

CONTAMINATED LAND IN THE NORTHERN TERRITORY

Contaminated land liability and compliance with environmental regulations should be a key consideration for owners or occupiers of actual or potentially contaminated land. In particular, the storage, handling and distribution of fuel products exposes businesses operating in the downstream petroleum industry to potential historical and future contamination issues.

Businesses must pro-actively identify potential risks and liabilities that they may be exposed to through the operation of environmentally sensitive operations and implement risk management strategies, regulatory compliance and contractual protections to minimise their exposure to liability.

In this guide, Alexandra Geelan of [Moulis Legal](#) provides an overview of the key risks, obligations and liabilities relating to contaminated land in the Northern Territory. Contact our specialised [property and downstream petroleum lawyers](#) for further information and assistance relating to your particular circumstances.

THE REGULATION OF CONTAMINATED LAND IN THE NORTHERN TERRITORY

Contaminated land in the Northern Territory is investigated and managed in accordance with the *Waste Management and Pollution Control Act 1998* (NT) ('WMPCA'). The Environment Protection Authority ('EPA') works with the Department of Lands, Planning and the Environment ('DLPE') and local councils to assess and manage contamination that causes or threatens to cause environmental harm or harm to human health.

Public Register

The EPA maintains a register of licences, environmental protection approvals, environmental management plans, compliance plans, pollution abatement notices and any incidents that they have been notified of under the WMPCA.

REPORTING AND NOTIFICATION OBLIGATIONS

'Environmental harm' is defined in section 4 of the WMPCA as any actual or potential harm to or adverse effect on the environment of any degree or duration including environmental nuisance.

Duty to notify of pollution

If an incident occurs that causes or threatens to cause pollution resulting in environmental harm, the person conducting the activity must notify the EPA as soon as practicable but, in any case, within 24 hours of becoming aware of the incident. The notification must include details of the incident including date, time, location, how the pollution occurred and any attempts made to prevent, reduce or clean up the pollution.

The WMPCA provides protection for those who comply with their notification obligations and any notification provided in accordance with this duty cannot be used as evidence in court proceedings.

Duty to notify when land or business sold or leased

Where a person has been issued with an order or notice under the Act (such as a compliance plan or pollution abatement notice) and proposes to sell, lease, or otherwise permit another person to occupy the land, the person must notify the proposed purchaser or lessee of the notice or order. The person must also notify the EPA of their intention to sell, lease or grant occupation of the land.

Once the land is sold or leased, the new owner, lessee or occupier must notify the EPA that they are the new owner or occupier within 14 days of the acquisition being completed.

The same notification requirements apply if a person proposes to sell, lease or gift a business which carries out an activity to which the notice or order relates.

LIABILITY FOR CONTAMINATED LAND

Under section 12 of the WMPCA, any person who conducts an activity that is likely to cause pollution resulting in environmental harm must take all reasonable and practicable measures to prevent or minimise the pollution or environmental harm. This is known as the 'general environmental duty'.

Liability for contaminated land in the Northern Territory – and throughout Australia – is based on the *polluter pays principle* whereby the person who caused pollution or contamination is responsible for the costs associated with the contamination including management, remediation, compensation and any penalties.

Under section 77 of the WMPCA, the EPA may issue a pollution abatement notice on a person who:

1. the EPA believes, on reasonable grounds, has committed or may commit a general environmental offence or has failed to comply with their general environmental duty; or
2. is the owner or occupier of land that is polluted.

Contracting out of liability

The WMPCA does not preclude a person from transferring out of all historical, current or future environmental and contamination liability under contract.

All purchasers and lessees of potentially contaminated land such as service stations and fuel depots, should conduct thorough due diligence, ensure adequate disclosure and negotiate effective warranties and indemnities to reduce their potential liability.

INVESTIGATION OF CONTAMINATED LAND

Generally, assessment of site contamination is carried out as part of the land use planning and approvals process and DLPE may request an assessment as a condition of a development permit or approval.

Otherwise, site assessments can be initiated by the EPA when notified of a potentially contaminated site. The EPA may require a person to carry out, as part of an assessment, an environmental audit to evaluate a range of issues including whether management systems are sufficient to manage pollution or environmental harm or the extent to which action is required to clean-up or manage contaminated land. The audit program must be completed by a certified contaminated land audit.

Land owners or occupiers can also voluntarily conduct an environmental audit and provide the results to the EPA and, if they choose to do so, the results of the audit cannot be used as evidence in proceedings against the person for an offence under the WMPCA.

REMEDICATION AND MANAGEMENT OF CONTAMINATED LAND

Compliance Plans

A person who is unable to comply with the WMPCA, *Waste Management and Pollution Control (Administration) Regulations 2000* or an environment protection objective may enter a compliance plan which requires staged improvement in waste management and the prevention, reduction, control, rectification or clean-up of pollution or environmental harm which, when completed, enables the person to comply with their obligations.

A compliance plan can be created either:

- (a) by a person voluntarily submitting a draft plan to the EPA;
- (b) as required by written notice from the EPA to submit a draft plan; or
- (c) as required by order of the Court to submit a draft plan to the EPA.

Once the EPA has received a draft plan, they will consider it against the objectives of the WMPCA, best practice environmental management and the public interest. If it is satisfied with the draft plan, the EPA will approve it and notify the person. If it is not satisfied, the EPA must notify the person of their refusal to approve the plan and their reasons.

If a person is complying with the compliance plan, proceedings cannot be instituted against them for an alleged offence against a provision of the WMPCA to which the compliance plan relates.

Performance Agreement

The EPA may also enter into a performance agreement with a person conducting an activity that is likely to cause environmental harm. A performance agreement is an undertaking by the person to conduct a program to protect, restore or enhance the environment or to improve the waste management procedures to prevent, control or clean up pollution or environmental harm.

The agreement can specify that the Territory is to provide assistance in the performance of the program and is a contract which binds the Territory and the person.

Pollution abatement notice

The EPA may issue a pollution abatement notice to a person it reasonably believes has committed or may commit an offence including failing to comply with the general environmental duty or a person who is the owner of land that is contaminated. The notice may require a person to comply with a code of practice, the general environmental duty, the WMPCA, to prevent an action occurring which may cause pollution or to take remedial action to return polluted land as far as possible to a specified condition.

A pollution abatement notice must be lodged with the Land Titles Register and are available on the NT EPA website.

Review of decision

A person can apply to the EPA for internal review of most decisions made under the WMPCA including a decision to issue a pollution abatement notice or to require a compliance plan. If they are not satisfied with the response, they can apply to the EPA for further review which will be considered by either the Minister or a review panel established by the Minister.

This guide presents an overview and commentary of the subject matter. It is not provided in the context of a solicitor-client relationship and no duty of care is assumed or accepted. It does not constitute legal advice.



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CANBERRA

6/2 Brindabella Circuit
Canberra International
Airport
ACT 2609

BRISBANE

Level 4, Kings Row Two
235 Coronation Drive
Milton QLD 4000

AUSTRALIA

T +61 2 6163 1000
F +61 2 6162 0606
E info@moulislegal.com