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SPECIAL

Environment Protection Act 1970

STATE ENVIRONMENT PROTECTION POLICY (PREVENTION AND MANAGEMENT OF CONTAMINATION OF LAND)

The Governor in Council under section 16(1) and section 17A of the **Environment Protection Act 1970**, and on the recommendation of the Environment Protection Authority declares the following State environment protection policy (Prevention and Management of Contamination of Land).

Dated 4 June 2002

Responsible Minister
SHERRYL GARBUTT MP
Minister for Environment and Conservation

HELEN DOYE
Clerk of the Executive Council

1. **Title**
This Order may be cited as the State environment protection policy (Prevention and Management of Contamination of Land) and is referred to below as the policy.
2. **Commencement**
The policy shall come into operation upon publication in the Government Gazette.
3. **Policy area**
This policy shall apply to all land in the State of Victoria.
4. **Application of policy**
Where the provisions of this policy are inconsistent with the provisions of any other State environment protection policy in relation to land the provisions of this policy shall prevail.
5. **Contents of policy**
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PART I – POLICY FRAMEWORK

6. Policy goal

The goal of this policy is to maintain and where appropriate and practicable improve the condition of the land environment sufficient to protect current and future beneficial uses of land from the detrimental effects of contamination by:

- (a) preventing contamination of land; and
- (b) where pollution has occurred, adopting management practices that will ensure:
 - (i) unacceptable risks to human health and the environment are prevented; and
 - (ii) pollution is cleaned-up or otherwise managed to protect beneficial uses.

7. Policy Principles

The policy is guided by the following principles of environment protection:

- (1) *Principle of integration of economic, social and environmental considerations*
 - (a) Sound environmental practices and procedures should be adopted as a basis for ecologically sustainable development for the benefit of all human beings and the environment.
 - (b) This requires the effective integration of economic, social and environmental considerations in decision making processes with the need to improve community well-being and the benefit of future generations.
 - (c) The measures adopted should be cost-effective and in proportion to the significance of the environmental problems being addressed.

- (2) *The precautionary principle*
- (a) If there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.
 - (b) Decision making should be guided by:
 - (i) a careful evaluation to avoid serious or irreversible damage to the environment wherever practicable; and
 - (ii) an assessment of the risk-weighted consequences of various options.
- (3) *Principle of intergenerational equity*
- The present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations.
- (4) *Principle of conservation of biological diversity and ecological integrity*
- The conservation of biological diversity and ecological integrity should be a fundamental consideration in decision making.
- (5) *Principle of improved valuation, pricing and incentive mechanisms*
- (a) Environmental factors should be included in the valuation of assets and services.
 - (b) Persons who generate pollution and waste should bear the cost of containment, avoidance and abatement.
 - (c) Users of goods and services should pay prices based on the full life cycle costs of providing the goods and services, including costs relating to the use of natural resources and the ultimate disposal of wastes.
 - (d) Established environmental goals should be pursued in the most cost effective way by establishing incentive structures, including market mechanisms, which enable persons best placed to maximise benefits or minimise costs to develop solutions and responses to environmental problems.
- (6) *Principle of shared responsibility*
- (a) Protection of the environment is a responsibility shared by all levels of Government and industry, business, communities and the people of Victoria.
 - (b) Producers of goods and services should produce competitively priced goods and services that satisfy human needs and improve quality of life while progressively reducing ecological degradation and resource intensity throughout the full life cycle of the goods and services to a level consistent with the sustainability of biodiversity and ecological systems.
- (7) *Principle of product stewardship*
- Producers and users of goods and services have a shared responsibility with Government to manage the environmental impacts throughout the life cycle of the goods and services, including the ultimate disposal of any wastes.
- (8) *Principle of wastes hierarchy*
- Wastes should be managed in accordance with the following order of preference:
- (a) avoidance;
 - (b) re-use;
 - (c) re-cycling;
 - (d) recovery of energy;

- (e) treatment;
 - (f) containment;
 - (g) disposal.
- (9) *Principle of integrated environmental management*
If approaches to managing environmental impacts on one segment of the environment have potential impacts on another segment, the best practicable environmental outcome should be sought.
- (10) *Principle of enforcement*
Enforcement of environmental requirements should be undertaken for the purpose of:
- (a) better protecting the environment and its economic and social uses;
 - (b) ensuring that no commercial advantage is obtained by any person who fails to comply with environmental requirements;
 - (c) influencing the attitude and behaviour of persons whose actions may have adverse environmental impacts or who develop, invest in, purchase or use goods and services which may have adverse environmental impacts.
- (11) *Principle of accountability*
- (a) The aspirations of the people of Victoria for environmental quality should drive environmental improvement.
 - (b) Members of the public should therefore be given:
 - (i) access to reliable and relevant information in appropriate forms to facilitate a good understanding of environmental issues;
 - (ii) opportunities to participate in policy and program development..

8. *Policy Intent*

The quality of the land environment will be maintained, and where necessary enhanced, to maximise to the extent practicable the beneficial uses of the land environment, consistent with the aspirations of the Victorian community.

Human health and the environment will be protected through the prevention of contamination of land and clean-up and management of pollution of the land environment.

