



Duty to Report Contamination



Regional Contaminated Land Capacity Building Program

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This document forms part of a series of Contaminated Land Resources and Guides, produced as part of the Contaminated Land Capacity Building Program, as outlined on the next page.

Proudly led by the Councils of the Hunter Region

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Acknowledgement of Country

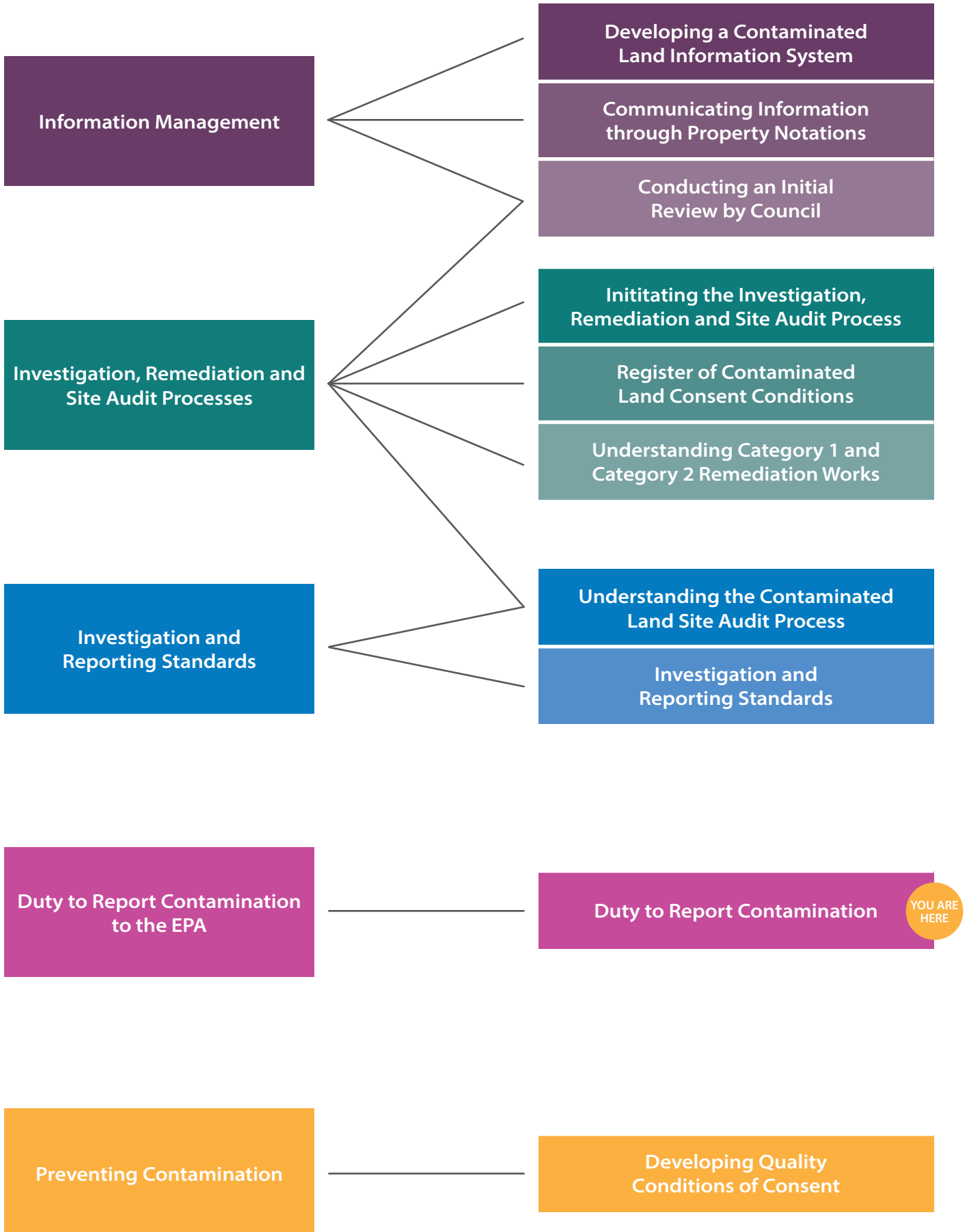
The Hunter Joint Organisation acknowledges the country and history of the traditional custodians of the lands upon which we work and live. We pay our respects to the Elders past, present and emerging, of our region, and of Australia.

