

Environment Protection Authority

# Contaminated Land Advice and Audit Team Update

Jo Graham  
1 April 2022



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# Next Accreditation Round

- Currently forming a new Accreditation Panel
  - New procedures established for appointment of Panel members
  - Details on website: <https://www.epa.nsw.gov.au/your-environment/contaminated-land/site-auditor-scheme>
  - Advertised for nominations – closing date 18 March 2022
- Aim to advertise for new applications for auditor accreditation following formal appointment of new Panel

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## Queries and updates

- Automatic Mutual Recognition – NSW Treasury consulted stakeholders in November 2021 (via meeting / surveys) the EPA is still awaiting outcome of the decision on the request for a further 5 year exemption from AMR
- Auditor Portal – no current update
- EPA organisation chart: <https://www.epa.nsw.gov.au/about-us/our-organisation/our-organisation>
- Contaminated Land Advice & Audit Team structure:
  - **Director:** Karen Marler    **Unit Head:** Anthea White
  - **Team members:** Rose Cocks, Victoria Lee, Giselle Goloy, Sam Waskett, Jo Graham and Armin Kavehei (graduate scheme)
  - Auditor inbox - [nswauditors@epa.nsw.gov.au](mailto:nswauditors@epa.nsw.gov.au)



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## Reminders / admin

- Reminder to terminate audits where there has been no involvement/activity for some time – terminations notices (EPA / consent authority) ref. section 3.8.4 of the Guidelines for the NSW Site Auditor Scheme (3<sup>rd</sup> edition)
- Reminder to attach EMPs / RAPs to SASs when required
- Revisions to SASs – (e.g. for typographical errors) – remember to prefix or suffix with an “R” ref. section 3.4.3 of the Guidelines for the NSW Site Auditor Scheme (3<sup>rd</sup> edition)
- Accreditation renewals – please read the cover letter / comments provided on SAR reviews for any clarifications / outstanding requirements / documentation requests

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## SLIDO feedback questionnaire –

- seeking auditor views on the potential expansion of the auditor scheme to include the auditing of landfills
- Seeking auditor views on costs of PI insurance and accreditation fees



Join at  
**slido.com**  
**#371 118**

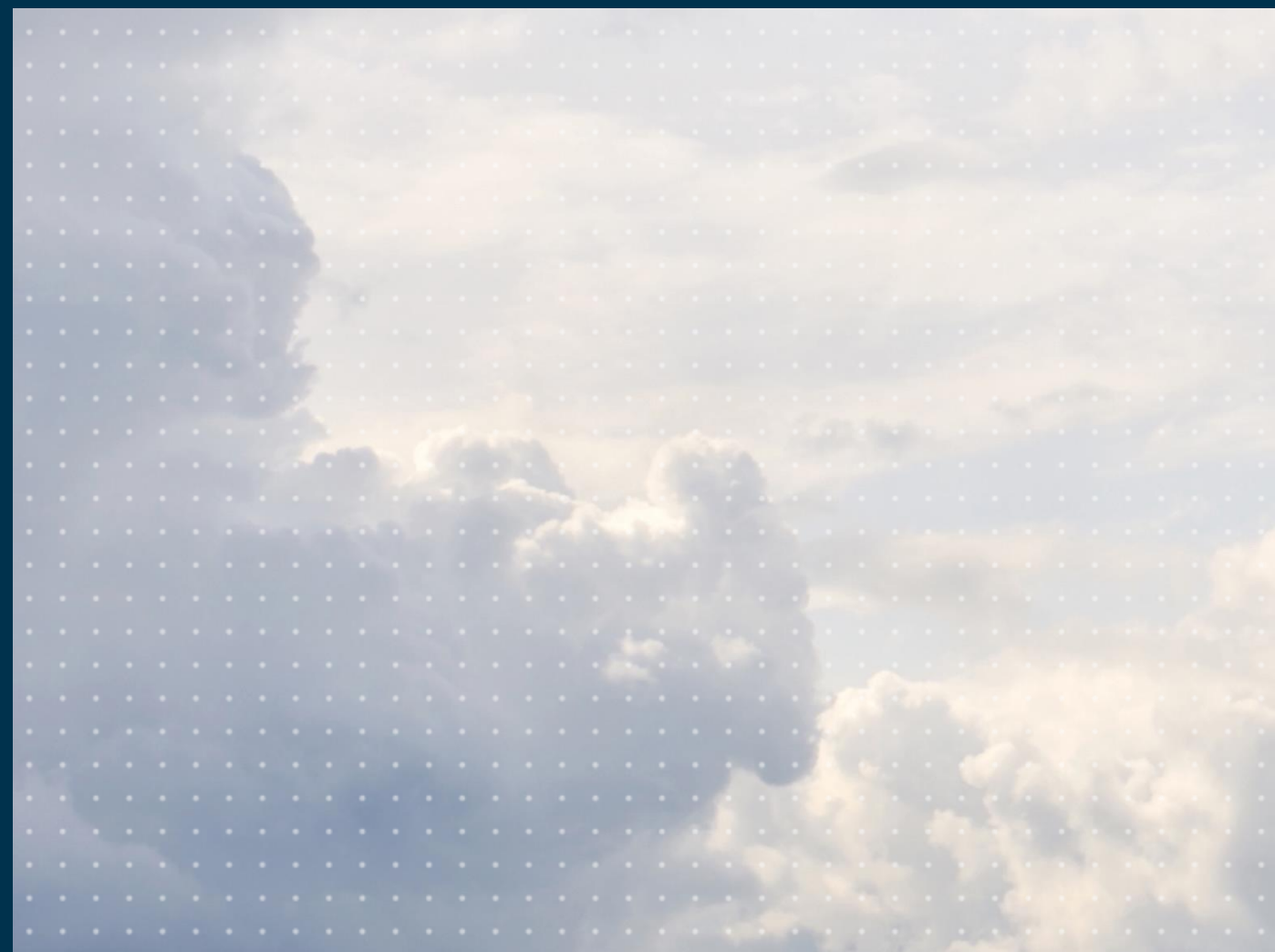
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# LAND AND RESOURCES POLICY

UPDATE

Joanne Stuart

April 2022



# CONTENTS

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2. Review of the CLM Reg
3. Recent Publications
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5. Review of the POEO Waste Regulation
6. Miscellaneous updates



# Environment Legislation Amendment Act 2022





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# ENVIRONMENT LEGISLATION AMENDMENT ACT 2022

- Made changes to seven pieces of legislation – came into effect on 4 March 2022
- Extends liability for illegal waste dumping to vehicle owners
- Allows EPA to issue notices to more than one person involved in a pollution incident
- Extends regulatory requirements and considerations to current and former directors and related corporate bodies
- Increases a number of penalty amounts
- Creates new false and misleading offences

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## Changes to CLM Act

- Extends existing financial assurance provisions to ongoing maintenance orders and restrictive and positive public covenants
- Enables the EPA to consider the financial capacity of a company or person when determining if a financial assurance is required
- Allows the EPA to issue a clean-up or prevention notice as soon as it is notified of contamination and before a determination is made as to whether the contamination is significant enough to warrant regulation
- Increases maximum penalties to align with similar offences and court orders to those available under the POEO Act

