

Contaminated land policy

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EPA acknowledges Aboriginal people as the first peoples and Traditional custodians of the land and water on which we live, work and depend. We pay respect to Aboriginal Elders, past and present. As Victoria's environmental regulator, we pay respect to how Country has been protected and cared for by Aboriginal people over many tens of thousands of years. We acknowledge the unique spiritual and cultural significance of land, water and all that is in the environment to Traditional Owners, and recognise their continuing connection to, and aspirations for Country.

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1. Purpose

Environment Protection Authority Victoria (EPA) is Victoria's environmental regulator.

As an independent statutory authority under the *Environment Protection Act 2017* (the Act), our regulatory role is to prevent and reduce harm from pollution and waste, including circumstances where pollution and waste has caused contamination of land and groundwater. We do this in several ways:

- working with the community, industry, business and governments to prevent and reduce the harmful impacts of pollution and waste on Victoria's environment and people
- taking proportionate regulatory action against those who fail to meet their obligations
- supporting all Victorians to understand their obligations under the law
- providing clear advice on the state of our environment so that people can make informed decisions about their health.

The Act and Environment Protection Regulations 2021 (the Regulations) intended to commence on 1 July 2021 introduce a range of significant changes to environmental protection laws. These include new obligations relating to the risks contaminated land poses to human health and the environment - a **duty to manage** contamination risks and a **duty to notify** EPA in certain circumstances.

This policy explains the contaminated land duties in the Act and their role in minimising contaminated land risks of harm. It also describes how EPA will implement the duties, and how EPA expects duty holders to approach compliance.

This policy should be read together with the following EPA documents:

- *Regulatory strategy 2020-2025* (publication 1800)
- *Compliance and enforcement policy* (publication 1798).

2. The need for regulation

The Act adopts a preventative approach to eliminating, or otherwise reducing, risks of harm to human health and the environment by requiring action *before* an activity is commenced and periodically once that activity commences to ensure risk controls are working.

Many parts of the environment, however, have already been harmed due to a failure to manage the risks associated with our activities. Land and groundwater in many areas of metropolitan Melbourne and regional Victoria has become contaminated through:

- our industrial and manufacturing heritage
- poor environmental practices for much of the last century
- poor understanding of the adverse effects of contaminants previously thought benign
- substances and practices originally thought to pose little or no risk that are later revealed as harmful.

Many forms of contamination are dynamic in nature. They can migrate in groundwater or from surface run-off or wind, generate harmful vapours and cause onsite or offsite impacts to ecosystems. Contamination can also pose unacceptable health risks in diverse contexts. If left unmanaged, contamination can become increasingly challenging and costly to address, particularly where the use of the land changes.

These sources of harm require proactive action to ensure the use of contaminated land and groundwater does not place the community or the environment at risk of harm. This means ensuring the current use of land and groundwater is managed to minimise these risks of harm. Where land use changes are proposed, it also means that remediation of contaminated land is to a level 'fit for purpose' for its intended future use.

The Act introduces new duties for contaminated land. These apply to harm that has already occurred or is continuing to occur - even in the absence of the harmful activities. These duties are fundamentally focussed on addressing risk that is often poorly identified or understood.

What is contaminated land?

Section 35 of the Environment Protection Act 2017 defines land to be contaminated if:

waste, a chemical substance or a prescribed substance is present on or under the surface of the land, and the waste, chemical substance or prescribed substance—

- (a) is present in a concentration above the background level; and*
- (b) creates a risk of harm to human health or the environment.*

The background level for a given contaminant is the naturally occurring concentration of that substance in the vicinity unless EPA makes a determination for that contaminant or a process for deriving a background level.

The meaning of land includes publicly or privately owned land and includes any buildings or other structures permanently affixed to the land, and groundwater. Groundwater means any water contained in or occurring in a geological structure or formation or an artificial landfill below the surface of land.

3. What are the new duties?

The three key duties that address contaminated land risks – the general environmental duty (GED), the **duty to manage** and the **duty to notify** – all sit within a broader risk management and response scheme under the Act. Land contamination issues will also continue to be addressed under other regulatory processes, in particular the *Planning and Environment Act 1987* and the *Environment Effects Act 1978*.

