

Environment Protection Authority

# EPA Statement of Commitment to Aboriginal Peoples

Contaminated Sites Auditors meeting

Kylie Jacky – Lead

Joanne Wilson – Senior Project Officer

22 March 2024





# Aboriginal Initiatives team



Jo

Todd

Belinda

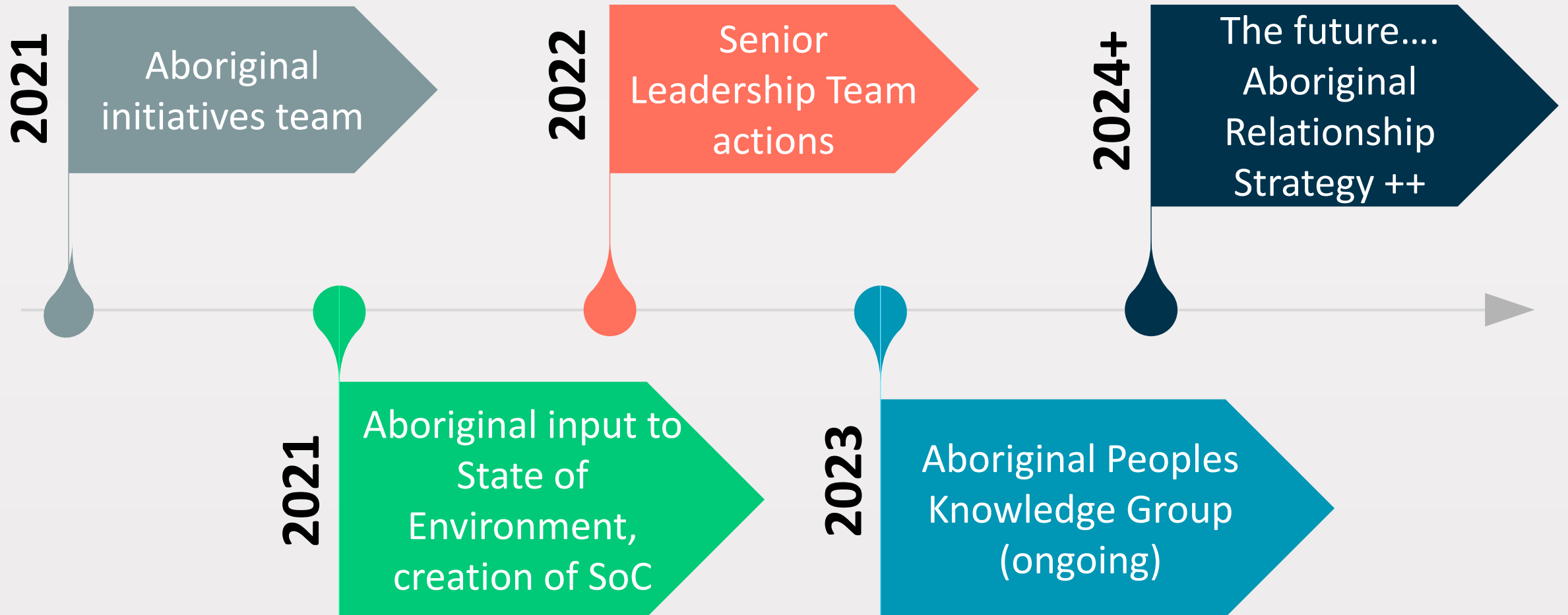
Kayla

Kylie

Veronica



# Aboriginal Statement of Commitment







## EPA Aboriginal Statement of Commitment

- Work in **respectful partnership** with Aboriginal peoples
- Actively **learn from and listen to** Aboriginal voices, cultures and knowledges
- Act boldly and bravely to play our part to **mend and heal Country together**
- **Respect Aboriginal people's knowledge** and science as an equal to western science.
- Include **Aboriginal knowledges** and science into the **EPA decision making**.
- Ensure Aboriginal knowledges, science and **Indigenous Cultural Intellectual Property** is protected
- Address both the **tangible and intangible** cultural elements of environmental protection
- Deliver on results that have **direct benefits for Aboriginal communities**
- Embed **consistent, meaningful, and trustworthy engagement** with Aboriginal communities
- Improve **Aboriginal cultural competency** across the agency
- Improve **Aboriginal employment** across the agency
- **Monitor the impact** of this Commitment





## Why have a Statement of Commitment?

Aboriginal Cultural values = protection of environment

Acts of colonisation loss of stewardship and cultural practices

First building blocks improve cultural capability





# Examples of where the Statement of Commitment is influencing our work

**Aboriginal perspectives in EPA strategies, policies and legislation**

**Aboriginal Engagement – river health (floods and fish kills)**

**Aboriginal impact statements**

**Aboriginal Peoples Knowledge Group – Guide, Advise, Nurture, Challenge**

**Addressing illegal dumping and waste management with Aboriginal communities**

**Asbestos clean up in Discreet Aboriginal Communities**





# Rights and interests of Aboriginal peoples over lands and waters in NSW

## **Local Aboriginal Land Councils –**

Manage culturally significant and economically viable land returned under Land Rights Act, manage Aboriginal housing, advocate for views of Aboriginal people