# Review of the CLM Regulation

Public consultation underway





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## CLM Regulation to be remade

- Draft Regulation currently out on public consultation until 2 May 2022
- Encourage you to make a submission
- You can review the draft Regulation, Regulatory Impact Statement and other information at: <https://yoursay.epa.nsw.gov.au/>
- Regulation has to be remade by 1 September 2022 or it will lapse

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# Proposed changes to CLM Reg

The draft 2022 Regulation will remake the current 2013 Regulation with minor amendments to:

- require the EPA, and anyone required to provide a financial assurance, to consider its policy and guidelines when determining if a financial assurance is required
- enable the EPA to waive or refund the accreditation fee payable by a site auditor in certain circumstances (for example parental leave)
- require additional information to be included in the annual return that a site auditor must submit to the EPA, including:
  - whether the audit is a statutory site audit
  - the end date of a terminated audit and the reason for the termination
  - the date of issue of a revised or amended statutory site audit and the reason for the revision or amendment
- increase the amounts payable for certain penalty notice offences under the CLM Act

# Recent publications





## New and updated policies / guidelines

- Revised Contaminated Land Consultant Certification Policy published end of January along with a response to submissions
  - Concerns with the certification schemes raised in submissions have been sent to the two schemes for comment
  - Includes concerns about complaints processes and level of expertise of some consultants
  - EPA recommended that both schemes review their processes
- EMP Practice Note has also been published along with a submissions report

# Review of Resource Recovery Order and Exemption Framework



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# Resource Recovery Framework – An independent review

- The *Waste and Sustainable Materials Strategy 2041* (WASM) includes an objective of achieving an 80% recovery rate from all waste streams by 2030.
- The WASM also highlights the importance of supporting innovation to deliver circular economy outcomes. To that end, the WASM commits Government to review the resource recovery framework (RRF).
- The EPA has commissioned Dr Cathy Wilkinson to conduct an independent review of the RRF and make recommendations as to potential areas of reform.
- Dr Wilkinson is the former head of the Victorian EPA and current Professor of Practice at the Monash Sustainable Development Institute.



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# Scope and objectives of the RRF review

- The objectives are to examine the existing NSW waste and resource recovery framework and provide formal recommendations on:
  1. How well the framework protects the environment and human health from the inappropriate use of waste.
  2. How well the framework achieves beneficial resource recovery and facilitates circular economy outcomes, including pathways for innovation.
  3. The EPA's ability to take appropriate regulatory actions action to protect the environment and human health under the framework.
  4. The framework's transparency, clarity and enforceability.
  5. Options to reform and strengthen the framework which proportionally balance the potential risks and benefits of resource recovery.
- The review will consider issues including the definition of waste, waste classifications, end of waste, chain of custody, resource recovery orders and exemptions and proportionality of the RRF.

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# Issues paper consultation and next steps

- Consultation on an Issues Paper will be held from 22 March to 6 May 2022.
- The EPA's consultation portal <https://yoursay.epa.nsw.gov.au> will host the Issues Paper.
- The independent review is expected to be finalised in first half of 2022.
- The EPA will consider the findings and recommendations of the independent review and then develop a work program in response
- Review recommendations may be considered as part of the POEO Waste Regulation remake.

# Review of POEO Waste Regulation

Kicking off





# Scope and opportunity for reform

Part 1: Preliminary

Part 2: Contributions (the levy)

Part 3: Records

Part 4: Tracking

Part 5: Interstate reporting

Part 6: General transport

Part 7: Asbestos waste transport and management

Part 8: Consumer packaging

Part 8A : Construction and demolition waste facilities

Part 9 : Exemptions

Part 10: Immobilised contaminants

Part 11: Miscellaneous

- Scope includes the Waste Regulation and relevant licensed waste activities (and definitions) in Schedule 1 to POEO Act.
- What do we need to continue?  
What do we need to amend?  
What do we need to get rid of?  
What do we need to include?

## Project timeline – key steps

- Currently undertaking internal scoping of issues
- Targeted external consultation in May-June 2022
- Draft Regulation and RIS for public consultation in early 2023
- Regulation to be re-made by 1 September 2023

If you have any identified waste issues – come talk to us!  
Sarah Crossie: [sarah.crossie@epa.nsw.gov.au](mailto:sarah.crossie@epa.nsw.gov.au)

# Miscellaneous Updates



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# Groundwater guidelines

- Victorian EPA Groundwater Sampling Guidelines have just been released – will not be formally endorsing these but can be used if consistent with the NEPM, our groundwater guidelines and the legislation
- NSW EPA plans to review and update its Guidelines for the assessment and management of groundwater contamination shortly (references previous VIC EPA Guidelines)
- Sampling Design Guidelines touch briefly on groundwater sampling
- NSW EPA also just released revised and updated Approved methods for the sampling and analysis of water pollutants in NSW



# Resilience and Hazards SEPP – Planning Guidelines

- SEPP 55 “lifted and shifted” into Chapter 4 of new SEPP – commenced on 1 March 2022
- Proposed SEPP amendments are still being drafted
- Planning guideline is in final stages of internal drafting and review
- Taken longer than expected to allow Dept time to resolve complex matters around the policy as well as other pressing priorities