All occupiers will give effect to their duty to prevent contamination of land which they occupy. Without derogating any responsibility incurred by the polluter, occupiers will clean-up or manage pollution of the site for which they are the occupier (or ensure the pollution is cleaned-up or managed). These actions will ensure that the site is suitable for its current use and that other elements and segments of the environment are protected. Occupiers will also use the site and manage any contamination in a manner which takes account of any relevant statement of environmental audit that may have been issued for the site.

Any pollution of land will be cleaned-up or otherwise managed to protect the beneficial uses of the land and to ensure the condition of the land does not cause detriment to the beneficial uses of other elements at the site or off-site.

Any clean-up of pollution of land will reflect the order of preference set out in the waste hierarchy i.e. treatment and reuse on-site is preferred to treatment and reuse off-site (provided an equivalent environmental outcome is achieved) and where long term containment off-site is least preferred.

The clean-up of pollution of land will be carried out in a manner that does not result in detriment to the beneficial uses of other segments of the environment.

Any decision which has the effect of allowing a use or development of a site to occur, consistent with the **Planning and Environment Act 1987**, will be made having regard to: any contamination of land at the site and any significant effects that contamination may

have on any proposed use or development; the potential for any use or development to contaminate land; and the need to impose any conditions necessary for the prevention of contamination of land or the ongoing management of existing contamination of land.

Information will be made available to the public regarding the condition of the land environment. Information about land contamination will be disclosed by an occupier where another person proposes to become the occupier of a site.

Statutory programs related to environment protection, planning, public health, agriculture and natural resource management will be coordinated for the effective prevention and management of contamination of land.

PART II – LAND USE CATEGORIES

9. Land use

- (1) For the purpose of this policy, the following categories of use of the land environment are identified:
 - (a) Parks and Reserves: consisting of parks and forested areas as defined in any Victorian or Commonwealth legislation or subordinate legislation, or any regions designated by the Authority or Department of Natural Resources and Environment.
 - (b) Agricultural: consisting of rural areas involved in agricultural or horticultural practices.
 - (c) Sensitive use: consisting of land used for residential use, a child care centre, pre-school, or primary school. A sensitive use may occur in an area of High density (where development makes maximum use of available land space and there is minimal access to soil) or in Other lower density areas (where there is generally substantial access to soil)
 - (d) Recreation/Open space: consisting of general open space and public recreation areas.
 - (e) Commercial: consisting of a range of commercial and business activities.
 - (f) Industrial: consisting of utilities and a range of industrial activities.
- (2) The Authority will, when necessary, determine to which category of land use any site belongs, having regard to as many sources of relevant information as are reasonably available to the Authority.

PART III – BENEFICIAL USES TO BE PROTECTED

10. Beneficial uses

- (1) The beneficial uses of land protected by this policy are:
 - (a) maintenance of natural ecosystems, modified ecosystems and highly modified ecosystems;
 - (b) human health;
 - (c) buildings and structures;
 - (d) aesthetics; and
 - (e) production of food, flora and fibre.
- (2) Subject to sub-clause (4) the protected beneficial uses for the various land use categories are marked by a tick in Table 1.
- (3) The Authority may determine that a protected beneficial use in Table 1 does not apply at a site where:
 - (a) the background concentration of an indicator is greater than the relevant objective designated in Table 2; or
 - (b) the protection of the beneficial use is impracticable due to one or more characteristics of the land.

- (4) In addition to the requirement to protect beneficial uses of land, land must be managed to protect any beneficial use designated under any State environment protection policy as protected in any other segment, or element of the environment.

TABLE 1 – PROTECTED BENEFICIAL USES OF LAND

Beneficial Use	Land Use						
	Parks & Reserves	Agricultural	Sensitive use		Recreation/Open space	Commercial	Industrial
			High density	Other			
Maintenance of ecosystems							
<i>Natural Ecosystems</i>	✓						
<i>Modified Ecosystems</i>	✓	✓		✓	✓		
<i>Highly Modified Ecosystems</i>		✓	✓	✓	✓	✓	✓
Human health	✓	✓	✓	✓	✓	✓	✓
Buildings & structures	✓	✓	✓	✓	✓	✓	✓
Aesthetics	✓		✓	✓	✓	✓	
<i>Production of food flora and fibre.</i>	✓	✓		✓			

PART IV – INDICATORS AND OBJECTIVES

11. *Indicators and objectives for land*

- (1) The Authority will have regard to the indicators and objectives listed in Table 2 to determine whether the level of any contaminant at any site poses an unacceptable risk to protected beneficial uses listed in Table 1.
- (2) Subject to Clause 16, the condition of all land within the policy area is to be maintained as close as practicable to background levels.

