

CONTAMINATED LAND MANAGEMENT BILL

Schedule of the amendments referred to in the Legislative Council's Message of 2 December 1997.

- No. 1 Page 2, clause 3, line 22. Omit "to aim".
- No. 2 Page 2, clause 3, line 23. Omit "the need to maintain". Insert instead "the principles of".
- No. 3 Page 3, clause 4, line 22, definition of *guidelines*. Omit "103". Insert instead "105".
- No. 4 Page 7, clause 6. Insert after line 10:
- (2) It is the duty of the EPA to respond to a person (other than the EPA or an authorised officer) who has furnished information referred to in subsection (1). The response must:
 - (a) be made in a reasonable time, and
 - (b) state what the EPA has done in relation to the information and the reasons for doing it, and
 - (c) be in writing if the information was in writing.
- No. 5 Page 8, clause 9, lines 9 and 10. Omit all words on those lines. Insert instead:
- (b) whether the substances are toxic, persistent or bioaccumulative or are present in large quantities or high concentrations or occur in combinations,
- No. 6 Page 8, clause 9, line 28, note. Omit "103". Insert instead "105".
- No. 7 Page 9, clause 10, lines 6-10. Omit all words on those lines. Insert instead:
- (1) The EPA is to have regard to the principles of ecologically sustainable development in the exercise of its functions under this Act and is to seek the implementation of those principles in the management by other persons of contaminated land.
- No. 8 Page 9, clause 10, lines 13 and 14. Omit all words on those lines. Insert instead:
- according to their meanings in the following definition:
- principles of ecologically sustainable development* means the following statements of principle:
- Ecologically sustainable development requires the effective integration of economic and environmental considerations in decision-making

processes. Ecologically sustainable development can be achieved through the implementation of the following principles and programs:

- (a) the precautionary principle - namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

In the application of the precautionary principle, public and private decisions should be guided by:

- (i) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and
 - (ii) an assessment of the risk-weighted consequences of various options,
- (b) inter-generational equity - namely, that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations,
- (c) conservation of biological diversity and ecological integrity - namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration,
- (d) improved valuation, pricing and incentive mechanisms - namely, that environmental factors should be included in the valuation of assets and services, such as:
 - (i) polluter pays - that is, those who generate pollution and waste should bear the cost of containment, avoidance or abatement,
 - (ii) the users of goods and services should pay prices based on the full life cycle of costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any waste,
 - (iii) environmental goals, having been established, should be pursued in the most cost effective way, by establishing incentive structures, including market mechanisms, that enable those best placed to maximise benefits or minimise costs to develop their own solutions and responses to environmental problems.

- No. 9 Page 14, clause 15, lines 20-22. Omit all words on those lines. Insert instead:
- (c) advises that the making of the declaration does not prevent the carrying out of a voluntary investigation of the area by any person, and
- No. 10 Page 14, clause 15, line 27. Omit "must, before". Insert instead "must, at least 7 days before".
- No. 11 Page 15, clause 15 (5), line 7. Insert "and, if the land to which the declaration relates is outside the Sydney Metropolitan area, in a newspaper circulating in the locality in which the land is situated" after "Wales".
- No. 12 Page 15, clause 16 (2), line 26. Insert "and, if the land to which the declaration relates is outside the Sydney Metropolitan area, in a newspaper circulating in the locality in which the land is situated" after "Wales".
- No. 13 Page 15, clause 17. Insert after line 37:
- (2) The EPA must not make an order under this section unless it has considered any submissions made by the public under this Division on whether the order should be made.

- No. 14 Page 17. Insert after line 27:

19 Voluntary investigation proposals: agreement of EPA

- (1) This section applies where one or more persons furnish the EPA with a proposal to investigate land, being land that is contaminated with a substance in such a way as to present a significant risk of harm.
- (2) The EPA may agree with one or more of the parties to such a voluntary investigation proposal that the EPA will not issue an investigation order against them if an investigation is carried out in accordance with the proposal and the EPA is satisfied that:
- (a) the terms of the proposal are appropriate (including any plan of investigation, provision for giving notice and terms setting out a timetable for the investigation or requiring progress reports on the investigation), and
- (b) the parties have taken all reasonable steps to identify and find every owner and notional owner of the land and every person responsible for contamination of the land (in such a way as to present a significant risk of harm) with the substance referred to in subsection (1), and
- (c) the parties have given the persons identified and found a reasonable opportunity to participate in the formulation and carrying out of the proposal on reasonable terms.
- (3) The EPA may agree as referred to in subsection (2) even if it is not satisfied as to the matters set out in subsection (2) (b) and (c), but only if the parties have undertaken not to recover contributions under Division 6 in respect of the investigation.