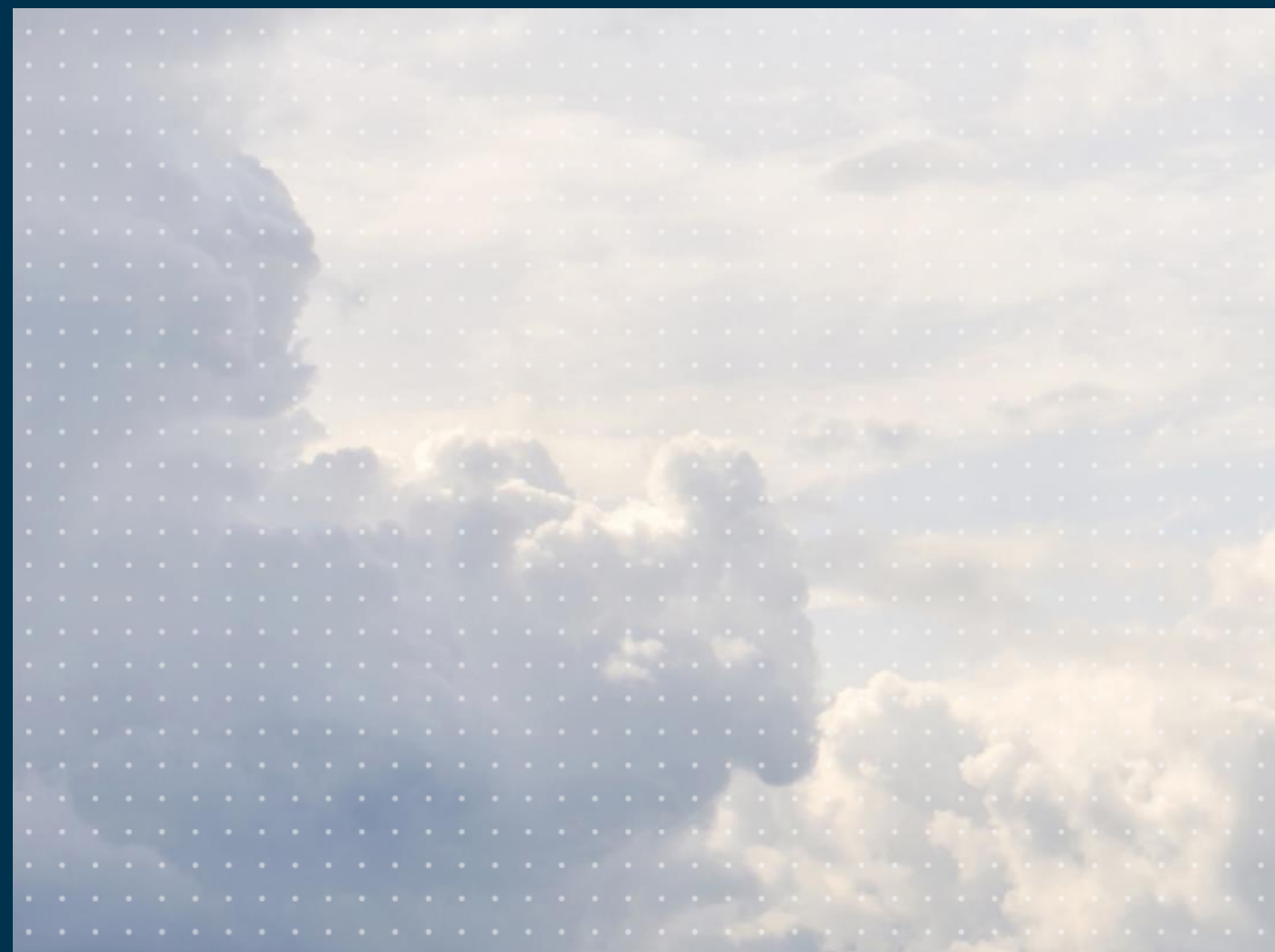
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# Recovered soil & Recovered fines on new templates

March 2022

Helen Prifti

Unit Head – Resource Recovery Innovation



# Why do we have new templates?



## EPA review (Health Check)

An internal review of the framework recommended improving the orders and exemptions.



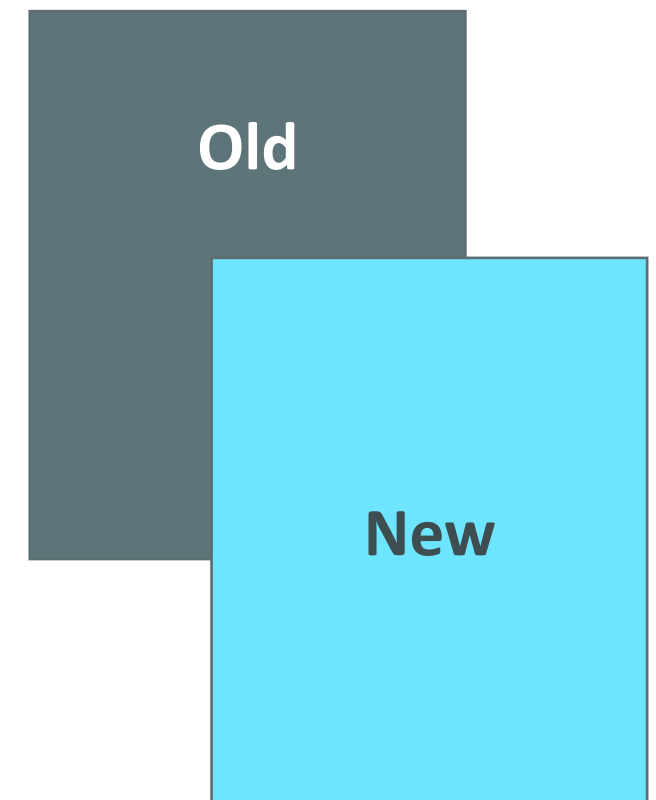
## Prosecution learnings

The framework has also been improved based on learnings from EPA prosecutions.



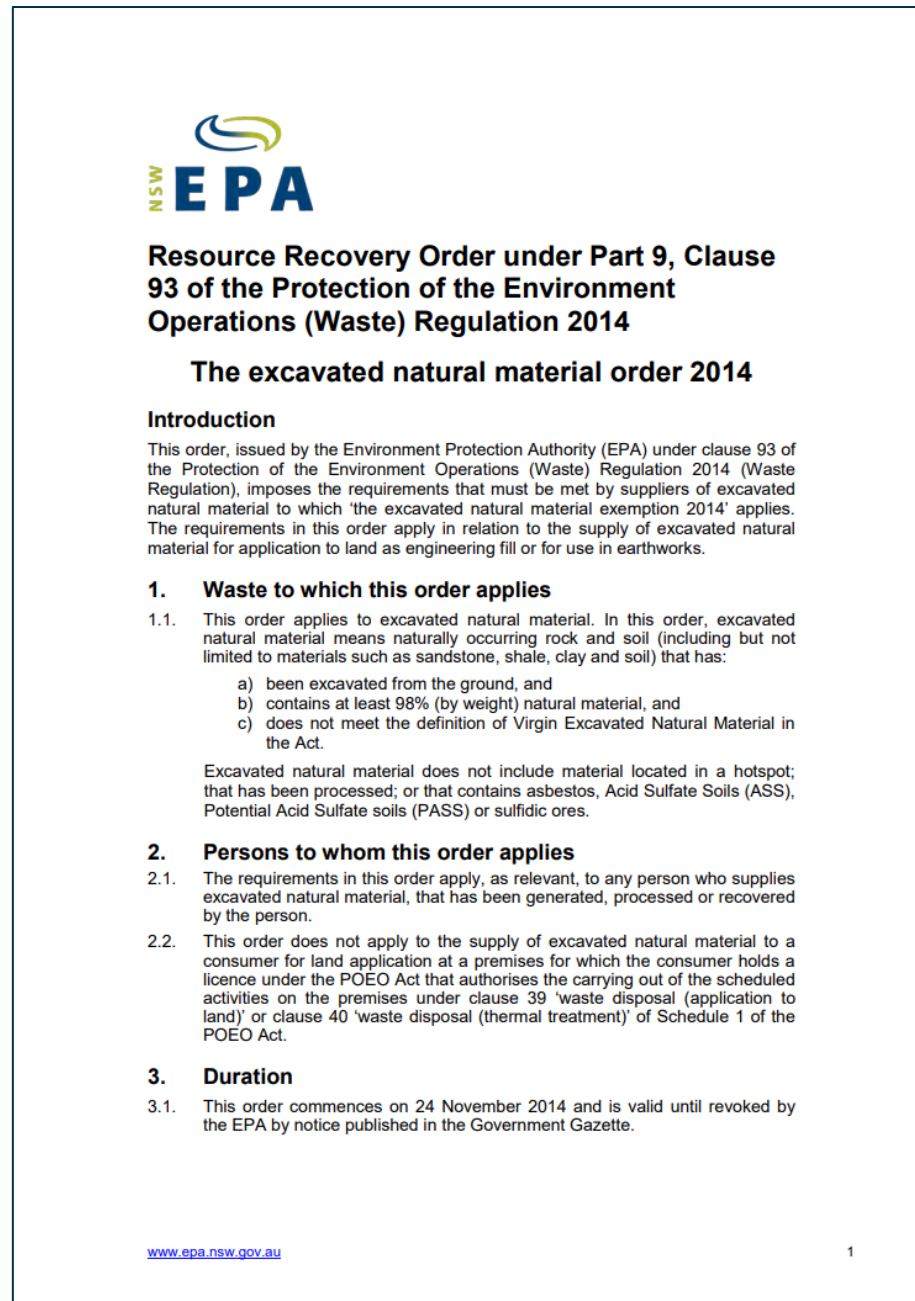
## Industry feedback

The EPA also made changes based on feedback from industry.