TABLE 2 –INDICATORS AND OBJECTIVES FOR LAND

Beneficial Use	Indicators	Objectives
Maintenance of ecosystems	Chemical substances or waste identified through the application of the <i>National Environment Protection (Assessment of Site Contamination) Measure (Schedule B(2), Appendix 1)</i> or any other chemical substance or waste.	Contamination must not adversely affect the maintenance of relevant ecosystems and the level of any indicator must not be greater than – (a) Any regional Ecological Investigation Level developed in accordance with the <i>National Environment Protection (Assessment of Site Contamination) Measure</i> and published by the Authority for a region in which the site is located. Until such time that regional Ecological Investigation Levels applicable to the site are published, the Interim Urban Ecological Investigation Levels nominated in the <i>National Environment Protection (Assessment of Site Contamination) Measure</i> shall be used in place of any regional Ecological Investigation Level, or (b) levels derived using the risk assessment methodology described in the <i>National Environment Protection (Assessment of Site Contamination) Measure</i> , or (c) levels approved by the Authority.
Human Health ¹	Chemical substances or wastes identified through the application of the <i>National Environment Protection (Assessment of Site Contamination) Measure (Schedule B(2), Appendix 1)</i> or any other chemical substance or waste.	Contamination must not cause an adverse effect on human health and the level of any indicator must not be greater than – (a) the investigation level specified for human health in the <i>National Environment Protection (Assessment of Site Contamination) Measure</i> , or (b) levels derived using a risk assessment methodology described in the <i>National Environment Protection (Assessment of Site Contamination) Measure</i> , or (c) levels approved by the Authority ²

Beneficial Use	Indicators	Objectives
Buildings & Structures	pH, sulfate, Redox potential, salinity or any chemical substance or waste that may have a detrimental impact on the structural integrity of buildings or other structures.	Contamination must not cause the land to be corrosive to or adversely affect the integrity of structures or building materials.
Aesthetics	Any chemical substance or waste that may be offensive to the senses.	Contamination must not cause the land to be offensive to the senses of human beings.
Production of food and flora and fibre	Chemical substances or waste identified through the application of the <i>National Environment Protection (Assessment of Site Contamination) Measure</i> (Schedule B(2), Appendix 1) or any other chemical substance or waste.	Contamination of land must not: (a) adversely affect produce quality or yield; and (b) affect the level of any indicator in food, flora and fibre produced at the site (or that may be produced) such that the level of that indicator is greater than that specified by the <i>Australia New Zealand Food Authority, Food Standards Code</i> .

- Note 1. Refer to Department of Human Services for specific advice and/or statutory approvals regarding indicators and objectives for biological or radiological hazards.
2. In consultation with other relevant statutory public health programs for alternate objectives for human health'.

PART V – ATTAINMENT PROGRAM

GENERAL

12. Responsibilities

- (1) The Authority will exercise its powers, duties and functions to prevent and manage contamination by:
 - (a) ensuring that all works approvals, licences and notices issued under the **Environment Protection Act 1970** are consistent with the policy;
 - (b) assisting the community to understand the nature and significance of contamination;
 - (c) working co-operatively with all who use and manage land in the policy area to promote the use of practices that protect beneficial uses of land;
 - (d) maintaining the integrity of the environmental auditor (contaminated land) program by appointing auditors, promulgating guidance for environmental auditing, maintaining a quality assurance program for environmental audits of contaminated land and taking any necessary enforcement action in accordance with Part IXD of the **Environment Protection Act 1970**;
 - (e) coordinating, reviewing and reporting on implementation of the policy.
- (2) Protection agencies must implement the policy in so far as it relates to their powers, duties and responsibilities.

13. Planning authorities and responsible authorities

All planning authorities and responsible authorities must ensure their powers, functions and duties carried out in accordance with the **Planning and Environment Act 1987** are consistent with the provisions of this policy.

14. Planning scheme amendments, planning permits and change of land use

Prevention

- (1) In accordance with section 60(1)(a)(iii) of the **Planning and Environment Act 1987**, in determining a planning permit application, a responsible authority must consider any significant effects which the use or development may have on the environment. A responsible authority should consider imposing any necessary planning permit conditions related to the prevention and/or management of contamination of land.

General Obligations

- (2) In considering a request for a planning scheme amendment or an application for a planning permit in relation to potentially contaminated land, planning and responsible authorities:
 - (a) should require the applicant to provide sufficient information on the potential for existing contamination to have adverse effects on the future land use, to enable a decision regarding the suitability of the site for the proposed use or development;
 - (b) must consider any significant effects the environment, including any contamination of land, might have on any use or development, in accordance with section 12(2)(b) and section 60(1)(a)(iii) of the **Planning and Environment Act 1987**;
 - (c) should impose such conditions as it considers necessary to ensure any existing contamination identified in sub-clause (b) is managed such that the site is suitable for the permitted use(s).
 - (d) should have regard to guidelines or guidance documents prepared by the Authority or the Department of Infrastructure, in fulfilling any obligations under this clause.

Specific Obligations

- (3) In preparing an amendment to a planning scheme which would have the effect of allowing potentially contaminated land to be used for a sensitive use, the planning authority must have regard to Minister's Direction No. 1 as amended from time to time under section 12(2)(a) of the **Planning and Environment Act 1987**.
- (4) In meeting the general obligations set out in sub-clause (2), a responsible authority determining a planning permit application under the **Planning and Environment Act 1987** which would have the effect of allowing potentially contaminated land to be used or developed for a sensitive use, should consider any significant effects contamination may have on a sensitive use by, where appropriate:
 - (a) requiring that a certificate of environmental audit be issued before any building or works associated with the sensitive use has commenced; or
 - (b) requiring that:
 - (i) a statement of environmental audit indicating that the environmental conditions of the site are suitable for the sensitive use, be issued before any building or works associated with the sensitive use has commenced; and either
 - (ii) the permit applicant satisfies the responsible authority that the statement of environmental audit (including any relevant conditions included in the statement) has been complied with

before any building or works associated with the sensitive use commence; or

- (iii) the permit applicant satisfies the responsible authority that the statement of environmental audit (including any relevant conditions included in the statement) will be complied with on completion of the permitted development.