- (4) The EPA's agreement must be in writing and copies of the agreement must be served on the parties with whom the agreement is made.
- (5) If the EPA is satisfied that the terms of a proposal that has been the subject of the EPA's agreement under this section have been carried out and the EPA serves notice in writing on the parties that it is so satisfied, the parties may (except in the case referred to in subsection (3)) recover contributions in accordance with Division 6 as if the parties had carried out the investigation under an investigation order.

20 Voluntary investigation proposals: exceptions

- (1) The EPA is not prevented by its agreement under section 19 from making an investigation order against persons (including public authorities) with whom it has made no such agreement (whether or not they are parties to the proposal referred to in that section).
- (2) The EPA is not prevented by such an agreement from making an investigation order against a party to the agreement who is an appropriate person if, in the opinion of the EPA, the terms of the proposal are not carried out.

Note. Cost contributions among parties to voluntary investigation proposals are affected by section 36.

No. 15 Page 18, clause 19, lines 9-11.

Omit all words on those lines. Insert instead:

- (c) advises that the making of the declaration does not prevent the carrying out of a voluntary remediation of the site by any person, and

No. 16 Page 18, clause 19. Insert after line 27:

- (4) That service must be effected not later than a reasonable period before the declaration is made (so that an opportunity is given to the person served to make a submission to the EPA on whether the declaration should be made).

No. 17 Page 18, clause 19 (4), line 29. Insert "and, if the land to which the declaration relates is outside the Sydney metropolitan area, in a newspaper circulating in the locality in which the land is situated" after "Wales".

No. 18 Page 18, clause 19, lines 32-36. Omit all words on those lines. Insert instead:

- (6) A declaration under this section is not invalid merely because of a failure to comply with subsection (3), (4) or (5) in relation to the declaration or merely because the declaration differs (otherwise than in a matter of substance) from the proposed declaration referred to in subsection (3) or the copy referred to in subsection (5).

- No. 19 Page 18, clause 19. Insert after line 36:
- (7) If the EPA considers that the risk of harm presented by the contamination of land is so significant (or the harm itself is so serious) that, in the public interest, it must make a remediation order at the same time as it makes a declaration under this Division, the EPA is not required:
- (a) to comply with subsection (2) (d) or (3), or
- (b) to allow a reasonable opportunity for the making of submissions on the making of the declaration or order.
- No. 20 Page 19, clause 20 (2), line 12. Insert "and, if the land to which the declaration relates is outside the Sydney metropolitan area, in a newspaper circulating in the locality in which the land is situated" after "Wales".
- No. 21 Page 19, clause 21. Insert after line 26:
- (3) The EPA must not make an order under this section unless it has considered any submissions made by the public under this Division on whether the order should be made. This subsection does not, however, apply in a case where, in accordance with this Division, the EPA makes a remediation order at the same time as it makes a declaration under this Division
- No. 22 Page 23, clause 25, line 16. Omit "24". Insert instead "26".
- No. 23 Page 23, clause 25, line 25, note. Omit "34". Insert instead "36".
- No. 24 Page 24, clause 26, line 3. Omit "24". Insert instead "26".
- No. 25 Page 24, clause 27, line 20. Omit "24". Insert instead "26".
- No. 26 Page 27, clause 33, line 6. Omit "28". Insert instead "30".
- No. 27 Page 28, clause 34, line 3. Omit "32 or 33". Insert instead "34 or 35".
- No. 28 Page 28, clause 34, line 8. Omit "32 or 33". Insert instead "34 or 35".
- No. 29 Page 28, clause 34, line 26. Omit "28". Insert instead "30".
- No. 30 Page 28, clause 34, lines 34 and 35. Omit "24 and 25". Insert instead "26 and 27".
- No. 31 Page 28, clause 34. Insert after line 35:
- (8) **Costs**
For the purposes of this section, the costs to a person in carrying out the requirements of an investigation or remediation order include any amount for which the person is liable, or reasonable cost or expense that the person has a duty to meet, under clause 33.
- No. 32 Page 29, clause 37, line 30. Omit "33". Insert instead "35".
- No. 33 Page 30, clause 38, line 8. Omit "37". Insert instead "39".

