

11 February 2022
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EPA

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Dear Emma

EPA THE NEW CONTAMINATED LAND DUTIES: DUTY TO MANAGE AND DUTY TO NOTIFY

About CMPA

CMPA is the premier representative body for the Victorian earth resources industry. It represents a broad spectrum of those involved in construction material processing businesses and has a membership base consisting of over 200 quarries across the industry. Together, these members employ approximately 1500 Victorians which underpins the construction industry of almost 240,000 employees (<https://liveinmelbourne.vic.gov.au/connect/victorian-industries/transport-defence-and-construction>).

CMPA members are typically small to medium sized family and private businesses, local government and utility providers. Many are regionally based employers and service local construction, infrastructure and road maintenance needs. The extractives sector is a key pillar within the construction industry underpinning the growth and economic development of Victoria through supply of the construction materials.

In 2020/21, the sector supplied approximately 68.5 million tonnes (see Figure 1) of construction materials to the market, at a value of approximately \$1B directly supporting Victoria's \$80B Big Build (<https://bigbuild.vic.gov.au/about>) and the estimated 1.6M new homes required by 2050 (<https://earthresources.vic.gov.au/geology-exploration/industry-investment/joint-ministerial-statement-on-extractive-resources>). Small to medium quarries account for approximately half of this production and is submitted to be a vital industry supporting the ongoing economic prosperity of Victorians.

The CMPA supports the principle of responsible, balanced legislation that is in the best interests of the State of Victoria and Australia including the protection of resources that enable extraction of resources that is cost efficient to market and to the Victorian taxpayer who is ultimately the end consumer and beneficiary of that resource.

About the CMPA

The CMPA Rules contain the following purposes of the Association which are to:

- (i) conduct its affairs with honesty and integrity;
- (ii) demonstrate its commitment to the:
 - viability of the Industry;
 - protection of the environment;
 - community in which it exists;
- (iii) vigorously pursue with government and others issues of widespread concern to members;
- (iv) demonstrate leadership and a sense of direction for the Industry;
- (v) act as a resource and provide support to its members through the delivery of cost savings and assistance in complying with legal obligations;
- (vi) foster unity and cooperation between members and others;
- (vii) promote continuous improvement through education, training and other activities.

As per purpose (vii) through the development of Guidelines, Checklists and Reference Manuals such as:

| Guidelines | Checklists | Reference Manuals | Community publications |
|---|-------------------|--------------------------------|---|
| Noise Management | Excavator | Work Safely | Quarries Build Communities https://cmpavic.asn.au/community/ |
| Dust Management | Front End Loader | Conduct Laboratory-based tests | |
| Blast Management | Mobile Plant | Conduct Screening | |
| Bushfire Response | On Road Tip Truck | Service & Maintain Crushers | |
| Slimes Management | Watercart | Conduct Crushing | |
| Traffic Management | Haul Truck | Collect Routine Site Samples | |
| Working Safely with Geotechnical Risk in Quarries | | Combined Crushing & Screening | |

The Guidelines are made available **free to the community** on <https://cmpavic.asn.au/publications/support-sheets/>

The above CMPA profile highlights the seriousness with which the extractive industry undertakes its responsibilities including to maintain community confidence and a social license to operate.

Notifiable contamination guideline - Duty to notify of contaminated land (publication 2008.1 July 2021)

Discussion

General:

The Guideline (Duty to notify) is impractical being 71 pages long with numerous references to other publications.

The document is very technical though the presence of diagrams may assist the understanding of “any person who is in management or control of land”.

It is unclear whether the document is written “for any person who is in management or control of land” (unlikely) or for contaminated land specialists.

The on-line reporting system for Contaminated Land Notification – Part B is not fit for purpose:

- The notifier is unable to obtain a copy of their submission, though, a Microsoft word version is provided and recommended to be filled in prior to the on-line notification.
- When clicking submit a “Failed submission error” may be received resulting in a phone call to EPA whilst ensuring the window remains open.
- Attachments cannot be uploaded to the form.
- The browser cannot be closed while filling in the form including automatic shutdown/restart of the computer if it is left idle due to all data input not being saved.
- If the form is resubmitted with updated information, it will delete any previously submitted information.
- The on-line data is not automatically saved or even able to be manually saved as the form is completed.

Assessing and controlling contaminated land risks: A guide to meeting the duty to manage for those in management or control of land (Publication 1977 June 2021)

Discussion

General:

As one of the original authors of the NEPM (ASC) and a former EPA Principal Environmental Auditor (contaminated land) the guideline outlines the process for assessing and controlling contaminated land use. However, for any person who manages, or controls contaminated land (including land that makes it reasonable to assume the land or groundwater may be contaminated) the guideline (duty to manage):

- Does not have a clearly defined end point: the requirements of the Guideline (duty to manage) are unattainable;
- Requires specialist advice from contaminated land consultants and lawyers;
- Is disproportionate to the magnitude of the risk of harm to human health or the environment;

- Would be daunting to the average person who manages, or controls contaminated land including land that has potential contamination present;
- Does not give definitive clear direction for example, *“a largely intact ecosystem may be sufficiently resilient to allow levels of contamination, whereas invasive remediation to remove the contaminants may unreasonably disrupt the ecosystem”*;
- Does not deliver on EPA expectations for documented evidence of compliance which has yet to be released by the EPA;
- Is not reasonably practicable.

Submission

It is well understood and supported that contaminated or potentially contaminated land needs to be managed so that risk of harm to human health or the environment from contaminated land are minimised so far as reasonably practicable. However:

- Both documents, Guideline (duty to notify) and Guideline (duty to manage), are very complex and hence, not reasonably practicable **for all** persons that are in the management or control of contaminated land.
- The Guideline (duty to manage) is said to be *“supporting duty holders to make decisions that are proportionate to the risks of harm.”*, however, Figure 1 *“Victorian regulatory scheme for contamination risks”* is not supportive at all due to being *“not an exhaustive representation of all obligations relating to contamination”*.
- A key EPA document is missing *“Identify the potential for land to be contaminated”*.
- The on-line reporting system for Contaminated Land Notification – Part B is not fit for purpose.
- Specialist advice from contaminated land consultants and lawyers is required regardless of the magnitude of risk of harm to human health and the environment from contamination of land.
- The extractive industry (quarries) has a lower and different risk profile to the mining industry must be considered separately: for example toxic chemicals may be released into the environment causing contaminated land, surface water and/or groundwater such as a mine processing of gold ore which can generate arsenic and mercury concentrated in tailings or coal mines that can catch fire. Quarried materials are generally benign, no or minimal processing steps using toxic / contaminating materials.
- Essentially the Guidance produced here by EPA is subjective where attempts to comply in good faith may be subject to challenge with the duty holder never confident that they have fully complied.

I would be pleased to discuss this submission with you further. Please contact me on 0434 692 618 or via email at elizabeth.gibson@cmpavic.asn.au in respect of any matter.

Yours sincerely

A handwritten signature in black ink that reads "EM Gibson". The letters are cursive and fluid.

Dr Elizabeth Gibson
General Manager