

# Implementing the National Environment Protection (Assessment of Contaminated Sites) Measure amendment 2013

Information  
bulletin



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## What is the National Environment Protection (Assessment of Site Contamination) Measure?

The National Environment Protection (Assessment of Site Contamination) Measure (the 'ASC NEPM') was created in 1999. It aims to provide adequate protection of human health and the environment where site contamination has occurred, through the development of an efficient and effective nationally consistent approach to the assessment of site contamination. It is intended for use by the broader contaminated environments community which includes regulators, site assessors, environmental auditors, land owners, developers and industry.

In Victoria, the ASC NEPM is mainly implemented through the State Environment Protection Policy (Prevention and Management of Contamination of Land) 2002.<sup>1</sup> However, it is also indirectly administered through the State Environment Protection Policy (Groundwaters of Victoria) 1997, the Environment Protection (Industrial Waste Resource) Regulations 2009, the *Planning and Environment Act 1987* and the environmental audit system for contaminated land, which provides the administrative framework for assessing site contamination.

## The ASC NEPM review

As scientific understanding of the substances and interactions with the environment improve, so too does our ability to provide more accurate analysis on the acceptability of substances in the environment and their influence on human health.

The need to incorporate this new scientific and technical information into the ASC NEPM was recognised in its initial drafting, through the inclusion of a requirement for future review. This inclusion helped ensure maintenance of the scientific accuracy of the document, and ultimately ensure an appropriate balance between essential and unnecessary remediation.

The review of the ASC NEPM was initiated in 2007 and from that time EPA Victoria (EPA) has represented the Victorian Government within the process. EPA has

provided a conduit for agencies such as the Department of Health and WorkSafe to provide input, and participated in development of revisions to the various Schedules of the ASC NEPM. Revisions of the ASC NEPM has also involved key experts within the industry and academia.

The final document is technically detailed, and achieving consensus on the changes considered necessary by the range of industry and academic experts, and government departments nationally was a lengthy process.

The amended ASC NEPM was agreed to by the Environment Ministers of Australia at a meeting of the Standing Council on Environment and Water (SCEW) meeting on 11 April 2013. The amended ASC NEPM formally came into operation on 16 May 2013.

Further specific information on the ASC NEPM, including access to the full document can be found on the SCEW website: <http://www.scew.gov.au/nepms/assessment-of-site-contamination.html>

## Resulting legislative changes in Victoria

As noted, the ASC NEPM is directly implemented through the State Environment Protection Policy (Prevention and Management of Contaminated Land) 2002 ('SEPP PMCL') in Victoria.

Administrative changes to SEPP PMCL were gazetted to reflect the amendment to the ASC NEPM and provide clarity to all Victorians that the amendment is now to be used, on September 26.

These changes only effected the nomenclature of the NEPM, and the updating of Departmental, legislative and guidance references. A full review of the SEPP PMCL is anticipated to be undertaken at a later date. The specific changes to the text can be found on the [Victorian Government Gazette website](#) (see page 2439).

## When to begin using the ASC NEPM amendment

The amended ASC NEPM formally came into operation on 16 May 2013. As this reflects the most current agreed science and will soon be codified into Victorian law, EPA Victoria expects the amended ASC NEPM to be used for all new and early staged site assessments. For sites which have progressed significantly there are transitional arrangements in place (see below).

<sup>1</sup> For example, the NEPM health investigation levels have been incorporated as objectives to determine whether the level of a contaminant at a site poses an unacceptable risk to protected beneficial uses, in the Victorian State Environment Protection Policy (Prevention and Management of Contamination of Land) No. S95, Gazette 4/6/2002

## Transitional arrangements

Regulators in the states and territories of Australia have agreed, in principle, to a transition period of up to 12 months for full implementation of the amended ASC NEPM. The transition period allows for regulators to implement any legislative or administrative steps required to put the amendment into effect.

During the 12 month transition period, Victoria will allow companies to finalise and submit work, which is consistent with the original ASC NEPM and already substantially progressed, for auditor review or to submit final reports directly to the relevant jurisdiction where no auditor review is involved *based on appropriate justification*.

Examples of where a site assessment would be considered substantially progressed include:

- a contract has been awarded and the Sampling and Analysis Quality Plan has been finalised and the field work has commenced or is imminent at the time of registration of the amendment

or

- the site assessment report has been submitted for auditor review.

In addition, for some newly included contaminants in the amended ASC NEPM, some laboratory methods may not be commonly available to undertake appropriate assessment. The 12 month transition period will allow laboratories time to modify relevant procedures and processes.

With these practicalities in mind, the States and territories of Australia expect that all site contamination assessment reports dated from 16 May 2014 will be consistent with the amended ASC NEPM unless alternative arrangements have been agreed with the relevant regulator.

## What constitutes appropriate justification?

Explanation of why use of the original ASC NEPM constitutes no added unacceptable risk in the opinion of the auditor (or to the satisfaction of the appropriate jurisdiction where the work is taking place outside of an audit).

Where one cannot be confident that no added unacceptable risk would exist, can an auditor use statement of environmental audit (SoEA) conditions to manage parts of the site that met the original ASC NEPM but which don't meet the amended ASC NEPM?

This depends on the risk posed, the requirements of the party who requested the audit (council/site owner/EPA etc), and the opinion of the auditor.

If the following items are met, then it may be appropriate to use a SoEA to manage aspects of the site where there is concern that the assessment and management decisions made in accordance with the original ASC NEPM would not meet the requirements of the amendment:

- It is the auditor's opinion that a certificate of environmental audit could not otherwise be achieved.
- The risk presented by those aspects of the site in question are restricted to the site, i.e. do not pose any offsite risks.
- It is the view of those who requested the audit that a statement of environmental audit is an acceptable outcome.
- The conditions imposed can be practically implemented.

## Further information

Details of the ASC NEPM, including links to the schedules and appropriate legal referencing, and additional training materials can be found on the SCEW website:

<http://www.scew.gov.au/nepms/assessment-of-site-contamination.html>

Questions concerning policy and guidance in relation to the ASC NEPM, can be directed to EPA's Policy & Regulation Unit - send an email to [guidelines@epa.vic.gov.au](mailto:guidelines@epa.vic.gov.au), with the subject, 'NEPM query'.

Questions concerning transitional arrangements for specific sites should be directed as follows:

- where you have been dealing with EPA regarding the site in the past, to your EPA contact
- where the latter doesn't apply and the site is under audit, to EPA's Environmental Audit Unit [environmental.audit@epa.vic.gov.au](mailto:environmental.audit@epa.vic.gov.au)
- to any other government agency you have been working with in relation to the site.

General questions, for which none of the latter contact points are suitable can be directed to EPA via its call centre, on 1300 EPA VIC (1300 372 842).