15. *Regional catchment strategies*

The Authority will provide support to Catchment Management Authorities and other protection agencies to enable the protection of beneficial uses from contamination of land through regional catchment strategies and other management strategies and programs.

16. *Application of chemicals or waste to land*

- (1) The application of chemical substances or wastes to land, including land used for agriculture, may be undertaken in the course of managing land for a beneficial use.
- (2) The application of chemical substances or waste to land may only occur in accordance with:
 - (a) any works approval, licence or notice issued under the **Environment Protection Act 1970**;
 - (b) the provisions of any other Victorian or Commonwealth legislation; or
 - (c) best practice, including that set out in any code of practice, guidance or guideline approved by the Authority or Department of Natural Resources and Environment, Department of Human Services or the National Registration Authority.

PREVENTION OF CONTAMINATION

17. *Prevention of contamination of land*

- (1) Subject to Clause 16, the occupier of any site must ensure that the land is managed to prevent contamination.
- (2) To prevent contamination of land, any occupier or other person within the policy area involved in the transport, storage or handling of any chemical substance or waste must:
 - (a) apply best practice;
 - (b) comply with any Industrial waste management policy or relevant dangerous goods legislation; and
 - (c) have regard to any guidance document approved by the Authority.
- (3) The occupier of a premises, where the principal activity is storing or handling chemical substances or waste that has the potential to contaminate land, should prepare and implement an Environment Improvement Plan to prevent contamination.
- (4) The Authority may through notice, licence or other statutory mechanism, require the occupier of any premises, where there is potential to contaminate land, to prepare and implement an Environment Improvement Plan.

18. *Material with potential to impact on the environment*

Occupiers of land which, due to its physical or chemical properties (including naturally elevated levels of indicators or acid sulfate characteristics) has the potential to adversely impact on protected beneficial uses, must manage the land in a manner that ensures:

- (a) adverse impacts on the beneficial uses of the site are avoided by taking into account the properties of the land when disturbing, developing or using the site;

- (b) the risk of adversely affecting any beneficial use of any element of the environment off-site is reduced to a level acceptable to the Authority; and
- (c) disposal or reuse of any material off-site is undertaken in accordance with any legislative requirements and procedures approved by the Authority.

MANAGEMENT OF CONTAMINATION

19. *Site contamination assessment*

The Authority may through works approval, licence or notice require the occupier of a premises to undertake and report the results of a site contamination assessment to determine:

- (a) the nature, extent and levels of existing contamination; and
- (b) the actual or potential risk to any protected beneficial uses at the site or off-site resulting from that contamination.

20. *Sampling and Analysis of Soils and Sediments*

- (1) In assessing contamination at a site, samples must be taken in accordance with:
 - (a) EPA Victoria Publication 441 A Guide to the Sampling and Analysis of Waters, Wastewaters, Soils and Wastes; or
 - (b) any other relevant methods or guidelines approved by the Authority.
- (2) Samples must be analysed according to:
 - (a) EPA Victoria Publication 441 A Guide to the Sampling and Analysis of Waters, Wastewaters, Soils and Wastes, using laboratories that are accredited by the National Association of Testing Authorities (NATA) or equivalent accreditation bodies listed in NATA's Mutual Recognition Agreement (MRA) Network for those analyses; or
 - (b) any other relevant methods and guidelines approved by the Authority.

21. *Polluted land*

Subject to clause 10(3), where contamination at a site is of a level which precludes a protected beneficial use of the relevant land use, a state of pollution exists and the land must be cleaned up and/or managed so that:

- (a) there is no immediate threat to human health on-site or off-site or the environment off-site;
- (b) contamination does not preclude protected beneficial uses of the relevant land use; and
- (c) the risk of contamination from the site adversely affecting any beneficial use protected under any State environment protection policy off-site is reduced to a level acceptable to the Authority.

22. *Management strategies*

- (1) Where contamination has occurred, site management strategies must:
 - (a) be consistent with the provisions of this or any other policy, regulation, licence or notice under the **Environment Protection Act 1970**; and
 - (b) prevent further contamination; and
 - (c) where practicable maximise all potential uses of a site.
- (2) The preferred management strategy should be determined with reference to:
 - (a) the principle of the waste hierarchy;
 - (b) achieving the best practicable environmental outcome; and
 - (c) protection of beneficial uses.
- (3) Management of any waste soil that is a prescribed industrial waste must be in accordance with the Industrial waste management policy (Prescribed Industrial Waste).