# Purpose of new templates

## Current format



**NSW EPA**

**Resource Recovery Order under Part 9, Clause 93 of the Protection of the Environment Operations (Waste) Regulation 2014**

**The excavated natural material order 2014**

**Introduction**

This order, issued by the Environment Protection Authority (EPA) under clause 93 of the Protection of the Environment Operations (Waste) Regulation 2014 (Waste Regulation), imposes the requirements that must be met by suppliers of excavated natural material to which 'the excavated natural material exemption 2014' applies. The requirements in this order apply in relation to the supply of excavated natural material for application to land as engineering fill or for use in earthworks.

**1. Waste to which this order applies**

1.1. This order applies to excavated natural material. In this order, excavated natural material means naturally occurring rock and soil (including but not limited to materials such as sandstone, shale, clay and soil) that has:

- a) been excavated from the ground, and
- b) contains at least 98% (by weight) natural material, and
- c) does not meet the definition of Virgin Excavated Natural Material in the Act.

Excavated natural material does not include material located in a hotspot; that has been processed; or that contains asbestos, Acid Sulfate Soils (ASS), Potential Acid Sulfate soils (PASS) or sulfidic ores.

**2. Persons to whom this order applies**

2.1. The requirements in this order apply, as relevant, to any person who supplies excavated natural material, that has been generated, processed or recovered by the person.

2.2. This order does not apply to the supply of excavated natural material to a consumer for land application at a premises for which the consumer holds a licence under the POEO Act that authorises the carrying out of the scheduled activities on the premises under clause 39 'waste disposal (application to land)' or clause 40 'waste disposal (thermal treatment)' of Schedule 1 of the POEO Act.

**3. Duration**

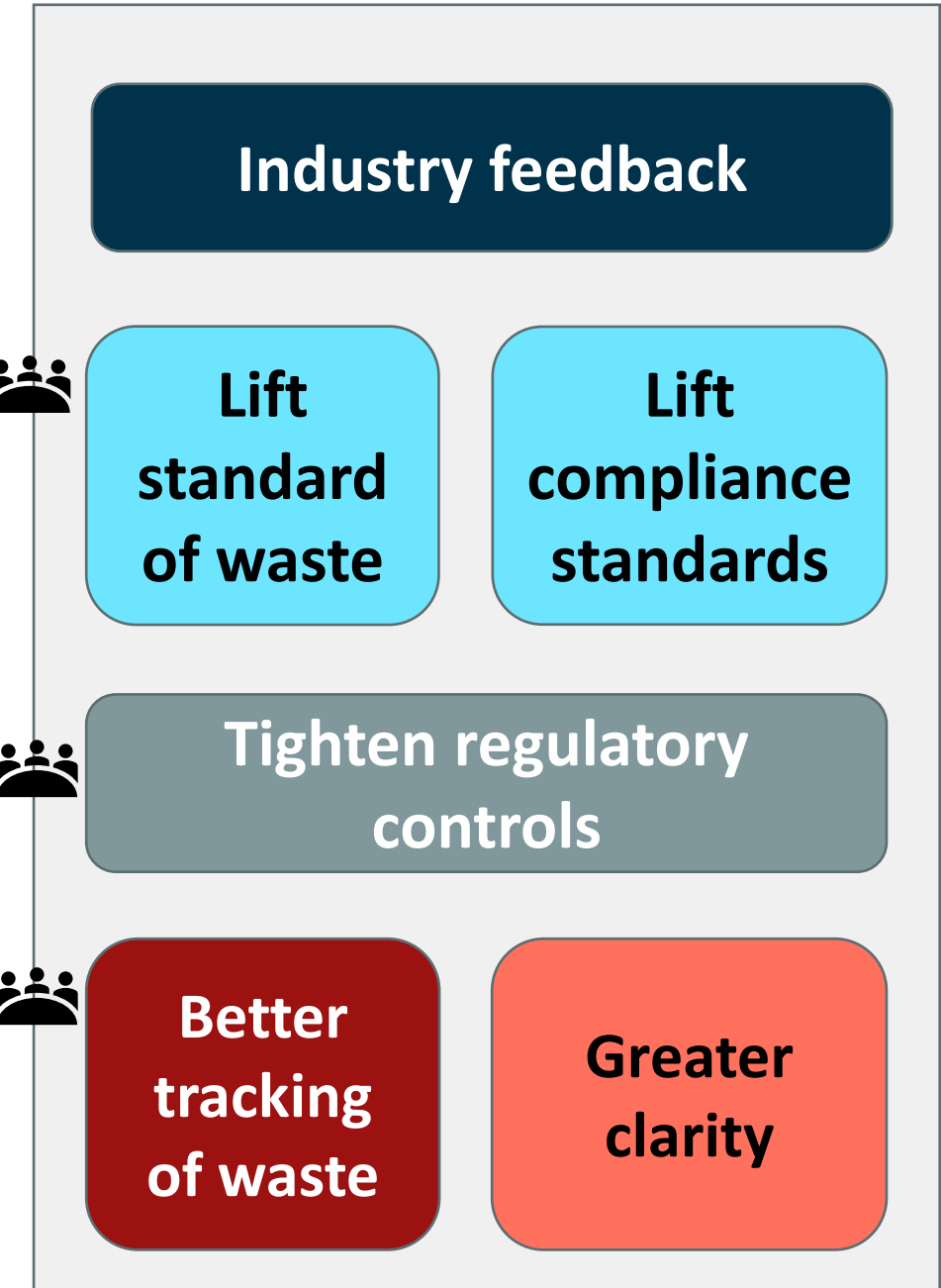
3.1. This order commences on 24 November 2014 and is valid until revoked by the EPA by notice published in the Government Gazette.