Disclaimer

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Focus Areas

Supporting Resources and Guides





1. What is the Duty to Report Contamination?

Contaminated land in New South Wales (NSW) is primarily managed through two avenues:

1. Sites where contamination is considered “Significant Enough to Warrant Regulation”, sometimes referred to as SEWR, are the management responsibility of the NSW Environment Protection Authority (EPA) through the powers provided to it under the *Contaminated Land Management Act 1997*.
2. Other sites are managed by Councils via land use planning instruments through the powers provided to it under the *Environmental Planning and Assessment Act 1979* (updated in 2018).

The duty to report contamination to the NSW EPA for the NSW EPA to assess if it is significant enough to warrant regulation is a requirement under Section 60 of the *Contaminated Land Management Act 1997*, with updates provided through the *Contaminated Land Management Amendment Act 2008*. Specific details, including examples of cases when there would or would not be a duty to report are presented in the *Guidelines on the Duty to Report Contamination under the Contaminated Land Management Act 1997* (NSW EPA 2015) (herein referred to as the Duty to Report Guidelines).



2. Who should Report?

The following people are required to report contamination as soon as practical after they become aware of any contamination that meets the triggers for the duty to report:

- Anyone whose activities have contaminated land
- An owner of land that has been contaminated (noting that the duty applies to the owner regardless of whether the contamination happened before or during their ownership of the land).

Although the above people have the duty to report contamination, anyone can at any time report suspected contamination to the NSW EPA. The interests of both affected individuals and the community at large are better served by the early consideration of the risk posed by contamination. Although there is no duty to report contamination for Council as the regulatory authority for land use planning (noting there is a duty to report for Council as landowners), the *Model Contaminated Land Policy – Land Use Planning* (Hunter Joint Organisation 2024), includes the following statement relating to reporting contamination where it is uncertain if the polluter or owner has reported:

POLICY STATEMENT:

Where Council considers that contamination on a site triggers the duty to report contamination, and it is not clear if the polluter or site owner has reported the contamination, it will notify the EPA for possible action under the *Contaminated Land Management Act 1997*.



ADVISORY NOTES:

According to the *Duty to Report Guidelines* "A person who is required to report contamination to the EPA but fails to do so may be subject to prosecution. If they are convicted, the CLM Act currently provides for a maximum penalty of:

- \$1,000,000 with a further penalty of \$77,000 for each day the offence continues, in the case of a corporation, or
- \$250,000 with a further penalty of \$33,000 for each day the offence continues, in the case of an individual."



3. What are the triggers?

The triggers for the duty to report are presented in Duty to Report Guidelines Section 2.3, which outlines criteria and scenarios for various matrixes (soil, groundwater, surface water and vapour intrusion) and contaminants (including specific considerations for asbestos). The details on how the requirements should be interpreted are presented further through examples. The Duty to Report Guidelines also provides a flowchart and checklist for people assessing if there is a duty to report contamination. The flowchart is included as Figure 1 below, with references to where in the Duty to Report Guidelines further information can be found. The checklist is included in Attachment A.