One important way that the new duties support other regulatory processes, such as for changes in land use planning, is the focus on information disclosure and transparency promoted by the duties. Combined with information sources such as EPA's Public Register and Victoria Unearthed, this supports increasing knowledge and clarity about contaminated land risks. It can help those managing, selling or buying land to make well informed decisions; and EPA and others focus their efforts on the highest risks.

The **duty to manage** contaminated land (section 39) requires a person in management or control of land to minimise risks of harm to human health or the environment from the presence of contamination in land or groundwater:

- A person can fulfil their duty based on what is known about contamination at the site, including the *potential* for contamination to be present, and when it is reasonable to expect a person (in management or control of the site) to have that knowledge.
- As knowledge on the potential for contamination increases, then the scope of a person's duty also increases, whether to assess risks or to manage them.

The Regulations set out circumstances where contamination may need to be reported to EPA under the **duty to notify of contamination** (section 40). The duty to notify of contamination promotes transparency of information, to continuously improve the available knowledge for all parties and improve the management of contaminated land risks – whether directly between parties involved with the land or by EPA.

Figure 1 represents the relationship between knowledge of different states of contamination and the corresponding compliance response that is expected under the key duties. Part 3.5 of the Act sets out the contamination duties.

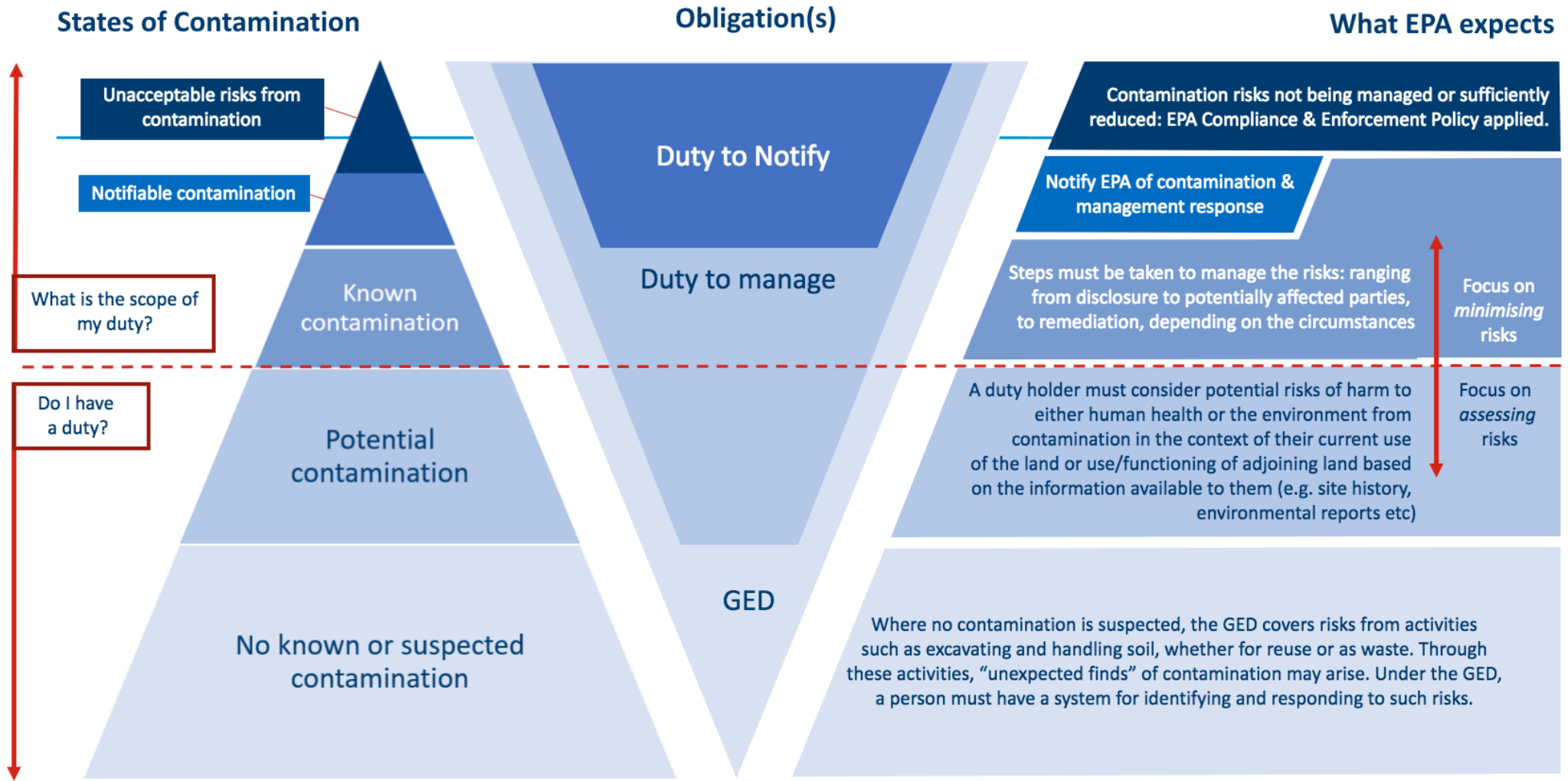


Figure 1 Contaminated land obligations and the knowledge of site contamination

The varying states of contamination and corresponding duties and expectations are set out in Section 4 of in this policy.

3.1 Approach to managing risk

The contaminated land duties are designed to manage risk in a balanced way. Core elements of the duties are outlined below.

Contaminated land duties work alongside the GED	Where a person engages in an activity that involves soil or groundwater that may be contaminated, the general environmental duty (GED) requires the person to minimise those risks in conducting that activity. This obligation applies in addition to the contaminated land duties.