[www.epa.nsw.gov.au](http://www.epa.nsw.gov.au)

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## New format



**Industry feedback**

**Lift standard of waste**

**Lift compliance standards**

**Tighten regulatory controls**

**Better tracking of waste**




**Greater clarity**







# What has changed in the **Order**?



## New concepts/ New conditions

1. **Introduction** – document context
2. **Supplier** – generator/processor
3. **Occupier premises** – consumer
-  4. **Notify first** – to assist with tracking
-  5. **Blending** – permitted for generals
6. **Retesting** – excluded
-  7. **Segregation** – manages exceedance
8. **Batch of waste** – stockpile defined

## Improved conditions

1. **Asbestos** – explicit in order 
2. **Accredited laboratory** – defined 
3. **What to do if you have non-compliance** – guidance included 
4. **Test methods tabulated** – ↑ readability 
5. **New info to be supplied & recorded**


# What has changed in the **Exemption**?



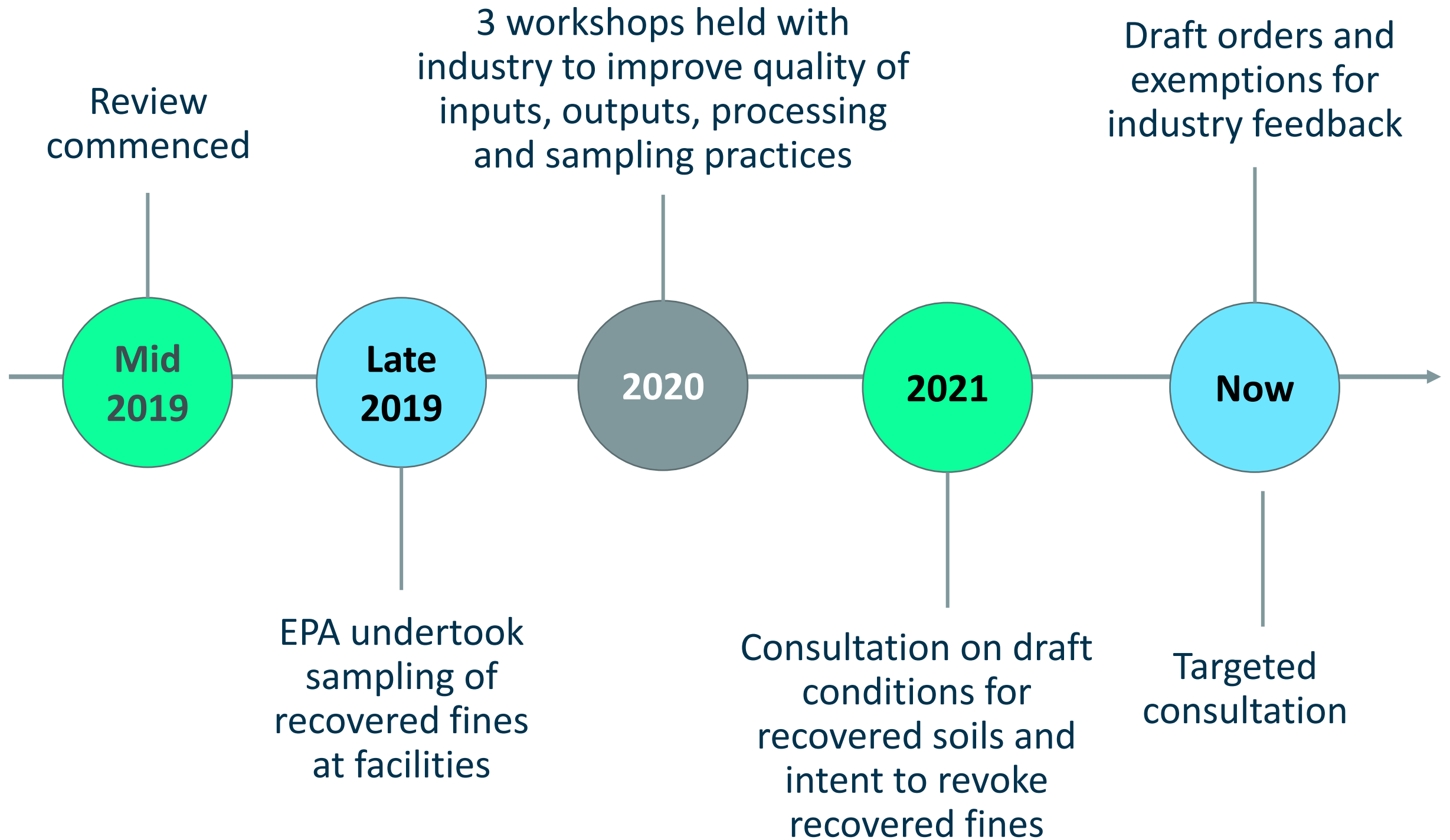
## New concepts/ New conditions

1. **Introduction** – document context
2. **Residue waste exempt** – only present in some exemptions, now in all where applicable
3. **Consignor, transporter, receiver exempt from tracking** – previously not included in exemptions, ↑ clarity
4. **Occupier must have planning consent** – references to EP&A Act (if applicable)

## Improved conditions

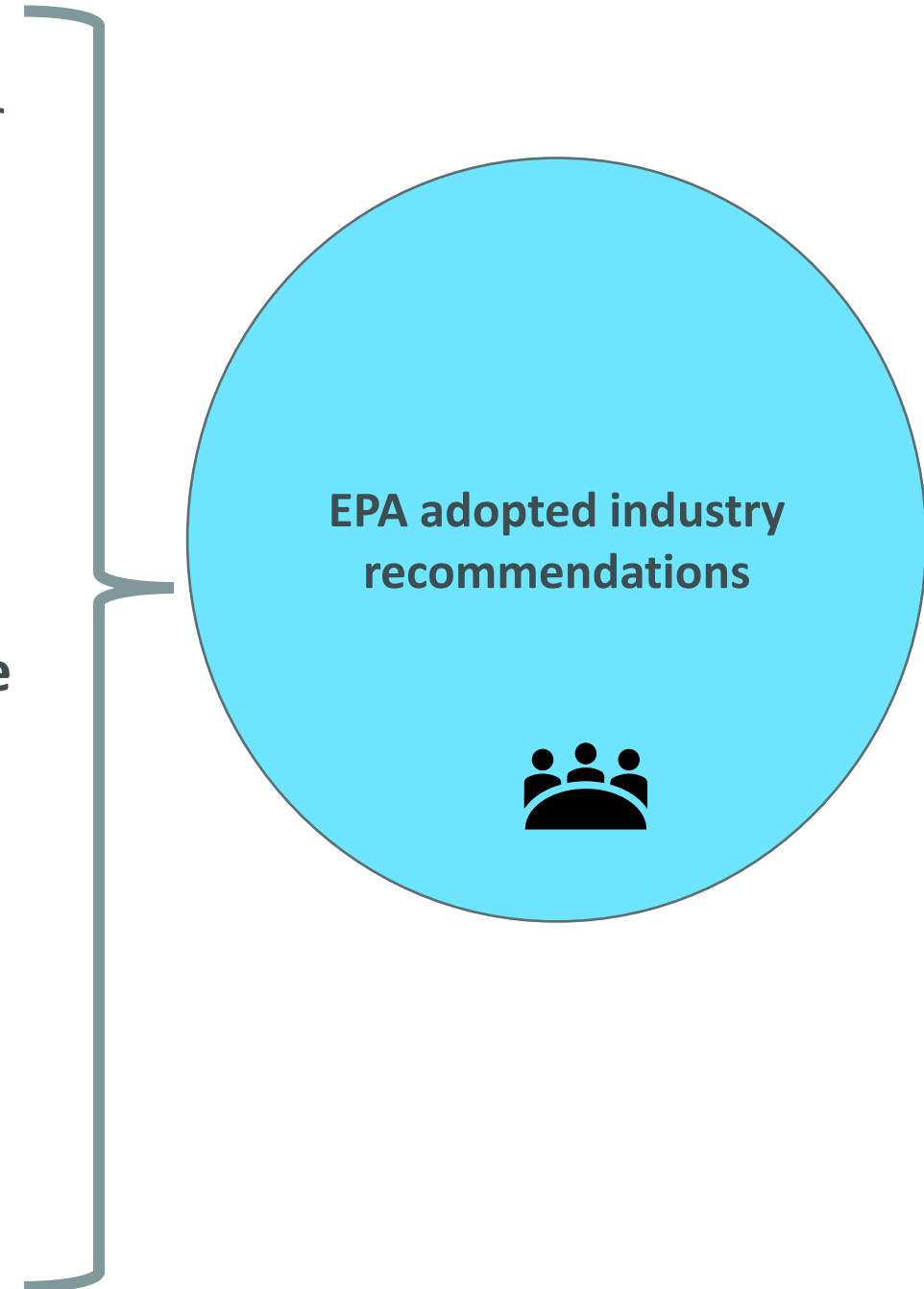
1. **Exemptions do not apply to** – now also includes waste-processing, energy recovery and resource recovery premises
2. **Land application uses are defined** – including engineering fill, earthworks, etc. 
3. **Record keeping** – date, from who, where was applied