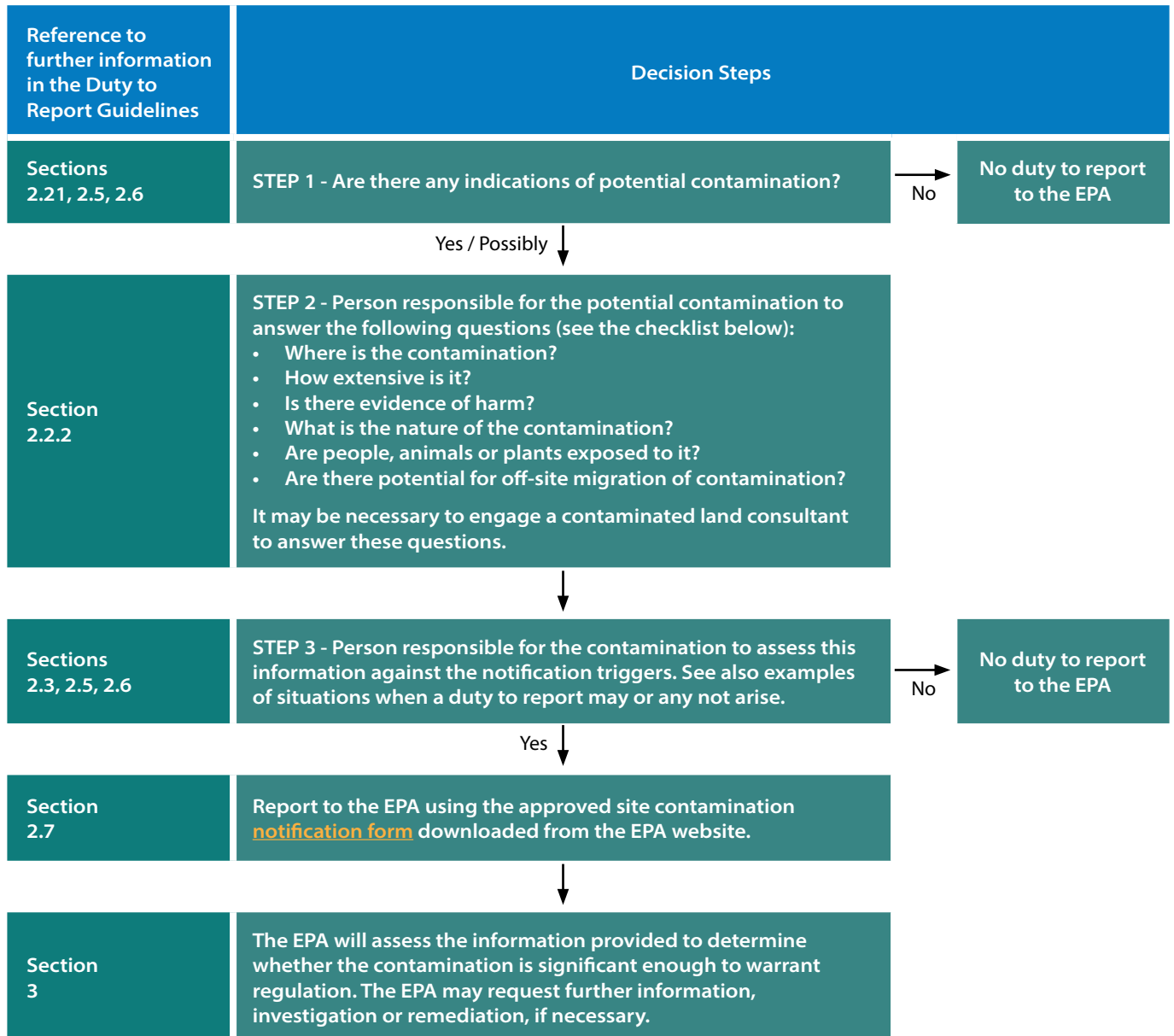


Figure 1. Decision process for use by persons responsible for reporting contamination to the EPA under the Contaminated Land Management Act 1997 (adapted from the Duty to Report Guidelines).

The Duty to Report Guidelines note that there are other notification requirements where immediate risks are identified. For example, there is a duty to report pollution incidents under the *Protection of the Environment Operations Act 1997*.

In some cases, the indicators identified in Step 1 provide enough evidence to conclude that the contamination should be reported to the NSW EPA. In those cases where the indicators suggest that contamination is present but there is uncertainty about reporting it to the NSW EPA, further investigation will be needed in accordance with the steps and objectives outlined in *Consultants Reporting on Contaminated Land – Contaminated Land Guidelines* (NSW EPA 2020), and other relevant guidelines made or approved by the NSW EPA under the CLM Act.

ADVISORY NOTES:

Although this document includes a summary of the duty to report for informative purposes, the Duty to Report Guidelines must be consulted when assessing a site for reporting requirements under Sections 60 of the Contaminated Land Management Act 1997.



4. What happens after the Site is Notified?

Once the Site is notified, the NSW EPA will assess if the notified contamination is considered significant enough to warrant regulation. Section 12 of the *Contaminated Land Management Act 1997* outlines the matters that the NSW EPA must consider in their assessment.