The duties apply to persons 'in management or control' of land	<p>The person in management or control of land is responsible for minimising contaminated land risks of harm. The duty applies where a person who exercises power over the land, can make choices about the land or is formally recognised as holding such powers.</p> <p>Note: This policy uses 'person in management or control' and 'duty holder' interchangeably in regard to contaminated land duties.</p>
'Management or control' is based on facts and the scope of your power	<p>Typical circumstances in which a person can exercise powers over land include:</p> <ul style="list-style-type: none">• a person who holds a legal interest in the land, such as an owner, lease holder or committee of management• a person who, for a period, is granted access to, or use of, the land. <p>The extent of a person's management or control over land helps determine the scope of any duties that person may hold. Importantly, more than one person can exercise control over land at a point in time. The facts of each case will vary and may require discussion between parties.</p>
The duties relate to knowledge of contamination	<p>The scope of the person's duty is informed by what they know or ought reasonably to know about the presence of contamination on the site. The duties promote information disclosure to continuously improve the available knowledge.</p> <p>For instance, the duty to manage contaminated land clarifies that a person coming into management or control of land has a right to know what the current duty holder knows about the status of contamination on the site and/or coming from the site.</p>
Notification relates to reasonable awareness	Where a person manages or controls land where notifiable contamination is present, their duty to report the contamination to EPA arises when they are aware or should reasonably have been aware of its presence.
The level of obligation changes with knowledge	<p>As knowledge of contamination changes, the level of expected action also changes. For example:</p> <ul style="list-style-type: none">• Potential contamination will require assessment of the risks.• Known contamination risks will need to be managed.• Notifiable contamination must be reported to EPA. <p>The level of obligation is therefore dynamic. It promotes, and responds to, increasing knowledge and communication.</p>

An important feature of the duties is how they guide proportionate, risk-based and evidence-based responses to potential or known contamination. This also extends to how EPA enforces the law, where this is required. The following principles relate to the way that proportionate risk management is promoted by the duties.