# Timeline of events



# 2021 Consultation feedback

1. **Clarify purpose of recovered soil vs ENM, VENM**
2. **Clarify desktop assessments for acid sulfate soil + other chemicals**
3. **Request batch sampling over continuous sampling**
4. **Request more sampling for asbestos**
5. **Request independent samplers (e.g.. CEnvP)**
6. **Request fines can be generated from mixed B&D waste**
7. **Request increase in foreign material limits due to concerns around density of certain materials, and the low limits proposed**
8. **Request fines used for construction purposes only**

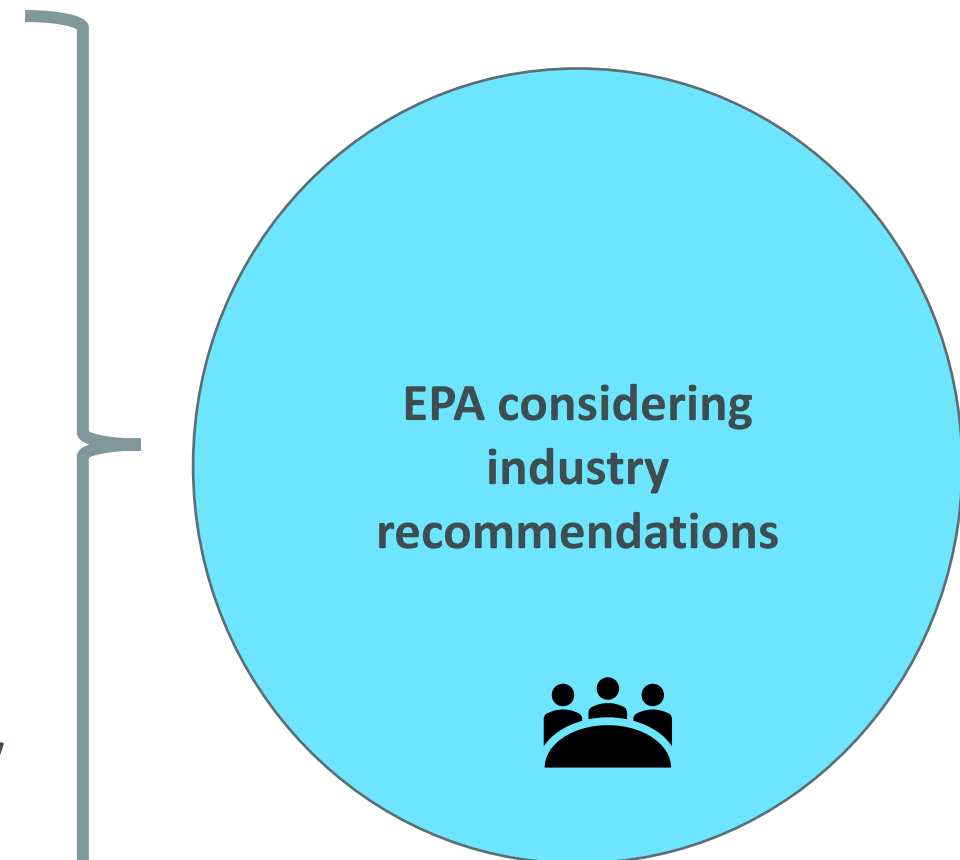




# 2022 Consultation feedback – what we are hearing now



1. Use of Certified Practitioners – too strict and limited
2. Consider smaller sampling frequencies for small stockpiles
3. Asbestos – test methods plus language
4. Remove unusual pesticides and herbicides, & review the need for PFAS testing
5. Align common test methods with laboratories & use less sensitive PQLs
6. Less testing for physical contaminants given their likely consistency
7. Limits – many unchanged from previous but updates to for eg TRH, changes to foreign contaminants
8. Business Impacts and transitional arrangements



# Questions

# Consultation feedback


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Have your say!

If you wish to provide feedback, please email:

[waste.exemptions@epa.nsw.gov.au](mailto:waste.exemptions@epa.nsw.gov.au)