Where the NSW EPA considers the contamination significant enough to warrant regulation, there are a number of actions it can take as follows:

- Declaring the land as “significantly contaminated land” (section 11 of the *Contaminated Land Management Act 1997*, previously referred to as “declaration of an investigation area” and “declaration of a remediation area”)
- Issuing management orders to require site assessment, remediation and/or monitoring (section 14 of the *Contaminated Land Management Act 1997*, previously referred to as “investigation orders” and “remediation orders”)
- Approving proposals from interested parties to manage the land voluntarily, known as “approved voluntary management proposals” (section 17 of the *Contaminated Land Management Act 1997*, previously known as “voluntary investigation proposals” and “voluntary remediation proposals”)
- Liaising and negotiating with landowners or land occupiers about appropriate solutions
- Undertaking educational and public awareness programs and other measures to minimise the environmental and health implications of the contamination (section 104 of the *Contaminated Land Management Act 1997*)
- Issuing a clean-up or prevention notice under the *Protection of the Environment Operations Act 1997* (*Protection of the Environment Operations Act 1997*), regardless of whether or not the NSW EPA is the appropriate regulatory authority (section 46 of the *Contaminated Land Management Act 1997*).

When contamination is considered significant enough to warrant regulation by the NSW EPA it needs to be notified to Council. NSW EPA must also provide a list of notices that are written for all regulated sites. Section 58 of the *Contaminated Land Management Act 1997* requires the NSW EPA to make copies or details of these notices available to the public. The register of sites regulated by the NSW EPA is available on the NSW EPA webpage: <http://www.epa.nsw.gov.au/prclmapp/searchregister.aspx>

Where the contamination is not considered significant enough to warrant regulation the contamination issues are to be dealt with through the planning process with Council as the Regulatory Authority. NSW EPA has a register of all sites that have been notified (regardless of if they were considered SEWR or not) which is a useful register for councils to consult when assessing a specific site, or when updating their Contaminated Land Information System (CLIS) registers: <https://www.epa.nsw.gov.au/your-environment/contaminated-land/notified-and-regulated-contaminated-land/list-of-notified-sites>

Attachment A – Checklist for Duty to Report Contamination

The following checklist is adapted from the *Guidelines on the Duty to Report Contamination under the Contaminated Land Management Act 1997* (NSW EPA 2015).

Checklist for the Duty to Report Contamination under the <i>Contaminated Land Management Act 1997</i>		
Item to Check	Yes / No	Comments
Project Site:		
Assessed by/date:		
Step 1: Indications of possible contamination		
Review of site history, records and undertake a site visit to inspect the following:		
May the site or adjacent sites be associated with potentially contaminating activities?		
May the site or adjacent sites be associated with complaints about pollution or illegal dumping of wastes?		
Are there any gaps in the site history or doubts about whether the site could have been associated with activities causing contamination?		
Are there any chemical, physical or biological indicators of contamination (refer to Section 2.2.1 of these Duty to Report Guidelines).		
If the answers to all above questions are No, there is no duty to report contamination to the NSW EPA under Section 60 of the <i>Contaminated Land Management Act 1997</i> . If the answer to any of the above questions is Yes, please proceed to Step 2.		
Step 2: Assessing the Site		
Once the indicators of contamination have been identified, check the following:		
Has an investigation of the potential contaminants of concern been conducted to define the nature, degree and extent of contamination?		
Have site investigation(s) and reporting followed the requirements of Contaminated Sites: Guidelines for Consultants Reporting on Contaminated Sites (EPA 2020) and Schedule B2 (Guideline on Site Characterisation) of the National Environment Protection (Assessment of Site Contamination) Measure 1999 (NEPC 2013)?		
Have site investigation(s) and reporting followed the requirements of Schedule B1 (Guideline on Investigation Levels for Soil and Groundwater) of the National Environment Protection (Assessment of Site Contamination) Measure 1999 (NEPC 2013)?		
Has the checklist for Exposure Assessment in Appendix VII of the Contaminated Sites: Guidelines for the NSW Site Auditor Scheme, 2nd edition (2017) been considered (or exposure assessment in future revisions of the site auditor guidelines)?		
Has any evidence of, or potential for, migration of contaminants from the site and its adjacent sites been appropriately addressed?		
Are the results of the assessment assessed against the notification triggers in Section 2.3 of the Duty to Report Guidelines?		
Was the Contaminated Land Consultant engaged a certified consultant, or qualified and experienced in accordance with Schedule B9 of the National Environment Protection (Assessment of Site Contamination) Measure 1999 (NEPC 2013)?		
Was the Contaminated Land Consultant engaged aware that the investigation is to provide information for assessment of reporting obligations under section 60 of the <i>Contaminated Land Management Act 1997</i> .		
If the answer to all questions in Step 2 is Yes, and the assessments undertaken indicate that no contamination is present, there is no requirement to report to the NSW EPA under Section 60 of the <i>Contaminated Land Management Act 1997</i>		



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