<p>The duties address risk management, not just remediation</p>	<p>Where a person manages or controls contaminated land, their duty is to minimise the risks of harm from the presence of the contamination – the level of action required is proportionate to the risks. This may involve physical and site management controls, clean up and remediation, where reasonably practicable.</p>
<p>The duty to manage relates to the current use of the land</p>	<p>To ensure a proportionate level of obligation, the duty to manage contaminated land is limited to consideration of the current use of the land, including any affected offsite land. In addition, the standard of conduct required to discharge the duty is limited to what is reasonably practicable to minimise the risks of harm for that current use.</p>
<p>The duty to manage promotes a proportionate, voluntary approach</p>	<p>The duty to manage contaminated land provides a legal basis for duty holders to prioritise and direct resources toward addressing harm from contamination, in a manner proportionate to the associated risks. In many cases, this will be promoted by the incentive to improve the value of land and adjacent environments.</p>
<p>The duties provide for targeted EPA interventions</p>	<p>The duty to manage contaminated land enables parties with a shared interest in contaminated land (for example landlord/tenant arrangements, parties to a transfer of ownership) to agree between themselves on how best to minimise risks of harm to human health and the environment without direct involvement of EPA.</p> <p>Where such arrangements fail to result in the minimisation of risks or to prevent contamination from spreading off-site, then EPA will intervene in line with its <i>Compliance and enforcement policy</i>.</p>
<p>The polluter pays principle applies</p>	<p>Where a person is responsible for the pollution or waste that caused or contributed to the contamination, then the polluter pays principle (Part 2 of the Act) applies to risk management and remediation – which is a higher standard of conduct than under the duty to manage alone.</p> <p>This can be enforced directly by EPA through notices and pursued through sanctions for non-compliance with notices.</p> <p>Further, a person who comes into management or control of land that has been polluted can also pursue their reasonable costs of complying with the duty to manage from the polluter.</p>

3.2 When is it 'reasonable' to know contamination is present?

Contamination is often underground and not readily observed from the surface of a site. It often contains substances that are 'invisible'. These characteristics require an iterative approach to determine if land is contaminated, including laboratory analysis to confirm the presence of many contaminants.

For a person in management or control of land (to whatever extent), the scope of the duties relates to what they know, or reasonably should know, about the status of contamination on that land.

This requires people in management or control of land to consider:

- what they **actually know** about the condition of land they manage or control, and
- what they **ought reasonably to know** when considering what others in similar circumstances would know.

All persons in management or control of land must take an active approach to considering the facts at hand about contamination, and what can be inferred from these, to assess the potential for their land to be contaminated.

3.3 Understanding 'risk management' under the duties

The key attributes of risk management expected under the Act (section 39(2)) for the duty to manage contaminated land are set out in Figure 2. They form a hierarchy of measures in relation to contaminated land risks:

- **Review, profile and characterise the risks:** This can be achieved by reviewing what is known or suspected about the site and its prior use, identifying the potential for contamination and then investigating and assessing the contamination based on that information. The goal is to characterise the site according to its potential for contamination to be present.
- **Disclose information on the risks:** By providing adequate information to parties that may be affected (including parties expected to take management or control) relating to identification, results of investigations, and the known risks, then those parties can make decisions informed by that knowledge, including to meet their own duties, where relevant.
- **Contain, control and cleanup:** Minimising the risks of harm from the contamination may be achieved through the provision and maintenance of appropriate containment and control measures and may also include cleanup activities to remove or minimise the risk where reasonably practicable. Such actions may occur onsite and offsite.

These elements play varying roles depending on the level of knowledge of contamination relating to a site. They may be used in combination or as alternative pathways depending on the status and nature of risks associated with the contamination.

-
- *Identification of any contamination that the person knows or ought reasonably to know of.*
 - *Investigation and assessment of the contamination.*
 - *Provision and maintenance of reasonably practicable measures to minimise risks of harm, including undertaking cleanup activities where reasonably practicable.*
 - *Provision of adequate information to any person you reasonably believe may be affected by the contamination.*
 - *Provision of adequate information to enable any person who is reasonably expected to become a person in management or control of the contaminated land to comply with the duty to manage contaminated land.*
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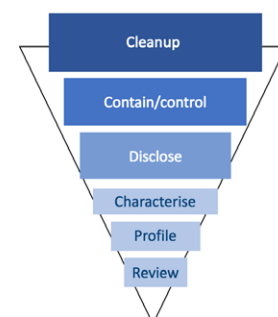


Figure 2: Hierarchy of risk management measures for contamination

3.4. Role of the GED and contamination

The GED underlies the duty to manage contaminated land. It applies to risks arising from activities that may disturb or exacerbate contamination, causing someone to be exposed to the contamination, or where an activity involves the use of groundwater that may be contaminated.