## **Discreet Aboriginal Communities**

Aka Missions. Often built on / adjacent to contaminated land, housing made from asbestos, limited waste services etc

## **Native Title**

Rights of traditional owners recognised under Native Title Act – various rights over lands and waters – see Native Title Vision online

## **Aboriginal Places**

Area of cultural significance to Aboriginal people. May be on public or private land. Declared under National Parks and Wildlife Act

## **Joint management – NSW NPWS**

Under ownership and leaseback agreements, rights of Aboriginal people are recognised and NPWS leases land from Traditional Owners.

## **Indigenous Protected Areas**

Areas of land and sea Country managed by First Nations groups for conservation in accordance with Traditional Owners' objectives. Supported by C'wealth govt



## Contamination – impact on Aboriginal peoples and communities

Discreet Aboriginal communities	Often built on landfill / close to contaminated sites / subject to illegal dumping, poor waste services
Land returned - Land Rights Act	Legacy contamination for groups that have no capacity to deal with and reduces opportunities to gain benefit from land return
Exposure to contaminants	Aboriginal peoples and communities can be disproportionately impacted by contamination due to poor quality housing, proximity to contamination source e.g. Broken Hill lead, importance of connection to natural resources for cultural purposes and food e.g. fish and shellfish
Impact of natural disasters	Disproportionate impact on Aboriginal peoples and communities, lands and waters impacted by contamination post disaster





## PFAS – Wreck Bay

PFAS used at HMAS Creswell has contaminated beaches, creeks etc in Jervis Bay.

Wreck Bay Aboriginal community originally excluded from Cwlth Govt settlement \$132.7 million across multiple sites.

In 2023, court awarded \$22 million relating to “...the community's ability to live on or conduct cultural activities on its land.”

"Importantly they have lost their connection to the country by reason of the contamination and momentary compensation will never be adequate to repair that kind of loss."



A sign warning of contamination at Wreck Bay on the New South Wales South Coast. (ABC Illawarra: Kelly Fuller)





# Questions? Let's Have a Yarn





# Contaminated Land Advice & Audit Team Update



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# NSW EPA training for building certifiers





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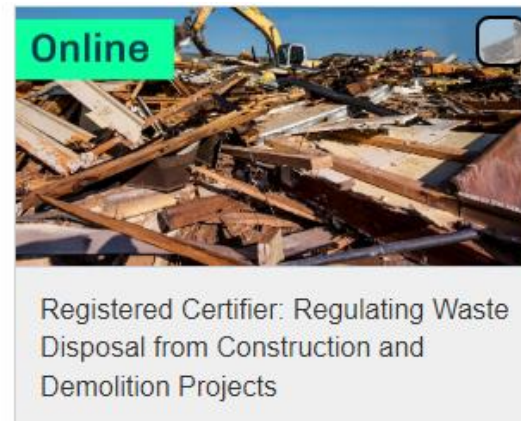
# Why has the EPA developed training for Building Certifiers?

- Interventions in the planning stages of a development can support better waste management outcomes.
- Industry bodies, certifiers and EPA site auditors reported the need for more support to navigate the regulatory requirements for waste, contaminated land and asbestos during redevelopment activities.
- EPA agreed to develop training to raise awareness of certifier's role in spite of not directly regulating them.
- The EPA's development of these modules included consultation internally and with stakeholders such as DPHI (Planning and Assessment), NSW FairTrading (formerly), LGNSW, SafeworkNSW, representatives from EPA accredited Site Auditors and City of Sydney Council, AIBS and AAC.
- The EPA is currently raising awareness for the availability of the training with building certifiers, industry groups and internally.



# Training modules

- Designed for Building Certifiers, but also useful for local government in planning, compliance and environment.
- Three detailed modules, 20 – 40 minutes each available on demand via [NSW EPA Learning Management System](#):
  - Waste Disposal
  - Asbestos
  - Contaminated Land



# Desired training outcomes

Raising awareness with certifiers to prevent downstream problem waste issues.

The training can reduce risk of non-compliance by:

- Improving understanding of the statutory requirements and legal framework and penalties.
- Improving ability to identify issues and consequences to avoid non-compliances in the sector and protect their professional reputation
- Supporting them to seek further information.

Building Certifiers receive a completion certificate and Continuing Professional Development points. For access to the training refer to the [EPA website](#) .