23. Clean up Levels

Where clean up is required to protect beneficial uses, clean up will either–

- (a) meet the relevant objectives of Table 2 for the protected beneficial uses subject to clause 10(3); or
- (b) be determined through a site specific risk assessment in accordance with the methodology set out in the National Environment Protection (Assessment of Site Contamination) Measure or another risk assessment methodology approved by the Authority.

24. Depth of Clean up

Where clean up is required to protect any beneficial use, the appropriate depth for clean up must be determined through a site-specific assessment, taking into account site characteristics, the nature of any contamination and the range of activities expected at the site in its current or anticipated use.

25. Transport and Disposal of Waste Soils and Sediments

The transport and disposal of waste soils or sediments must be undertaken in accordance with:

- (a) the **Environment Protection Act 1970**;
- (b) subordinate legislation including Regulations, Orders relating to notifiable chemicals, State environment protection policies and Industrial waste management policies under the **Environment Protection Act 1970**;
- (c) Health (Radiation Safety) Regulations 1994; and
- (d) Any relevant Guidelines or Protocols for Environmental Management or any other guidance approved by the Authority.

26. Statutory Environmental Audits

- (1) The Authority may require, through works approval, licence, or notice, the owner or occupier of a site, to undertake an environmental audit of the site.
- (2) Any Certificate or Statement of Environmental Audit must be issued in accordance with Part IXD of the **Environment Protection Act 1970**.
- (3) Where a statement of environmental audit has been issued for a site:
 - (a) the occupier of the site should use the site and manage any contamination in a manner consistent with any relevant Statement of Environmental Audit;
 - (b) to the extent that the Authority or a protection agency has required a Certificate or Statement to be provided, the Authority or protection agency, when making any decision dependent or conditional upon a Statement, should:
 - (i) have regard to any conditions included in any Statement of Environmental Audit; and
 - (ii) consider the need to impose conditions which require compliance with the Statement of Environmental Audit to be demonstrated.
- (4) Where the Statement indicates the site is not suitable for any use in its current condition, the Authority will require clean-up or management to protect human health and the environment.

27. Notification to Potential Occupiers

- (1) An occupier of any site on whom a notice under the **Environment Protection Act 1970** has been served which is still in force, must under section 60A of the Act notify any person who proposes to become the occupier of that site as to –
 - (a) the requirements of the notice; and
 - (b) the steps which have been taken to comply with that notice.

- (2) In accordance with section 53ZE of the **Environment Protection Act 1970**, an occupier of any site for which a Statement of Environmental Audit has been issued must provide a copy of the Statement to any person who proposes to become the occupier of the premises, unless a Certificate of Environmental Audit in respect of the premises has been issued subsequent to the Statement.
- (3) The Authority will work with stakeholders, including other government agencies and the property sector, to encourage occupiers to adopt sound practices for the provision of relevant information regarding contamination of land (including any site contamination assessment) to any person who proposes to purchase or lease the site.

PART VI – RELATED ACTIVITIES

28. *Research and monitoring*

- (1) The Authority will work with and encourage protection agencies, academic and research institutions, industry bodies and others to carry out research and surveys which will assist in the attainment of the goals stated in this policy.
- (2) To enable assessment of compliance with this policy, conditions that provide for monitoring of the chemical or other characteristics of the land may be incorporated in any works approval, licence, licence amendment or notice issued by the Authority, or permit issued by a responsible authority.

29. *Codes of practice and guidelines*

- (1) In cooperation with relevant protection agencies, organisations and individuals, the Authority will initiate and participate in the development and review of codes of practice and guidelines which aim to minimise the impact of activities that are likely to cause contamination of land.
- (2) The Authority will make publicly available a list and copies of such guidelines and codes of best practice.

30. *Public awareness*

The Authority will work with the Department of Infrastructure, the Department of Natural Resources and Environment, the Department of Human Services, local government and other protection agencies to promote public awareness in matters relating to:

- (a) the management of land to prevent contamination; and
- (b) risk assessment to ensure better understanding of toxicologically based risks to human health and the environment.

31. *Reporting policy implementation*

- (1) The Authority will periodically report publicly on contamination of land in Victoria.
- (2) A report under sub-clause (1) may include:
 - (a) an overview of the level of contamination of land within the policy area;
 - (b) a review of steps taken to implement this policy; and
 - (c) an assessment of the adequacy of the existing programs to assess the nature and extent of contamination.
- (3) The Authority will seek information and data regarding the condition of the land from protection agencies, to assist the Authority prepare reports under sub-clause (1).

PART VII – DEFINITIONS

32. *List of definitions*

In this policy, unless inconsistent with the context or subject matter:

“**Authority**” means the Environment Protection Authority constituted under the **Environment Protection Act 1970**;

“**background level**” means the level or range of levels of an indicator, measured in geologically similar land containing a measurable level of that indicator, outside the influence of any contaminant;

“**certificate of environmental audit**” has the same meaning as it has in the **Environment Protection Act 1970**.

“**chemical substance**” has the same meaning as it has in the **Environment Protection Act 1970**.

“**clean up**” has the same meaning as it has in the **Environment Protection Act 1970**.

“**dangerous goods**” has the same meaning as it has in the **Dangerous Goods Act 1985**;

“**element**” has the same meaning as it has in the **Environment Protection Act 1970**.