Activities such as earthworks, resurfacing and major landscaping can uncover contamination that was previously unknown or not detected. For example, past practices of burying waste onsite, or where contaminated soil has been imported as part of historical earthworks. These may only be detected when the surface of a site is disturbed.

A requirement to anticipate and be ready to manage 'unexpected finds' is common in industries where soil is disturbed or where past surveys, such as asbestos surveys, make assumptions on the presence of contamination rather than through direct sampling. Similarly, when accessing groundwater in an area that may be impacted by contamination, duty holders must consider and manage risks of exposing a person or the environment to contamination.

Under the GED (section 25(4)), duty holders must have systems for identifying, assessing and minimising these risks. They also must train those involved to identify and respond appropriately to 'unexpected finds' that suggest contamination is present or more widespread at the site than anticipated.

3.5 How the GED and the contamination duties relate

The contaminated land duties form a cohesive 'scheme' of obligations that follow a logical sequence:

1. A person must first consider the risk of harm regarding the activities they are proposing to engage in – so the first consideration is compliance with the GED.
2. The duty to manage contamination requires a person managing or controlling land to reflect on direct knowledge they have about the condition of their land. They must also consider indirect knowledge about the potential for contamination to be present (for example through site history and available databases) to determine if the duty applies in their circumstances. If it does they need to consider the scope of their duty.
3. Having taken steps to understand the presence and nature of contamination on their site, if they become aware (or should reasonably have become aware) that the contamination is notifiable, then they are under a duty to notify EPA.

This also means that a duty holder is not expected to undertake an investigation solely for the purpose of determining if they have notifiable contamination. It is the accumulation of knowledge of the site, and the knowledge arising from their duty to manage, that may bring them to the point of the requirement to notify.

There are duty holders **who already know** of the presence of notifiable contamination and they are expected to notify EPA. These duty holders will primarily be those that already have significant information on their sites from detailed site investigations, the outcome of exercising due diligence and through environmental risk management.

4. Contaminated land duties and status of contamination

Under the contaminated land duties, EPA recognises that the nature of obligations changes in line with the following states of land with respect to the presence of contamination:

- No known or suspected contamination (most land in Victoria).
- Potential contamination (where the duty holder must consider and proportionately investigate risks).
- Known contamination (where the duty holder must manage the risks).
- Notifiable contamination (where the duty holder must notify EPA).
- Contamination that presents an unacceptable risk of harm (where compliance and enforcement action can be expected).

4.1 No known or suspected potential contamination

For most land in Victoria, the contaminated land duties will have little or no application because it falls outside the definition of 'contaminated land' under the Act. The following principles help determine when a person is required to take steps to assess and manage contaminated land:

The duty to manage applies when contamination is reasonably foreseeable

Action under the duty to manage is only expected when a person knows or ought reasonably to know that land they control or manage is potentially contaminated. The risk of harm from contamination must be **reasonably foreseeable** for a person to be reasonably expected to comply with the duty to manage.

Reasonably foreseeable relates to direct and indirect knowledge

The concept of 'reasonably foreseeable' relates to evidence of contamination that the person in management or control knows about, their consideration of this evidence, and applying logic to assess whether contamination risks might exist. Given the often 'hidden' nature of contamination, this is an active process and involves inference from available facts.

Some knowledge suggests presence of contamination

Certain site knowledge can suggest the presence of contamination, including:

- past activities that are known to cause pollution
 - site records of incidents, activities and events that took place or may be assumed to have taken place, including insurance claims
 - visual observations of contamination, contaminating activities or infrastructure
 - odours or other evidence of contamination
 - public records indicating who owned or used the site in the past.
-

Some knowledge reasonably suggests no contamination

It would be reasonable to assume land is **not contaminated** when:

- **a person has no direct knowledge of contamination being present or likely to be present:** for example no information in reports or site assessments disclosed as part of a sale of land, and no visible evidence of contamination (such as demolition waste, soil stains or signs of leaked substances); and
 - **there is no reasonable indirect knowledge that contamination could be present:** for example where, based on reasonable consideration of the use and historical uses of the site, its location and proximity to polluting activities, there is no information reasonably available to indicate likely contamination.
-

Unexpected finds should still be considered

A person could reasonably conclude that there is no direct or indirect knowledge for them to suspect the presence of contamination. However, contamination can be 'hidden' below the surface or records of site use can be incomplete and they must consider the possibility of an 'unexpected find'. This expectation is equally important to those with temporary management or control of land where undertaking activities that may reveal the presence of contamination (for example demolition and excavation).