# Interim Audit Advice

- Results of Slido response at last Auditor's meeting:
  - Criteria used to determine whether to issue formal IAA or informal correspondence e.g. email – very inconsistent
  - Section 3.6.2 Guidelines for NSW Site Auditor Scheme – discusses IAA
  - Majority of responses considered no further guidance / templates required
  - EPA has certain expectations for IAA:
    - be signed by the auditor (not auditor's assistant)
    - be in a letter form rather than email to avoid confusion with general email correspondence

# Interim Audit Advice

- EPA expectations for IAA continued:  
Specify the following (as per s3.6.2 Auditor Guidelines):
  - that the interim advice does not constitute a site audit report or statement
  - ensure the interim advice is consistent with EPA guidelines and policy
  - not pre-empt the conclusion to be drawn at the end of the site audit process
  - clarify that a site audit statement will be issued at the end of the audit process
  - document in the site audit report all interim advice that was given



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# Contaminated land Strategy & Policy

22 March 2024





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# Priorities for 2024

- Review of UPSS Regulation 2019
- NSW Chief Scientist & Engineer asbestos review
- Position Statement: Management of asbestos-contaminated sites
- EMP compliance and enforcement



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# Integrated Waste Tracking Solution: A nationally consistent system

Jerome Koh  
Manager, Strategy & Policy



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# Reasons for Action



# Hazardous waste management



## Management of hazardous waste

- Carried out by private industry
- Regulated by governments
- Local government involved in both

## Proper management depends on

- Effective regulation that protects a stable and well-functioning market

# Tracking hazardous waste movements

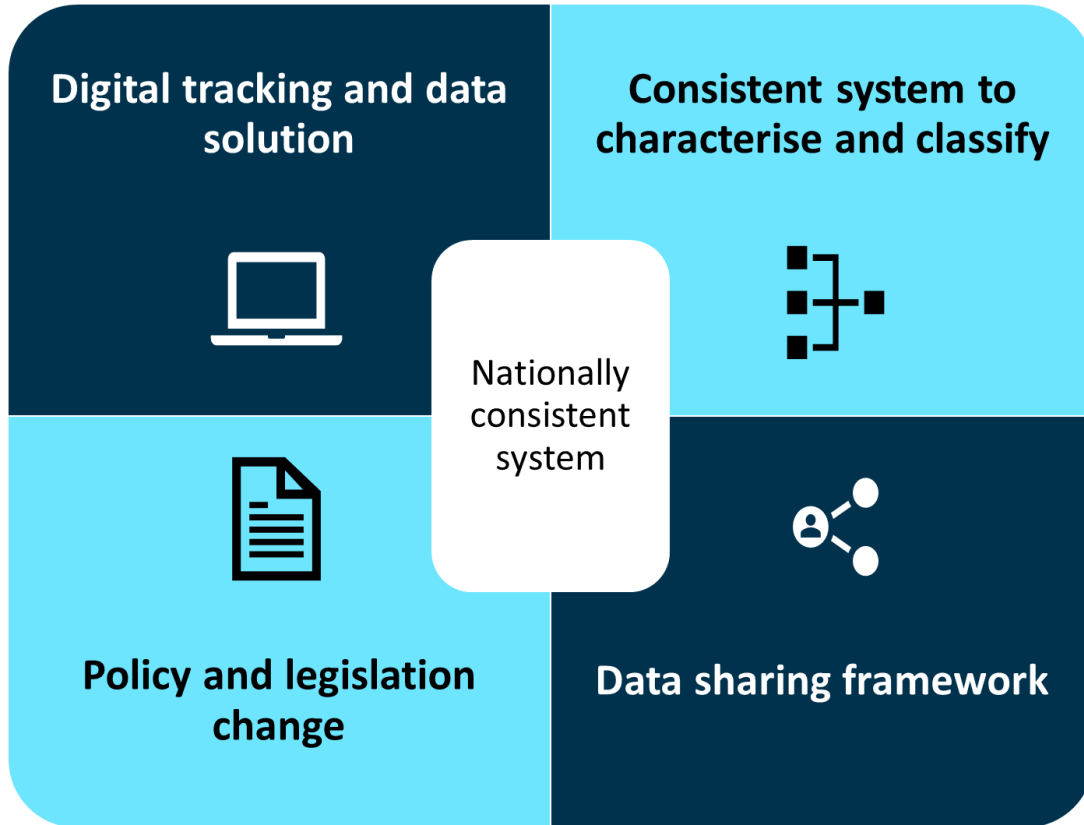


## Current situation

- National framework for tracking
- Each jurisdiction has their own legislation and requirements
- Each jurisdiction has systems and processes to track and report hazardous waste but not nationally integrated
- Many systems and processes are no longer fit for purpose.
- Barriers to sharing data



# Nationally consistent system



Effective regulation that promotes market stability and confidence

- Improve consistency in regulation
- Remove duplicative processes
- Lower barriers to compliance
- Enhance accessibility and use of data
- Facilitate sharing of data