Closing date: was 21 Feb 2022  now **4 March 2022**

Expected finalisation: was 11 March  now **1 April 2022**

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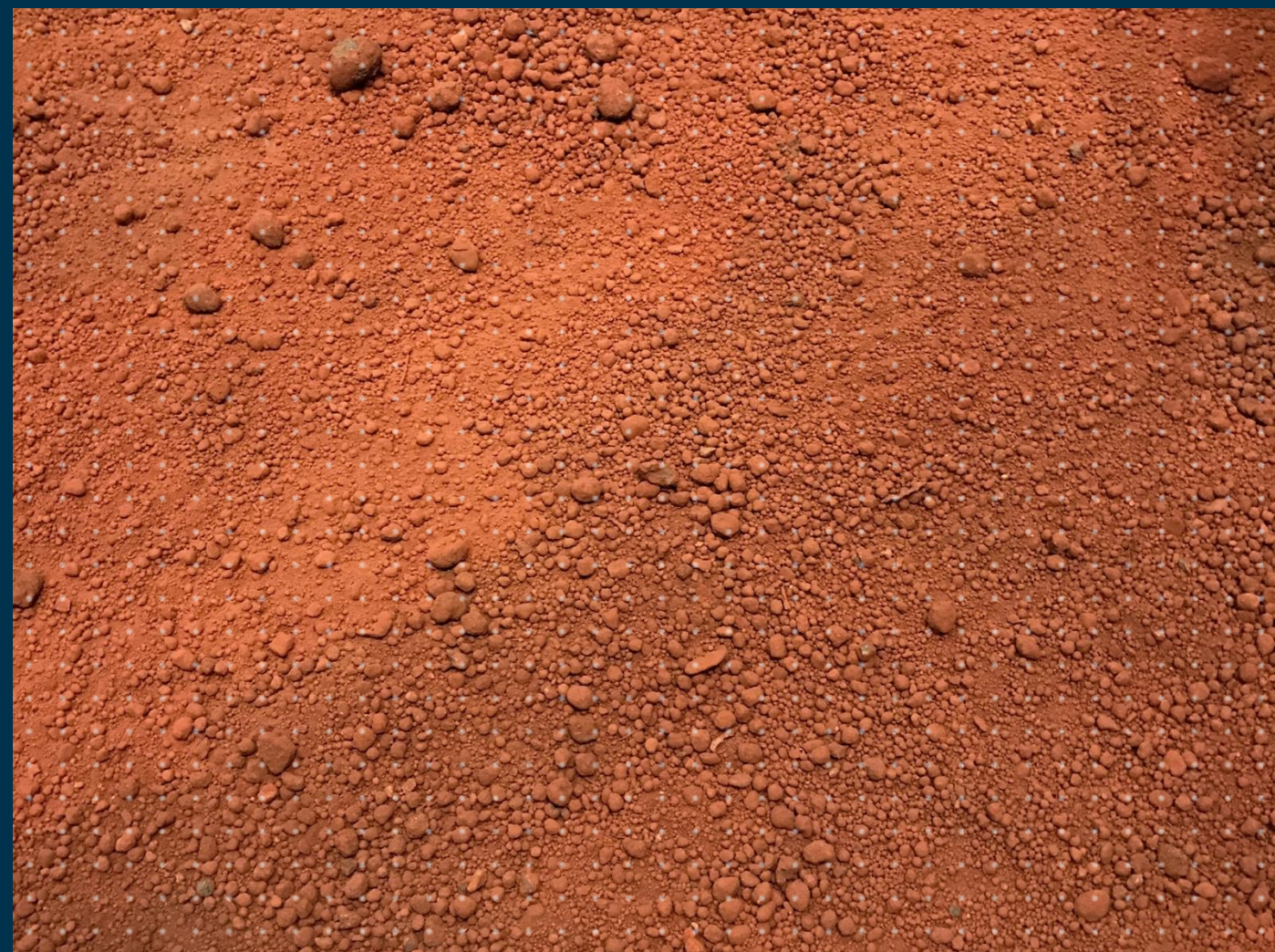
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# Release of 2021 WA Asbestos Guidelines

EPA Policy Position

Mark Hanemann

April 2022





# What are the 2021 WA Asbestos Guidelines?

- Published by WA DoH
- Provide advice on investigation and management of sites contaminated with asbestos
- Replace previous 2009 version
- 2009 version widely used in NSW by industry



Guidelines for the Assessment, Remediation and Management of Asbestos Contaminated Sites in Western Australia



# Key updates to 2021 WA Asbestos Guidelines

- Greater emphasis on site-specific management approach
- Expanded guidance on interpretation of sampling results
- Increased use of risk-based assessment
- Increased focus on management plans
- Consideration of site-specific clean-up criteria for asbestos – soil moisture, depth, etc.





# Why is publication of 2021 guidelines an issue?



- Not wholly consistent with approach in NSW
- 2021 version has amplified some inconsistencies
- Not an 'Approved Guideline' under s105 CLM Act
- 2009 version referenced in NEPM - indirectly referenced by various EPA guidelines
- Significant industry interest – seminars held



# What did we do in response?



- Internal working group formed in August 2021:
  - liaised with the NACC and SafeWork NSW
  - release of 2021 WA Guidelines does not necessitate any change to existing EPA policy
  - publish Position Statement to reiterate the EPA's position
  - further work needed - clarify definitions of waste, reuse, contamination, etc

# Main differences between WA and NSW

## Western Australia

- Site-specific clean up goals supported for asbestos – may result in lower level of remediation based on soil moisture, texture, etc.
- Reuse of low level asbins permitted, after screening and validation

## NSW

- Site-specific clean up goals for asbestos not supported - uncertainty and variability of parameters – EPA supports assessment of site-specific exposure scenarios
- POEO Act prohibits the reuse or recycling of asbestos waste in any form – screening considered form of recycling



# NSW approach to asbins

## Permitted

- Excavate and transport asbins to licensed waste facility
- Bury asbins in approved containment cell on same site
- Stockpile and segregate asbins for waste classification and disposal
- Apply appropriate capping in-situ without disturbance

## Not permitted

- Transport asbins to another site for containment or reuse
- Process, dilute or treat asbins for reuse
- Reuse under the resource recovery framework

# Next steps

- EPA is continuing to work with other agencies on related future guidance - scenarios
- Continue to refine interpretation of legislation – definitions of waste, reuse, contamination, etc.
- Will review position as new data becomes available
- SDGs due out soon – some information on asbins



# Questions?

EPA position on release of 2021  
WA Asbestos Guidelines

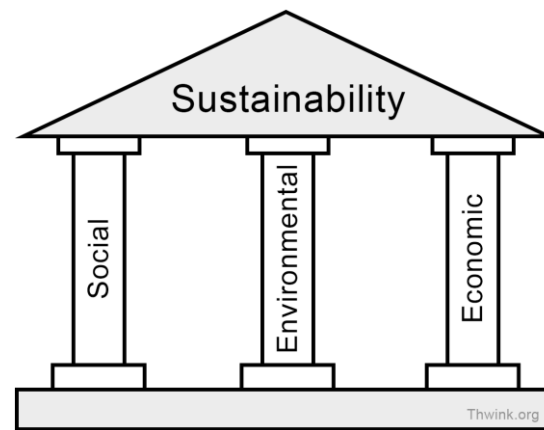


# Sustainability in contaminated land

What is the role of the  
Auditor ?

# What is sustainability?

**OUR  
COMMON  
FUTURE**



“development that meets the need of the present without compromising the ability of future generations to meet their own needs”.



# Federal and State Sustainability Targets



Reduce emissions by 26 to 28% below 2005 levels by 2030 (Federal target)

Reduce emissions by 50% below 2005 levels by 2030 (State target)



Net-zero emissions by 2050



Close the gap in life expectancy between Aboriginal and Torres Strait Islander and non-Aboriginal and Torres Strait Islander Australians by 2031

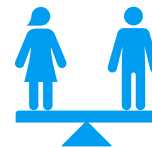


80% resource recovery rate by 2030

Reducing total waste generation by 10%

Phasing out single-use plastics by 2025

Halve the amount of organic waste sent to landfill by 2030



50% women on government boards



Focus on net zero emissions from organic waste by 2030

'Empower consumers and businesses to make sustainable choices'

EPA licensing generally improves environmental outcomes and the 'overall regulatory framework also helps support a healthy environment, that is more resilient to climate change.'