- No. 34 Page 31, clause 39, line 12. Omit "37". Insert instead "39".
- No. 35 Page 32, clause 42. Insert after line 10:
- (3) A declaration or order that revokes a declaration or order may only be made on the ground that the EPA does not have reasonable grounds to believe that land is contaminated in such a way as to present a significant risk of harm.
- No. 36 Page 32, clause 42, line 13. Omit "Section 15 (2) and (4)". Insert instead "Section 15 (2) and (3) (c)".
- No. 37 Page 32, clause 42, line 15. Omit "Section 19 (2) and (4) do". Insert instead "Section 21 (2) (c) does".
- No. 38 Page 32, clause 42, line 22. Omit "21". Insert instead "23".
- No. 39 Page 32, clause 42, line 22. Omit "22". Insert instead "24".
- No. 40 Page 36, clause 48, line 23. Omit "47". Insert instead "49".
- No. 41 Page 37, clause 48, line 14. Omit "47". Insert instead "49".
- No. 42 Page 37, clause 48, line 23. Omit "54". Insert instead "56".
- No. 43 Page 39, clause 52, lines 24-29. Omit all words on those lines.
- No. 44 Page 40, clause 54, line 18. Omit "48". Insert instead "50".
- No. 45 Page 42, clause 56, line 9. Omit "50". Insert instead "52".
- No. 46 Page 42, clause 56 (1). Insert after line 15:
- (e) a note of the existence of a voluntary investigation proposal in response to which the EPA has agreed not to issue an investigation order, while the proposal has not been fully carried out,
- No. 47 Page 42, clause 56 (1). Insert after line 16:
- (g) a separate part containing all such copies and notes as were formerly required, but are no longer required, under paragraphs (a)-(f) to be included in the record.
- No. 48 Page 43, clause 57 (1). Insert after line 1:
- (b) that a voluntary investigation proposal has been the subject of the EPA's agreement under section 19,
- No. 49 Page 43, clause 57 (1), line 3. Omit "24". Insert instead "26".
- No. 50 Page 43, clause 57 (1). Insert after line 4:
- (e) the completion of the carrying out of a voluntary investigation proposal that has been the subject of the EPA's agreement under section 19,

- No. 51 Page 43, clause 57 (1), line 7. Omit "24". Insert instead "26".
- No. 52 Page 43, clause 57 (1), line 8, note. Omit "50". Insert instead "52".
- No. 53 Page 43, clause 57. Insert after line 20:
- (c) that the land to which the certificate relates is the subject of a voluntary investigation proposal (or voluntary remediation proposal) that is the subject of the EPA's agreement under section 19 (or 26) - if it is the subject of such a proposal, and the proposal has not been fully carried out, at the date when the certificate is issued,
- No. 54. Page 43, clause 58 (1), line 26. Omit "is aware that his or her". Insert instead "becomes aware that the person's".
- No. 55 Page 43, clause 58 (1), line 28. Insert ", as soon as practicable after becoming so aware," after "must".
- No. 56 Page 44, clause 58 (2), line 1. Omit "is aware". Insert instead "becomes aware".
- No. 57 Page 44, clause 58 (2), line 4. Insert ", as soon as practicable after becoming so aware," after "must".
- No. 58 Page 44, clause 58, lines 25-27. Omit all words on those lines.
- No. 59 Page 63, clause 91, line 19. Omit "44, 53, 58, or 101". Insert instead "46, 55, 60 or 103".
- No. 60 Page 70, clause 103. Insert after line 14:
- A guideline so approved by the EPA has effect for the purposes of this Act subject to the terms of that approval, and the approval is taken to be part of the guideline.
- (4) The EPA may from time to time amend or revoke a guideline made by it under this section by making another such guideline in accordance with this section. The EPA may from time to time vary the terms of its approval of a guideline under this section, or revoke that approval.
- No. 61 Page 70. Insert after line 14:
- 106 Reasons for certain decisions**
- (1) If, in the exercise of any function under this Act, the EPA makes a decision on the basis that it does not have reason to believe that land is contaminated in such a way as to present a significant risk of harm, the EPA must provide a written statement of the reasons for its determination that that basis exists to any person that makes written request for those reasons in relation to that land.
- (2) The regulations may make provision with respect to any such statement of reasons, including:
- (a) the time within which a request for reasons must be made or within which the statement of reasons must be provided, and

(b) the matters to be set out in a statement of reasons.

(3) A statement of reasons is not required to be provided to a person if the person has already been notified of the reasons under section 6 or by any declaration, order or notice under Part 3.

No. 62 Page 73, clause 109 (2) (b), lines 14 and 15. Omit all words on those lines.

No. 63 Page 76, Schedule 1.3 [2], line 5. Omit "94". Insert instead "96".

No. 64 Page 77, Schedule 1.6, line 5. Omit "82". Insert instead "84".

No. 65 Page 79, Schedule 2. Insert after line 19:

5 Present guidelines continue in force

The following guidelines made by the EPA are taken to be in force for the purposes of this Act as if they had been made under this Act in accordance with section 105 (1) and (2) (a)-(c):

(a) *Contaminated Sites. Guidelines for Assessing Service Station Sites*, December 1994,

(b) *Contaminated Sites. Guidelines for the Vertical Mixing of Soil on Former Broad-Acre Agricultural Land*, January 1995,

(c) *Draft Guidelines for Consultants Reporting on Contaminated Sites*, August 1995,

(d) *Contaminated Sites. Sampling Design Guidelines*, September 1995,

(e) *Contaminated Sites. Guidelines for Assessing Banana Plantation Sites*, October 1997.