Here, the GED requires that you have in place systems for anticipating and managing risks arising from unexpected finds, including training workers to understand what contamination may look like and how to respond.

4.2 Potential contamination

The duty to manage applies when a person in management or control of land has, or reasonably should have, **access to direct or indirect knowledge** about the presence of contamination. The following principles apply.

A failure to consider information on the potential for contamination may breach multiple duties

Where there is a reasonable basis for concluding that a site is potentially contaminated, a person in management or control must consider the risks of harm that could arise from the presence of contamination.

A person may also breach the GED if they fail to consider available knowledge on the potential for contamination to be present before undertaking certain activities (for example disturbance of soil). A failure to assess contamination in soil that is then excavated and removed (including when it is claimed to be 'clean fill'), may also breach the industrial waste duties where there was reasonable evidence of potential contamination.

The duty holder must decide if further enquiries are warranted

To understand what, if any, action is required under the Act duties, a person in management or control of land must assess the facts and evidence available about their land and decide if further enquiries are required to fulfil their duties.

Action is proportionate to available evidence

The level of assessment that EPA expects of a duty holder to determine what, if any, action is required is **proportionate to the weight of evidence that they possess or reasonably could access**.

As the weight of evidence regarding the potential for contamination increases, the duty holder's enquiries regarding contamination should be more extensive. As the evidence is more and more suggestive of a risk of harm arising from the presence of contamination, their enquiries must become more thorough.

A detailed site investigation isn't always required

Where there is a potential for contamination to be present, satisfying the duty to manage does not automatically require a detailed site investigation.

The first stage is to decide if there is enough evidence to confirm contamination is present. This will generally be satisfied by a desktop review of available evidence and may include some targeted soil sampling and analysis.

4.3 Known contamination

The duty to manage applies when a person in management or control of land knows or has made reasonable assumptions of the presence of contamination. The following principles apply.

A failure to minimise risks may breach multiple duties

A failure to minimise risks of harm associated with the contamination, including any failure to prevent the contamination from migrating offsite, can breach the duty to manage contaminated land.

A person may also breach the GED if they conduct activities that expose people or the environment to a risk of harm from the contamination, or alter site conditions in a way that increases a risk of harm to people or the environment. For example:

- changes to the landscape of a contaminated site may mobilise contamination in soil as a result of increased water entering the soil
- stockpiled contaminated soil may be vulnerable to offsite run-off during rain events.

Contamination risks must be assessed

Where there is a sufficient weight of evidence suggesting the presence of contamination, the duty holder must take steps to characterise the nature of the risks of harm to people and the environment.

Assess and manage the contamination risks of harm based on current use

The standard of conduct in managing contaminated land risks depends on how the person's land, or any affected neighbouring land, is currently being used.

The fact that land meets the definition of contaminated land alone does not necessarily mean the risk of harm is unacceptable for the use of that land.

A duty holder must consider what pathways of exposure exist in relation to the contamination, both to human health and the environment based on the current use of the land (and offsite uses or the functioning of the environment, where relevant).

Management must be proportionate while minimising risks (so far as is reasonably practicable)

The level of management action will be determined by the nature of the contamination, its capacity to cause harm (for example in dust, migration in groundwater, transferred through vapour) and the degree of harm that could result.

Duty holders must implement all reasonably practicable risk controls. Examples of management actions include isolating contaminated areas to minimise exposure, removing the source of the contamination, and undertaking other types of remediation.

Disclosure is the minimum standard of conduct expected for known contamination

Assuming there are no exposure routes creating a risk of harm and contamination is not migrating offsite, then the residual risks may be minimised by disclosing the presence of the contamination and the management actions in response.

Disclosure must be made to anyone coming into management or control of the site, and may be required to persons offsite who may be affected by the contamination.

