically define that risk refers to risk from chemical substances.
- Revision of Principles in Section 6
 - revision of Principle 3 to include investigation and screening levels which is the terminology used in the guidelines, response levels are not provided in the guidelines.
 - revision of Principle 5 to clarify that all authorities that consent to developments or changes in land use are included
 - insertion of Principle 5A to make it clear that industries are responsible for taking appropriate precautions to prevent adverse long-term environmental impacts when decommissioning and dismantling infrastructure and equipment (these activities can result in contamination if appropriate action is not taken)

- revision of Principle 7 to refer to community engagement which is the revised terminology used in the guidance and to clarify when the process of community engagement should commence
- revision of Principle 10 to clarify that assessment of site contamination should be carried out by professionals with relevant qualifications, competencies and experience to ensure that an appropriate standard of assessment is carried out
- insertion of Principle 11A, to emphasise the importance of complying with the applicable work health and safety legislation during site contamination assessments
- revision of Principle 12 on environmental impact to state that the consideration of risks to water resources and ecological risks is part of the assessment of site contamination
- revision of Principle 13 to clarify that data quality objectives should be developed as well as implemented
- revision of Principle 14 to include reference to both investigation levels and screening levels in the initial assessment of human health and ecological risks
- revision of Principle 15 to include equivalent protection for the environmental values of water as is given to the capacity of soil (soil functions)
- revision of Principle 16, to clarify the factors to be taken into account in the consideration of remedial options
- revision of Principle 17 to include explosive gas mixtures in the circumstances when a specialised form of assessment will be required which is not covered by the guidelines
- revision of Principle 18 to include reference to the appropriate organisations to contact for advice in relation to sites with heritage value.
- Revision of Section 8 to include a modified description of the elements of a preliminary investigation and reference to investigation and screening levels to be consistent with the revised guidelines.
- Revision of Section 10 to include a review requirement every 10 years after the measure was last amended. The 1999 NEPM wording meant that no further review was required.
- Minor text revisions throughout the Measure to improve clarity and readability.

2. **repealing** the following (Attachment C):

Schedule A: Recommended General Process for the Assessment of Site Contamination.

Schedule B:

- *Guideline on Investigation Levels for Soil and Groundwater (B1);*
- *Guideline on Data Collection, Sample Design and Reporting (B2);*
- *Guideline on Laboratory Analysis of Potentially Contaminated Soils (B3);*
- *Guideline on Health Risk Assessment Methodology (B4);*
- *Guideline on Ecological Risk Assessment (B5);*
- *Guideline on Risk Based Assessment of Groundwater Contamination (B6);*

- *Guideline on Health-Based Investigation Levels (B7a);*
- *Guideline on Exposure Scenarios and Exposure Settings (B7b);*
- *Guideline on Community Consultation and Risk Communication (B8);*
- *Guideline on Protection of Health and the Environment During the Assessment of Site Contamination (B9); and*
- *Guideline on Competencies & Acceptance of Environmental Auditors and Related Professionals (B10).*

3. **substitution** of the following (Attachment D):

Schedule A: Recommended General Process for Assessment of Site Contamination

Schedule B: General Guidelines for the Assessment of Site Contamination

- *Guideline on Investigation Levels for Soil and Groundwater (B1)*
- *Guideline on Site Characterisation (B2)*
- *Guideline on Laboratory Analysis of Potentially Contaminated Soils (B3)*
- *Guideline on Site-Specific Health Risk Assessment Methodology (B4)*
- *Guideline on Ecological Risk Assessment (B5a)*
- *Guideline on Methodology to Derive Ecological Investigation Levels in Contaminated Soils (B5b)*
- *Guideline on Ecological Investigation Levels for Arsenic, Chromium (III), Copper, DDT, Lead, Naphthalene, Nickel and Zinc (B5c)*
- *Guideline on the Framework for Risk-Based Assessment of Groundwater Contamination (B6)*
- *Guideline on Derivation of Health Investigation Levels (B7)*
- *Guideline on Community Engagement and Risk Communication (B8)*
- *Guideline on Competencies and Acceptance of Environmental Auditors and Related Professionals (B9).*

Commencement

The amended National Environment Protection (Assessment of Site Contamination) Measure 1999 commences on the day after it is registered on the Federal Register of Legislative Instruments.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

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This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Bill/Legislative Instrument

This Legislative Instrument updates the principal instrument, the National Environment Protection (Assessment of Site Contamination) Measure, following a statutory review of the principal instrument by the National Environment Protection Council (NEPC).

NEPC is a ministerial council with membership of ministers from each Australian jurisdiction established to make, assess and report on the implementation and effectiveness of national environment protection measures (NEPMs) as provided for by the *National Environment Protection Act 1994* (Cth) (NEPC Act) and equivalent state and territory legislation. In making or varying a NEPM, NEPC is required to have regard for the environmental, economic and social impact of the measure (NEPC Act s15(b)).

Human rights implications

This Legislative Instrument does not engage any human rights recognised in the seven core human rights treaties as determined by assessment of the instrument against the 'policy triggers' set out in the assessment tool flowchart developed by the Attorney-General's Department.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

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