“**environmental audit**” has the same meaning as it has in the **Environment Protection Act 1970**.

“**environmental auditor**” has the same meaning as it has in the **Environment Protection Act 1970**.

“**indicator**” means any physical, chemical, biological or radiological characteristic used as a measure of environmental quality, as described in clause 11;

“**land**” refers to the element of the environment which includes:

- (a) soil, fill, rock, weathered rock and sand;
- (b) the vapour and liquids within interstitial space, in the unsaturated zone of (a); and
- (c) sub-aqueous sediment.

“**NEPM**” means National Environment Protection Measure developed under the **National Environment Protection Council (Victoria) Act 1995**.

“**objective**” means the level of an indicator prescribed for the protection of a beneficial use, as described in clause 11;

“**occupier**” has the same meaning as it has in the **Environment Protection Act 1970**.

“**planning authority**” means any person or body that is given power under section 8 of the **Planning and Environment Act 1987** to prepare a planning scheme or an amendment to a planning scheme;

“**planning permit**” means a planning permit issued under Part 4 of the **Planning and Environment Act 1987**;

“**polluted land**” means the condition of land described and referred to in section 45(1) of the **Environment Protection Act 1970**;

“**potentially contaminated land**” means land used or known to have been used for industry, mining, or the storage of chemicals, gas, wastes or liquid fuels (if not ancillary to another use of land) as defined in Minister’s Direction No.1 as amended from time to time under section 12(2)(a) of the **Planning and Environment Act 1987**;¹

“**protection agency**” has the same meaning as it has in the **Environment Protection Act 1970**.

“**responsible authority**” means the person who is the responsible authority for the administration or enforcement of a planning scheme described in section 13 of the **Planning and Environment Act 1987**;

“**risk assessment**” means a set of methods for estimating the probabilities and magnitudes of undesired effects resulting from contamination;

“**segment**” has the same meaning as it has in the **Environment Protection Act 1970**.

“**sensitive use**” means a residential use, a child care centre, a pre-school centre or a primary school as defined in Minister’s Direction No.1 as amended from time to time under section 12(2)(a) of the **Planning and Environment Act 1987**;

¹ Other land uses and activities may also give rise to contamination of land.

“site” means a parcel of land and other elements of the environment associated with the land, identifiable –

- (a) by reference to volume and folio numbers of a title registered with the Registrar of Land Titles in accordance with the **Transfer of Land Act 1958** or a parcel of land a memorial of the conveyance of which, containing a description of the said land, has been registered with the Registrar of Land Titles in accordance with the **Property Law Act 1958**; or
- (b) where determined by the Authority as applicable, by–
 - (i) Australian or global geographical coordinates of latitude and longitude to the third decimal place; or
 - (ii) Australian Map Grid reference to the nearest centimetre.

“statement of environmental audit” has the same meaning as it has in the **Environment Protection Act 1970**.

“waste” has the same meaning as it has in the **Environment Protection Act 1970**.

EXPLANATORY NOTES

Purpose of State environment protection policy

State environment protection policies (SEPPs) are declared by the Governor in Council under section 16(1) of the **Environment Protection Act 1970**. SEPPs provide a framework for environmental decision-making and a clear set of publicly agreed environmental objectives that all sections of the community must work together to achieve. Environment protection programs in Victoria are developed within this broad framework.

A State environment protection policy may apply to Victoria generally or to a portion of the State and may include:

- identification of the beneficial uses of the environment that are to be protected;
- selection of indicators (measures) of environmental quality;
- a statement of environmental quality objectives; and
- an optional "attainment program" which outlines selected measures which will support attainment of the policy's environmental quality objectives.

Background to State environment protection policy (Prevention and Management of Contamination of Land)

The State environment protection policy (Prevention and Management of Contamination of Land) (“the policy”) provides a framework for the protection of land and associated beneficial uses throughout Victoria. The policy allows for a consistent approach to the prevention of contamination of land and clean-up of pollution of land throughout Victoria and sets a consistent set of environmental quality indicators and objectives.

State environment protection policy (Prevention and Management of Contamination of Land) in detail

The policy is preceded by the necessary legal preamble for an Order in Council

Title

Clause 1 states that the policy title is State environment protection policy (Prevention and Management of Contamination of Land).

Commencement

Clause 2 states that the policy comes into effect upon publication in the Government Gazette.

Policy area

Clause 3 notes that the policy applies to all land in the State of Victoria.

Application of the policy

Clause 4 states that the policy over-rides all provisions relating to land in other State environment protection policies where there is any inconsistency between the State environment protection policy (Prevention and Management of Contamination of Land) and another State environment protection policy.

Contents of policy

Clause 5 provides a table of contents for the policy.

PART I - POLICY FRAMEWORK***Policy goal***

Clauses 6 outlines the goal of the policy. The policy aims to maintain and, where practicable, improve the condition of the land environment, so that the beneficial uses of the land are protected from the detrimental effects of contamination now and in the future.

While contamination of land should be avoided, historical contamination of land must also be recognised and managed. Such contamination may have arisen from former industrial activities, waste disposal, chemical or fuel storage and use. Depending on the level, nature and extent of contamination it may pose a risk to the beneficial of uses of land, that is the land may be polluted.