When activities change, risk and the effectiveness of risk controls must be reviewed

Whenever a change occurs or is planned for a contaminated site that may affect the risk profile or risk control measures on site, the duty holder must review the adequacy of the risk control measures.

For example, if earthworks are proposed that change the drainage on the site or expose soil to the atmosphere, then the risk of harm from the contamination, and any means of controlling the risk, must be re-evaluated.

Some types of contamination must be managed in a specific way

The Regulations specify the minimum standard of conduct required to manage contamination that includes non-aqueous phase liquid (NAPL). NAPL can constitute a significant ongoing source of contamination to soil, groundwater and soil vapour, both on and offsite. NAPL must be cleaned up, and the person who manages or controls the *source* of the NAPL must remove it, so far as is reasonably practicable.

Any failure to do so is a breach of the duty to manage contaminated land.

4.4 Notifiable contamination

Certain circumstances of contamination must be notified to EPA. The Regulations set out all instances that are notifiable, including a complete list of the contaminant types.¹

These contaminants are notifiable when either a person could be exposed to the contaminants, or the contaminants migrate beyond a person's management or control.

EPA must also be provided with information on the management response, or proposed management response, in relation to the contamination, and the following principles apply.

The duty to notify applies when a person is aware, or should be aware, of the contamination

Notifiable contamination is limited to well-understood, routinely tested contaminants of concern, and a person has a duty to notify EPA when they become aware, or should reasonably have been aware, that they manage or control land where notifiable contamination is present.

In some instances, EPA may be **informally** aware of the presence of contamination at a site (for example through past licencing or compliance interactions). This **does** not satisfy the duty holder's requirement to notify, and it is particularly important that duty holders notifying EPA provide information on how the risk of harm from contamination is being, or are proposed to be, managed.

Multiple parties can owe the duty: only one notification is required

While the duty to notify is shared between all persons with a level of management or control over land, once a valid notification is received the other duty holders are not required to make a separate notification, unless there is additional information to provide. Duty holders who share management or control are expected to consult one another on who will notify EPA, and to ensure the information provided to EPA is also shared among those sharing the duty.

¹ The Regulations cover all notifiable circumstances and completely replace the thresholds set out section 37(b) of the Act.

<p>Guidance and improving knowledge will assist in raising awareness</p>	<p>EPA will use guidance and stakeholder engagement to raise the awareness of those who manage or control contaminated land, and those who advise them, to help them to recognise when they must make a notification.</p> <p>EPA anticipates that as a result of actions being carried out to achieve compliance with the GED and duty to manage contaminated land, some duty holders will over time become aware of notifiable contamination on land they manage or control.</p>
<p>Notification does not shift duties or obligations</p>	<p>Responsibility to manage contamination does not shift to EPA once it is notified – it is always the responsibility of each person in management or control of the land.</p> <p>The duty to manage, which applies to all contaminants of concern, whether notifiable or otherwise, is the primary means by which risks are addressed.</p> <p>The presence of contamination in notifiable circumstances does not in itself confirm an unacceptable risk of harm at that site. However, further assessment and management may be required to ensure the site is safe for its current use and is not adversely impacting on adjacent occupants or the environment.</p>
<p>Explaining your management response will assist EPA’s regulatory focus</p>	<p>EPA recognises that most persons in management or control of land will act responsibly to manage the risks of harm posed by contamination. By providing information on how notifiable contamination is being managed, duty holders help EPA target regulatory response towards contamination where the risk is not appropriately managed.</p>
<p>Disclosure helps improve knowledge</p>	<p>Notifications made under the duty to notify will provide information on the nature and distribution of contaminated sites in Victoria. This information will support EPA to make more informed decisions when granting permissions, advise planning authorities on appropriate land use and assist in the evaluation of Victoria’s environment against the environment reference standards.</p>
<p>Some notifiable circumstances are exempt from notifying</p>	<p>The Regulations exempt certain circumstances from the requirement to notify, including those where a statement of environmental audit has been issued or where a remedial notice is in place. However, there are limitations on these exemptions, including where there has been a material change since the audit was completed, such as when a new type of notifiable contamination is identified.</p>
<p>Notifiable contaminants are not the only ones that create a risk of harm</p>	<p>The contamination required to be notified to EPA does not cover all contaminants of concern nor are they necessarily the most harmful or toxic to the environment. All types of contamination that can create a risk of harm must be addressed under the GED and the duty to manage, including contaminants that are not notifiable.</p>