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# What we have done





# Integrated Waste Tracking Solution (IWTS)

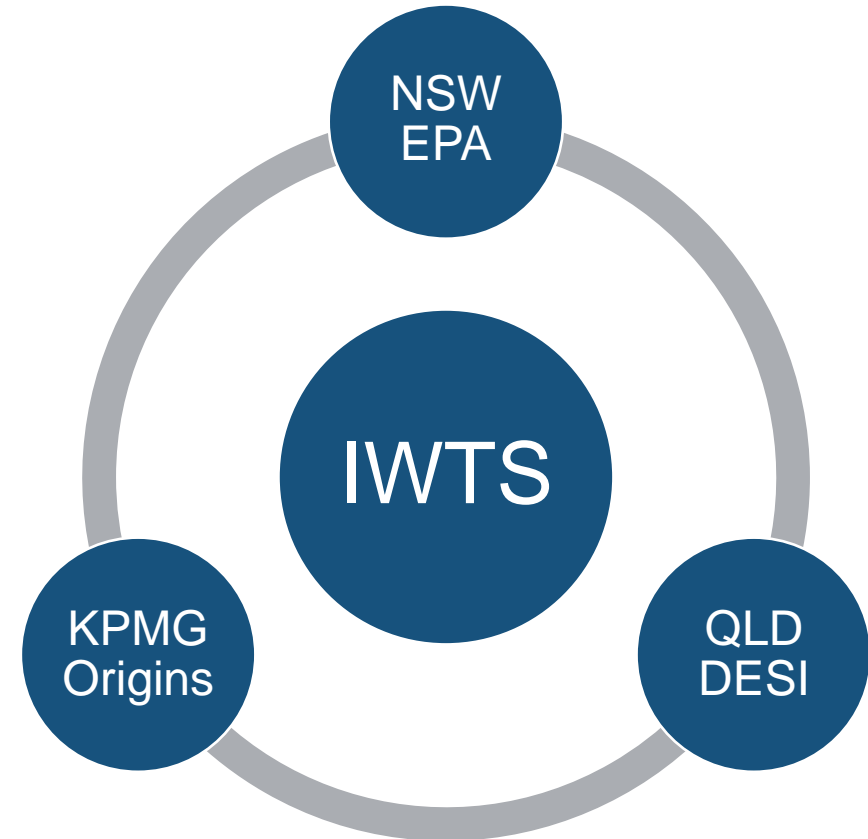
**KPMG is our solution supplier**

**KPMG Origins is:**

- Digital traceability platform
- Highly configurable
- Highly connectable
- Allows accelerated development

**The NSW EPA partnered with Queensland DESI**

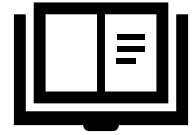
- Queensland DESI worked with us to develop and design the solution
- Queensland will launch the IWTS later this year
- This brings us a step closer to a nationally consistent system



# Engagement with Industry



Worked with industry to **develop a solution** that is fit for purpose



Released a **sandbox learning environment** prior to the go-live date to gather feedback and insights on the IWTS



Provided **live walkthrough sessions** as well as presentations at industry events, one-on-one meetings and presentations to peak bodies



Dedicated phone line that connects users with EPA project officers to **provide support to users**



400 outbound calls to users to inform them of the IWTS and **provide technical support**

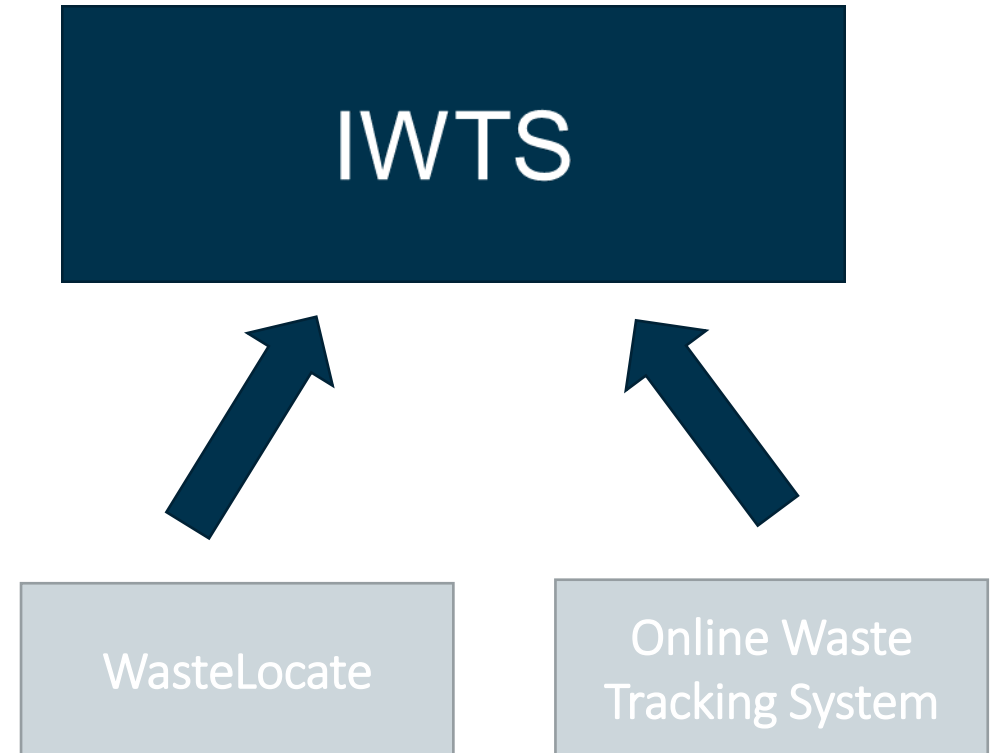


Dedicated project mailbox to capture user **feedback and provide support**



# Rollout of the IWTS

- 1** Operators who use **WasteLocate** for tracking **waste tyres** transition on 19 September 2023
- 2** Operators who use **WasteLocate** for tracking **asbestos waste** transition on 28 February 2024
- 3** Operators who use **Online Waste Tracking system** for tracking and/or reporting to transition on 28 February 2024