However, in many cases the land may be safely used for its current purpose and may only require management or clean-up to protect the beneficial uses if there is a change to a more sensitive use.

Where a site is not suitable for its current use or is causing detriment to the beneficial uses of the surrounding environment, i.e. the site is polluted, EPA will require clean-up or appropriate management to protect the beneficial uses.

Policy principles

Clause 7 sets out the principles of environment protection that guide actions undertaken in accordance with this policy. These principles mirror the principles of environment protection contained in the **Environment Protection Act 1970**.

Policy intent

Clause 8 indicates what this policy has been set in place to achieve. The policy intent is a statement of the expected outcome following implementation of the policy. The policy intent is not a series of specific requirements to be met, rather the outcomes identified in the policy intent are addressed through the attainment program.

PART II – LAND USE CATEGORIES***Land use***

Clause 9 identifies the several land use categories of the land environment which are covered by the policy.

PART III – BENEFICIAL USES TO BE PROTECTED***Beneficial uses***

Clause 10 and Table 1 of the policy outline the beneficial uses which are protected, and identify which beneficial uses are protected within each land use category.

Where more than one tick appears in Table 1 under Maintenance of Ecosystems, both types of ecosystem are protected, unless the Authority determines in accordance with this policy that a beneficial use does not apply.

PART IV – INDICATORS AND OBJECTIVES***Indicators and objectives for land***

Clause 11 and Table 2 of the policy identify the indicators of environmental quality and objectives appropriate to ensure the protection of beneficial uses.

PART V – ATTAINMENT PROGRAM**General*****Responsibilities***

Clause 12 outlines the responsibilities of the Authority and other protection agencies in the prevention and management of contamination of land.

Planning authorities and responsible authorities

Clause 13 requires planning authorities and responsible authorities to ensure that their actions under the **Planning and Environment Act 1987** are consistent with the provisions of the policy.

Planning scheme amendments, planning permits and change of land use***Prevention***

Sub-clause 14(1) states that a responsible authority, when determining a planning permit application under the **Planning and Environment Act 1987** for a use or development that has significant potential to contaminate land, should impose permit conditions related to the prevention and/or management of contamination of land (as appropriate).

This sub-clause will enable the responsible authority to highlight the need to comply with the requirements of EPA (or other authority of appropriate jurisdiction) in preventing and/or managing contaminated land associated with a particular use or development.

General obligations

Sub-clause 14(2) outlines the general obligations of planning and responsible authorities to take into account the potential for existing contamination when considering an application for a planning scheme amendment or planning permit. Sub-clause 14(2) applies to planning scheme amendments or applications for a planning permit related to potentially contaminated land as defined in this policy. It is intended that each planning and responsible authority will establish systems that enable identification of those sites that fit the definition of potentially contaminated land, based on site history and other relevant information. This will act as a trigger for more detailed consideration and assessment as required.

As set out in sub-clause 14(2)(iv), planning and responsible authorities should have regard to guidelines or guidance prepared by the Authority and/or the Department of Infrastructure to assist in implementation of sub-clause 14(2).

Specific obligations

Sub-clause 14(3) requires a planning authority to have regard to Minister's Direction No. 1 under the **Planning and Environment Act 1987** when preparing an amendment to a planning scheme which would have the effect of allowing potentially contaminated land to be used for a sensitive use.

Sub-clause 14(4) states that a responsible authority, when considering a planning permit application under the **Planning and Environment Act 1987** which would have the effect of allowing a potentially contaminated land to be used or developed for a sensitive use, should, where appropriate:

- require a Certificate of Environmental Audit be issued prior to the use, or works associated with the use, commencing; or
- require a Statement of Environmental Audit indicating that the site is suitable for the sensitive use, be issued prior to the use, or works associated with the use and require that the applicant satisfy the responsible authority that the statement conditions have or will be complied with.

When considering any Statement of Environmental Audit, a responsible authority should place emphasis on requiring the proponent to demonstrate compliance, in a manner consistent with the approach used to ensure compliance with other permit conditions. Where, in the opinion of the responsible authority, a higher level of enforcement is required, the responsible authority should liaise with other authorities of appropriate jurisdiction to ensure an appropriate enforcement mechanism is in place.

Where land is defined as "potentially contaminated land", but the responsible authority is satisfied that there is no evidence of any contaminating use, a Certificate or Statement of Environmental Audit need not be required.

A responsible authority may allow development works to commence at a site prior to a certificate or statement of environmental audit being issued, where such works are considered necessary to facilitate clean-up of pollution of land or groundwater.

In some circumstances, use of the environmental audit system may not be the most appropriate process for a responsible authority to satisfy its obligations pursuant to s.60(1)(a)(iii) of the **Planning and Environment Act 1987** e.g. regional contamination where effective regional strategies and processes are in place.

Regional catchment strategies

Clause 15 states that the Authority will work with Catchment Management Authorities and other protection agencies to ensure that regional catchment strategies and other programs and strategies make adequate provision for the protection of beneficial uses of land from contamination.