4.5 Unacceptable risks of harm from contamination

Some levels of contamination create an unacceptable risk of harm to human health or the environment. For example, contaminated land proposed for a sensitive use, such as a childcare centre, must meet the highest standards of remediation before it can be safely used for that purpose. Contamination that is actively spreading to adjacent land or into groundwater or surface water is more likely to present an unacceptable risk of harm. This is because it increases the area harmed by contamination and creates more opportunities for exposure to occur. More importantly, it has the potential to expose people to harm who would not be reasonably expected to know that such harm could occur, and therefore would not know to minimise their exposure risks.

EPA expects risks of harm to be minimised so far as reasonably practicable, either under a person's GED or duty to manage as appropriate, and the following principles apply.

Minimising risk may go beyond the current use

The duty to manage requires a person to minimise the risk so far as is reasonably practicable, which starts with considering elimination of such risk. As a minimum, a risk of harm from contamination must be minimised to a level that makes the land safe for its current use and ensures contamination does not migrate offsite.

Where it is reasonably practicable to reduce the risk further, the duty holder must take that action. In practice a combination of measures - such as some remediation, containment and disclosure - is likely to be available to manage the risk of harm.

The polluter pays principle applies to contaminated sites

Where the person who caused or contributed to the contamination can be identified, EPA can require that person to bear the cost of containment and abatement of the contamination itself. This may be a higher standard of cleanup than set by the duty to manage.

Unacceptable risks of harm are not limited to notifiable contamination

Unacceptable risks of harm from contaminated land is **not** limited to notifiable contamination. New sources and types of contamination, or other substances not captured on the list of notifiable contamination types, may be more harmful or toxic to the environment and require action by the person in management or control of the land, so far as is reasonably practicable.

Risk management is dynamic, considering hazards and controls

The duty to manage contaminated land risks and the GED are enduring obligations. The scope of these duties can change as new knowledge becomes available on associated risks or reasonably practicable means of minimising risks.

It is expected that persons in management or control of land where potentially polluting activities occur or have occurred or where waste is present are to keep abreast of newly identified types of contamination, risk controls, and remediation activities to prevent, minimise and restore land that is contaminated.

5. Approach to implementation

EPA recognises that in many instances those owing a duty to manage contaminated land under the Act will not have caused or contributed to that contamination. Even those who have caused or contributed to past contamination may have done so before the impact of contamination was understood or through activities that were lawful at the time. On the other hand, much contamination exists due to poor site practices, indifference to the consequence of polluting activities and in some instances, intentional illegal activity.

The level of knowledge on contamination varies greatly between different duty holders and will continue to evolve over time, owing in part to the absence of any prior positive duties to hold duty holders to account for that contamination.

EPA expects that duty holders will comply with the new scheme from commencement, particularly where duty holders are already aware of the presence of notifiable contamination from past assessments and where such contamination is identified and addressed in reports.

EPA will develop and progressively release a range of guidance documents to make clear the standard of conduct and risks management expected of duty holders. As knowledge in the regulatory community improves from making that guidance available, EPA's expectations of duty holders will increase.

EPA will implement the contaminated land framework in line with our *Compliance and enforcement policy* (publication 1798) and in a manner that is proportionate to the risk posed by the presence of the contamination. Duty holders are expected to follow guidance, and this will be supported by EPA site visits and the issue of remedial notices as appropriate, and targeted, risk-based strategic actions to address unacceptable risks of harm from contamination across Victoria.

6. References

Resource type	Title	Description	EPA publication
Strategy	<i>Regulatory strategy 2020–2025</i>	EPA's vision for delivery of our regulatory functions and activities over the next five years.	www.epa.vic.gov.au/about-epa/publications/1800-1
Policy	<i>Compliance and enforcement policy</i>	Outlines EPA's approach, method and priorities for ensuring compliance with our Acts and carrying out our compliance and enforcement powers.	www.epa.vic.gov.au/about-epa/publications/1798-1



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