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# What has changed and what has not





# There are no new regulatory requirements



There have been no changes to the POEO Waste Regulation 2014



There have been **no changes to the amount** of asbestos or tyres that triggers tracking requirements



There **are** changes to the Asbestos and Waste Tyres Guidelines to reflect new processes in the IWTS



There **are changes** to the way householders track asbestos



# Householder Asbestos Program

Householders are required to track asbestos waste via the **Disposing of household asbestos** form

Householders should fill in this online form **within 24 hours after** the load has been delivered.

There is **no need for householders to use the IWTS** if they plan to transport the asbestos themselves.



## Disposing of household asbestos

Use this form if you have over 100 kilograms or 10 square metres of asbestos waste from your home to dispose of, and have transported the waste yourself.

Mandatory fields are indicated with an asterisk \*

Generator Name \*

Please enter first and last name

Generator ID

If you are a householder operating a business, enter your ABN here.

Receiver Name \*

Q Please select the facility the load will be taken to

Pick up details

Pick Up Location Address \*

Pick Up Location Suburb \*





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# Looking ahead

# What are we doing next?

- 1 Assisting industry users to adopt IWTS
- 2 Queensland adoption of the IWTS
- 3 Continual enhancement of the IWTS







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# Questions

# Waste Updates

Dr Helen Prifti  
Manager, Technical  
Assessments and Advice



# Who we are

As the environmental steward and regulator of our State we are committed to a sustainable future.

Our people are proud to play a role in protecting the environment of NSW. We partner with Aboriginal people, industry and the wider community to protect, restore and enhance our diverse ecosystems.

We bring scientific expertise, experience and actions to inspire innovative solutions as we transition our state to a circular economy.

As we respond to urgent current issues, including climate change, we educate and support our stakeholders to create an environmentally healthy future.

Join us on our mission to protect tomorrow together.



## **EPA's observations**

- Retesting
- Limits of reporting

## **New system for RRO/E applications**



# Retesting

## What is this?

- Retesting is the practice of superseding a result with the re-measurement of one or more parameters at the discretion of the owner of the sample
- Retesting has been observed where samples:
  - Exceeded the absolute maximum concentrations
  - Did not exceed the absolute maximum concentrations, but did exceed the maximum average concentrations for routine/characterisation testing
  - Contained asbestos

## Why is this an issue?

- Misleading information
- Cast doubts on reliability of data
- Sample/s may not be representative of the stockpile or other waste materials being sampled

# PFAS and LORs

## What is the concern?

- Environmental labs have been re-issuing laboratory reports

## What has been observed?

- Most commercial labs can detect and report PFAS in soils at a PQL of 0.1-0.2 µg/kg.
- Some laboratories report at raised LOR (5µg/kg)

## Why is this an issue?

- Misleading since it appears that laboratories have less sensitive capability for PFAS testing



**Example 1.** Testing of a waste material subject to a resource recovery order and exemption application.

1) Consultant submitted samples of waste for PFAS testing

2) Laboratory detected and reported PFOS in each sample above the standard practical quantification limit (PQL) of 0.1-0.2 µg/kg

3) Laboratory issued report to consultant

4) Consultant contacted laboratory demanding to raise the PQL to 5 µg/kg.

5) Laboratory reissued report with no detections of PFAS in waste samples at a PQL of 5 ug/kg

6) Consultant declared in application to EPA: *“No detections of PFAS were detected in any of the clay samples collected.”*

**Excerpt of original laboratory report**

Perfluorobutanesulfonic acid	µg/kg	<0.2	<0.2	<0.2	<0.2	<0.2
Perfluoropentanesulfonic acid	µg/kg	<0.2	<0.2	<0.2	<0.2	<0.2
Perfluorohexanesulfonic acid - PFHxS	µg/kg	<0.2	<0.2	<0.2	<0.2	<0.2
Perfluoroheptanesulfonic acid	µg/kg	<0.2	<0.2	<0.2	<0.2	<0.2
Perfluorooctanesulfonic acid PFOS	µg/kg	1	1.6	0.9	0.7	1.5
Perfluorodecanesulfonic acid	µg/kg	<0.4	<0.4	<0.4	<0.4	<0.4