Application of chemicals or waste to land

Clause 16 states that chemical substances or wastes may be applied to land in the course of managing land for a beneficial use. This application must occur in accordance with the relevant Victorian or Commonwealth legislation (which includes subordinate legislation such as state environment protection policies, industrial waste management policies and regulations), or in accordance with best practice, including that set out in any government approved code of practice or guideline.

Prevention of Contamination

Prevention of contamination of land

Clause 17 outlines the responsibilities of site occupiers and transporters of any chemical substance or waste to prevent land contamination and provides for the preparation and implementation by certain occupiers of Environment Improvement Plans to prevent contamination.

In relation to sub-clauses (3) and (4), certain mining and extractive industries are regulated under the **Mineral Resources Development Act 1990** or the **Extractive Industries Development Act 1995** and are exempt from Works Approval and Licensing as set out under Part 3 of the Environment Protection (Scheduled Premises and Exemptions) Regulations 1996. Measures to prevent contamination on-site are established pursuant to the **Mineral Resources Development Act 1990** or the **Extractive Industries Development Act 1995**.

Material with potential to impact on the environment

Clause 18 states the management requirements for occupiers of land which has the potential to adversely impact on protected beneficial uses on or off the site.

Management of Contamination

Site contamination assessment

Clause 19 states that the Authority may require the occupier of a premises to undertake a site contamination assessment, subject to the requirements of and preconditions for the specific statutory tool used by the Authority to require the assessment.

Sampling and analysis of soils and sediments

Clause 20 notes the relevant guidelines, standards, accreditations and statutory reference documents that must be adhered to when obtaining and analysing soil and sediment samples as part of a site contamination assessment.

Polluted land

Clause 21 provides that, subject to sub-clause 10(3), a state of pollution exists where the level of contamination at a site precludes a protected beneficial use and outlines the management requirements for polluted land.

Management strategies

Clause 22 requires appropriate site management strategies to be applied to land where contamination has occurred and sets out the preferred order of management strategy. Management

of waste contaminated soil is subject to specific regulatory requirements set out in the Environment Protection (Prescribed Waste) Regulations 1998 and the Industrial Waste Management Policy (Prescribed Industrial Waste) 2000.

Clean up levels

Clause 23 states that the level of clean up required to protect beneficial uses must either meet the relevant objectives in Table 2, subject to clause 10(3), or be determined via a site specific risk assessment undertaken in accordance with an approved risk assessment methodology. Any clean-up determined using a site-specific risk assessment may be subject to audit by the Authority.

Depth of clean up

Clause 24 states that the appropriate depth for clean up must be determined through a site-specific risk assessment.

Transport and disposal of waste soils and sediments

Clause 25 requires the transport and disposal of waste soils and sediments to be undertaken in accordance with the relevant legislation and subordinate legislation, and any guidelines approved by the Authority.

Statutory Environmental Audits

Clause 26 states that the Authority may require the owner or occupier of a site to undertake a statutory environmental audit of the site. The clause outlines the responsibilities of an auditor when issuing a Statement or Certificate of Environmental Audit for a site.

The clause also identifies the duties of:

- occupiers of the site – in managing the site in a manner consistent with a Statement; and
- a planning authority, responsible authority, or the Authority - when making a decision dependent or conditional upon a Statement.

The clause also specifies that the Authority will require clean up or management of any site where the Statement indicates that the site is not suitable for any use in its current condition.

Notification to potential purchasers

Clause 27 reminds the occupier of any site which has undergone a statutory environmental audit or in respect of which any current notice has been served on the occupier under the **Environment Protection Act 1970**, of the existing statutory duty to notify any person who proposes to become an occupier of the site of the condition of the site. Most commonly, the obligation to provide a copy of the Statement, will apply when an owner is seeking to sell or lease a site. However the obligation will also apply to other forms of "occupation", for example in the case of a lessee seeking to sub-let a site or portion of a site.

Clause 27 also commits the Authority to work with other relevant stakeholders to encourage the provision of relevant site contamination information to any person who proposes to purchase or lease the site.

PART VI – RELATED ACTIVITIES

Research and monitoring

Clause 28 states that the Authority will work with a range of organisations and individuals to ensure that studies, research and surveys are conducted to assist in achieving the policy goals.

The clause also notes that conditions that provide for monitoring may be incorporated in any works approval, licence, licence amendment or notice issued by the Authority, or permit issued by a responsible authority. This will enable assessment of compliance with the policy.

Codes of practice and guidelines

Clause 29 states that the Authority will work in co-operation with relevant protection agencies, individuals and organisations to develop and review codes of practice which aim to minimise the impact of activities that are likely to cause contamination of land. Such guidelines and codes of practice will be made publicly available by the Authority.

Public awareness

Clause 30 states that the Authority will work with government departments, protection agencies and local government to promote public awareness regarding risk assessment and the management of land to prevent contamination.

Reporting policy implementation

Clause 31 states that the Authority will periodically report publicly on contamination of land in Victoria. The clause also identifies that protection agencies may be asked to assist the Authority in this task by providing information and data regarding the condition of land.

PART VII – DEFINITIONS

Clause 32 provides definitions of various words and terms used throughout the policy.

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