# Company sustainability targets



Net zero by 2030

Net zero by 2030

Carbon neutral by 2050

Net zero by 2040

Net zero by 2025

Net zero by 2030

40% representation by women by 2025

20% leadership roles held by women

40% representation by women by 2020

Over 30% of management positions will be held by women by 2021

Increase gender diversity among Senior Consultants, Technical Directors & Partners by 10% over previous year

Reinvest 50% or more of any annual profits towards achieving the social purpose

Exit oil and gas exploration before end of 2025, redeploying this expertise into renewables

Reducing carbon impact by at least 50% on all major projects

25% renewable component in energy accounts

Contribute 1% of prior year profits to support sustainability initiatives around the globe, including the ERM Foundation

Ensure 80% of our suppliers of purchased goods and services will have science-based targets by 2025

# What do the guidelines contemplate



## National Environment Protection (Assessment of Site Contamination) Measure 1999

- Overarching guideline discusses 'attainment of environmental outcomes' and includes the remediation hierarchy
- HILs are not intended to be clean-up levels. The decision on whether clean-up is required, and to what extent, should be based on site-specific assessment triggered by an exceedence of the HIL. Health risk assessment is the primary driver for making site decisions. Other considerations such as practicality, timescale, effectiveness, cost, **sustainability** and associated ecological risk assessment are also relevant.



- the practice of demonstrating, in terms of environmental, economic and social indicators, that an acceptable balance exists between the impacts of undertaking remediation activities and the benefits that those activities will deliver.

# Site Auditor Guidelines

- S4.3.2 Site remediation policy

The auditor should confirm that **sustainability** (environmental, economic and social) has been considered by the consultant when deciding which remediation option to choose, in terms of achieving an appropriate balance between the benefits and effects of undertaking the option. For example, where it is not viable to remediate large quantities of soil with low levels of contamination, alternative strategies should be considered or developed.

- **consider** · . [intransitive, transitive] to think about something carefully, especially in order to make a decision ..Oxford dictionary
- **consider** (verb): think about something carefully before making decision; think something may exist or be true; have particular opinion ... Macmillan

## However ...

- NEPM 1999 remediation says the preferred hierarchy is:
- on-site treatment of the contamination so that it is destroyed or the associated risk is reduced to an acceptable level; and
- off-site treatment of excavated soil, so that the contamination is destroyed or the associated risk is reduced to an acceptable level, after which soil is returned to the site; or,
- if the above are not practicable,
- consolidation and isolation of the soil on site by containment with a properly designed barrier; and
- removal of contaminated material to an approved site or facility, followed, where necessary, by replacement with appropriate material;

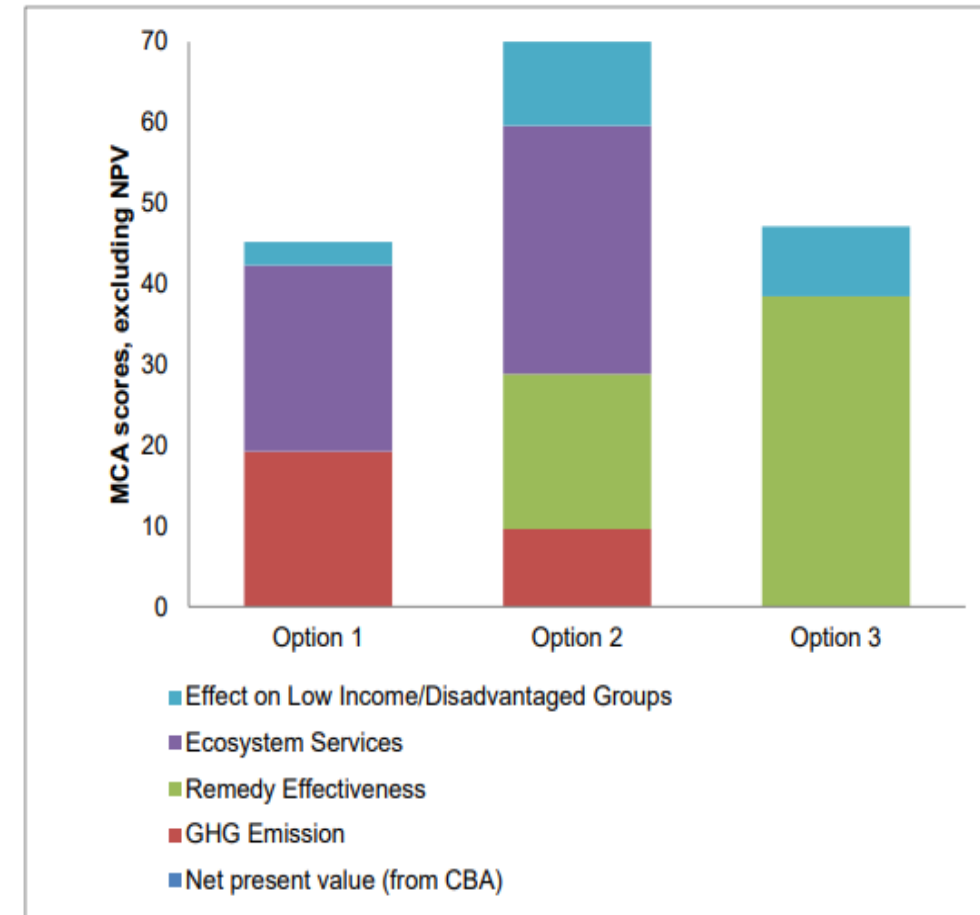
where the assessment indicates remediation would have **no net environmental benefit** or would have a net adverse environmental effect, implementation of an appropriate management strategy.

We rarely see the alternative



# What should the Auditor consider?

- Appropriateness of direct application of the guidelines without assessing site specificity
- Extent of evaluation of options in a sustainability context:
  - NRF includes guidelines on MCA analysis incorporating non-monetised aspects.
  - NRF states at least one indicator from each of the environment, economic and social categories should be chosen but there is no limit on the number of indicators that could be chosen
  - Interestingly, NRF also highlights that options should not be discarded where regulatory waivers are required
- Sensitivity analysis, selection and weighting of indicators



# Scenario 1

- Site proposed for residential development
- DNAPL
- Nearby surface water receptor
- Risk assessment shows periodic concentrations of contaminants above GLs but ERA/ HHERA identifies low risk. On site HHERA risks can be managed.
- Modelling indicates slow migration of similar concentrations to the surface water receptor over many decades
- Options were evaluated based on standard practice, guidelines and cost
- Options considered were: do nothing, MNA, full source removal and the selected option: cut off wall with select source removal and consolidation of impacted soils within the wall
- How might the auditor respond?



## Scenario 2

- Site proposed as a park
- Bonded asbestos in soil marginally above the guidelines
- Consultant has proposed 1m of clean fill as a cap and implementation of a management plan
- Council is owner/ operator.
- Only a very limited assessment of options completed.
- What else could be considered?





## Scenario 3

- Consultant has completed a site investigation and the depth of impact has some uncertainty.
- Remediation by excavation of a significant area is proposed and the depth of excavation is around 5 mbgl.
- The consultant has put forward that an additional 0.5 m of excavation depth be completed to address the uncertainty in depth
- How should the auditor respond ?



# Implications to the industry – final thoughts?

- Greater emphasis on risk based approach to remediation – this capability is limited in the industry ?
- Can we advocate for non-compliance with (or deviation from) EPA guidelines, should we push/ advocate for change ? eg waste guidelines
- Does this approach develop high tech/ innovation techniques, improved characterization to inform better ROAs ?
- Do we need training for MCA - can consultants deliver on sustainable solutions.