Low-level PFOS detected in every sample

**Excerpt of reissued laboratory report**

Perfluorobutanesulfonic acid	µg/kg	<5	<5	<5	<5	<5
Perfluoropentanesulfonic acid	µg/kg	<5	<5	<5	<5	<5
Perfluorohexanesulfonic acid - PFHxS	µg/kg	<5	<5	<5	<5	<5
Perfluoroheptanesulfonic acid	µg/kg	<5	<5	<5	<5	<5
Perfluorooctanesulfonic acid PFOS	µg/kg	<5	<5	<5	<5	<5
Perfluorodecanesulfonic acid	µg/kg	<5	<5	<5	<5	<5

PFOS not detected in every sample

# PFAS and LORs

## Why is this an issue for Resource Recovery Orders and Exemptions?

- The revised laboratory report withholds information regarding the presence (albeit small quantities) of PFAS in the waste materials.
- Where analytes are reported as total concentrations (e.g. PFOS+PFHxS or Total PFAS), the sum relies on the addition of detected values only.
- By artificially raising the PQLs to 5 µg/kg, reported sum of PFOS+PFHxS is <5 µg/kg.



# New system for applying for Resource Recovery Orders & Exemptions

- Applications for RROs and RREs will not be via email.
- Applications will be via new external facing portal (through eConnect).
- Commencing in coming weeks



RROE-NEW-20003  
**New RROE Application** Delete Draft

### Resource Recovery Specific Orders & Exemptions – New Application



**Application Type**

Select Resource Recovery Order and Exemption category? \*

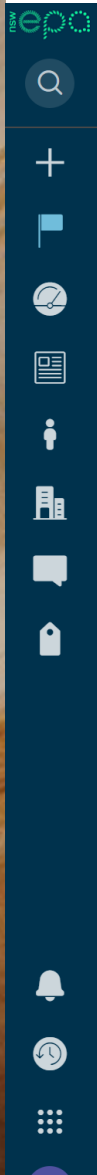
Have you contacted the NSW EPA regarding this application? \*  Yes  No

Save & Exit

Save

Save & Next





### Resource Recovery Specific Orders & Exemptions – New Application



**Applicant Type**

Are you an authorised agent completing this application on behalf of the applicant?  Yes  No

**Applicant Details**

**Applicant Role? (Select applicable options) \***  Waste Generator  Waste Supplier  Waste Processor  Waste Consumer

**Do you hold a current Environment Protection Licence number? \***  Yes  No

**Are you an organisation? \***  Yes  No

**First Name \***  **Middle name**  **Last / Family Name \***

**Email Address \***  **Mobile Number \***  **Phone Number**

**Postal Address \***

Any questions?

Thank you

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# OUR MISSION

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FALSE OR MISLEADING INFORMATION

# False or misleading information

## Contaminated Land Management Act (NSW) 1997

Daniel Opdam  
EPA Priority Investigations  
22 February 2024



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## FALSE OR MISLEADING INFORMATION

The NSW Environment Protection Authority acknowledges the Traditional Custodians of the land on which we live and work, honours the ancestors and the Elders both past and present and extends that respect to all Aboriginal people.

We recognise Aboriginal peoples' spiritual and cultural connection and inherent right to protect the land, waters, skies and natural resources of NSW. This connection goes deep and has since the Dreaming.

We also acknowledge our Aboriginal and Torres Strait Islander employees who are an integral part of our diverse workforce, and recognise the knowledge and wisdom embedded forever in Aboriginal and Torres Strait Islander custodianship of Country and culture.



## s 103 False or misleading information

(1) A person must not, in compliance or purported compliance with a requirement under this Act, give information to the EPA or another person knowing that, or being reckless as to whether, the information is false or misleading in a material particular.

Maximum penalty—

(a) for a corporation—

(i) in relation to a requirement under section 10, 14, 28 or 53B—\$1,000,000, or

(ii) in relation to another requirement—\$137,500, or

(b) for an individual—

(i) in relation to a requirement under section 10, 14, 28 or 53B—\$250,000 or imprisonment for 18 months, or both, or

(ii) in relation to another requirement—\$66,000 or imprisonment for 18 months, or both.

(2) For the purposes of this section, information given in connection with a site audit, a site audit report or a site audit statement is taken to be given in compliance with this Act.

(3) In this section—

give information includes make a statement, give evidence or produce a document.

Note: similar offences under the Protection of the Environment Operations Act 1997



## THE FRAUD TRIANGLE



*The Fraud Triangle by Donald R. Cressey*

## What to look for

- Discrepancies
- Abnormalities
- Circumstances
- Intuition





# What to do

- Review and articulate suspicions
- Check with lab
- Report to EPA – Enviroline
- Do not alert suspect (if possible)
- Make notes
- Organise records







## Investigation / court process

- Ongoing dealings with suspects/clients
- Statement/affidavit vs statutory notice
- Business records affidavit
- Giving evidence at court

Communication is key with investigators...  
and patience

# Key takeaway:



If you **see**  
something,  
**say** something®

REPORT SUSPICIOUS ACTIVITY  
TO LOCAL AUTHORITIES

Learn more: [dhs.gov/SeeSay](https://dhs.gov/SeeSay)

if you  
**SEE** **SAY**  
something something



"If You See Something, Say Something"® used with permission  
of the NY Metropolitan Transportation Authority.



**NSW EPA Site Auditors' Meeting  
Friday 22 March 2024**

# **Auditing a residential subdivision on a landfill – a case study**

**Dr Ian Swane**

**Ian Swane & Associates**

**([iswane@bigpond.com](mailto:iswane@bigpond.com))**

The Site





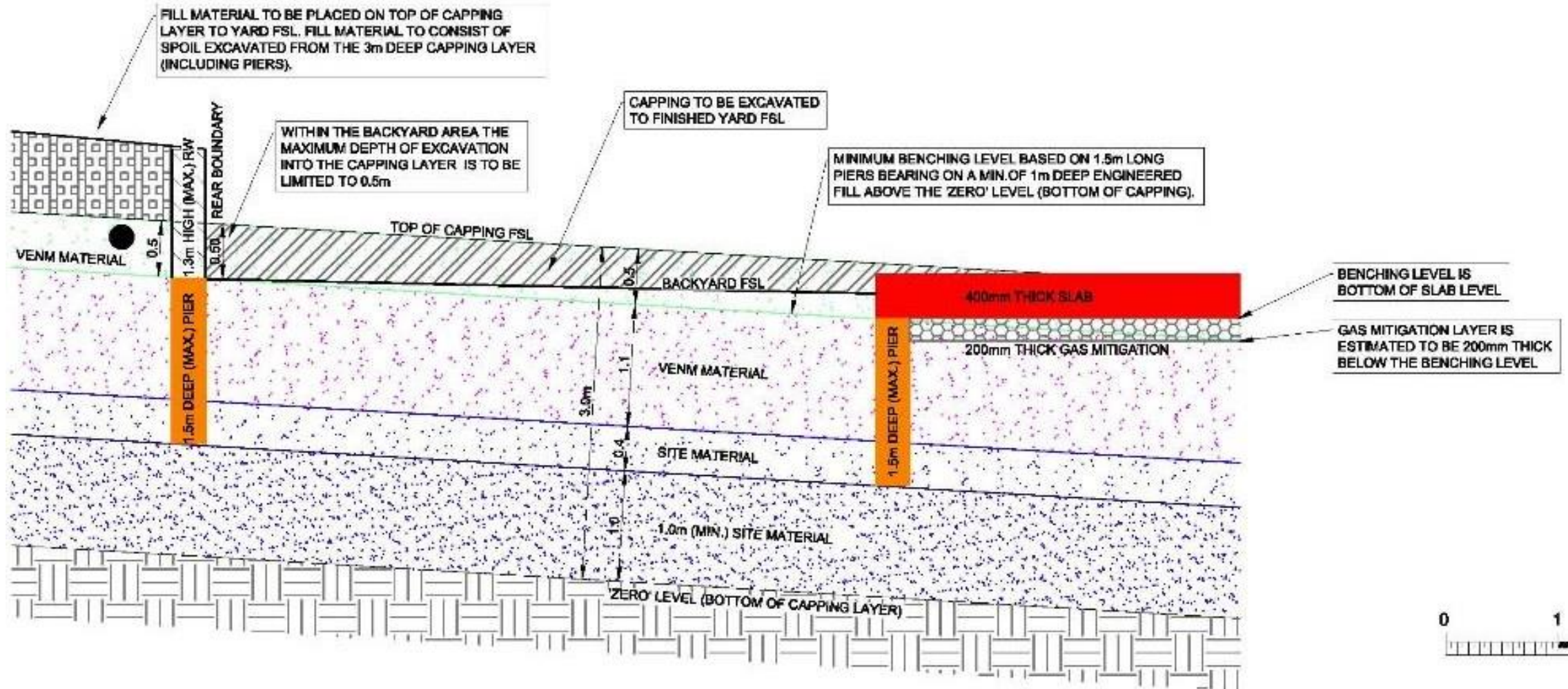
# The Proposed Development





# Cap Design

RATIO 1:200



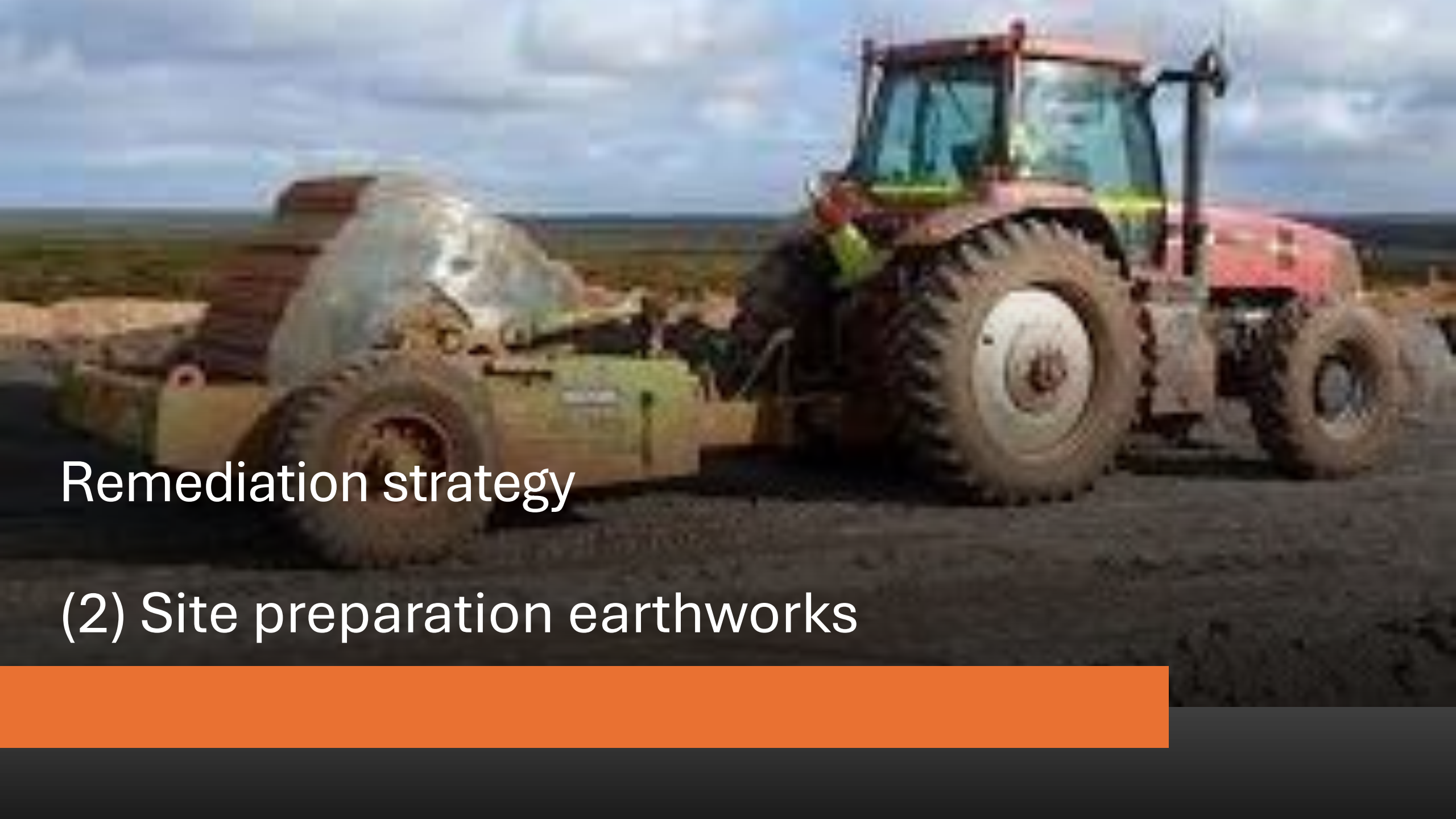


A large-scale excavation site with muddy soil and a pool of brown water. The soil is dark brown and appears to be a mix of sand and silt. There are some pieces of debris and a small orange object visible in the distance. The water in the pool is a murky, yellowish-brown color.

## Remediation strategy

(1) Excavation, processing and backfilling deep fill





Remediation strategy

(2) Site preparation earthworks





Remediation strategy

(3) Construction of lower cap layer





Remediation strategy

(4) Full scale pilot trials





Remediation strategy

(5) Construction of LFG interception trench





Remediation strategy

(6) Construction of upper cap layer





Remediation strategy

(7) Construction of LFG measures & ground slab





Remediation strategy

(8) Installation of roof ventilators



# Timeline

2002 – Investigations for proposed development commenced (E&G)

2015 (Jul) – Site auditor appointed (21 E&G reports completed)

2018 (Jan) – Section B SAS on remediation strategy issued

2020 (Jun) – Development consent issued

2022 (Jan) – First Section B SAS issued on completed cap

2023 (Apr) – First Section A2 SAS issued for house slabs / LFG

Present - Section B SAS's issued for capping covering 80% site

- Section A2 SAS's issued for 40% house slabs / LFG

2025 – Expected completion



# Technical challenges

1. Geotechnical engineering – subsidence, consolidation, compaction
2. Structural engineering – foundation design
3. Hydraulic engineering – Under-slab LFG ventilation
4. Construction management – Validation of remediation work
5. Audit management - Ensuring satisfactory completion of remediation work
6. Obtaining regulatory approvals
7. LFG – Understanding its transient behaviour during construction

Auditing a residential subdivision on a landfill site

# Lessons Learnt

- A good client (remediation very expensive, time consuming)
- Good consultants
- Sound understand of many technical issues
- Manage contributions from many disciplines over long periods
- Manage uncertainty using design redundancy & post-construction monitoring