

Consultation summary

The EPA reviewed the Contaminated Land Management Regulation 2013 (CLM Regulation), made under the *Contaminated Land Management Act 1997* (CLM Act), and proposed it be remade with minor amendments to support improved practices to prevent, manage and remediate contaminated land.

Consultation overview

We invited public feedback on the draft Contaminated Land Management Regulation 2022 and related regulatory impact statement via our [Have Your Say](#) website between 28 March and 2 May 2022.

We asked respondents to tell us what they thought about the draft regulation by completing a short online survey focused on four minor amendments to the CLM Regulation, or by providing a written submission.

Review of feedback

We received a small number of submissions via our survey and mailbox. We reviewed the survey responses and the written submissions and prepared a summary of feedback received and EPA responses.

The feedback raised some broader issues – outside the scope of the CLM Regulation – touching on environment protection legislation

objectives and principles. We'll think about how these important issues might be considered in our work co-caring for Country in NSW with Aboriginal people.

Feedback and responses summary

Financial assurance policy amendment

Requiring the EPA's financial assurance policy and guidelines to be observed including by the EPA and anyone required to provide a financial assurance under the CLM Act.

Feedback

No feedback was received. A minor change was made to section 5(b) of the draft regulation, to pick up the title of the EPA's new financial cost assessment guidelines: *Estimating Financial Assurances: Guideline on Independent Assessment of Costs*.

Fee waiver or refund

Enabling the EPA to waive or refund site auditor accreditation fees in certain circumstances.

Feedback

When an auditor pays their annual fee, they should be committed to working as an auditor for the year. Taking a break does not warrant a refund.

EPA response

There are limited circumstances allowed – for example, illness – where an auditor is unable to undertake audit work and would require an extended period of leave that may warrant a fee waiver or refund.

Site auditor annual returns amendment

Requiring additional details about site audits – including the type of site audit, details of audit terminations and revisions of statutory site audits

– to be included in site auditor annual returns to the EPA.

Feedback

These details could be included on the site audit statement (prepared by a site auditor summarising the findings of a site audit), and be published on the EPA website, so they are available for prospective purchasers of the subject land/development.

EPA response

The information the EPA requires in the statement is set out in the EPA's site audit statement proforma, not in the regulation. When next reviewing the proforma, we will seek comment on the information requirements. The EPA publishes copies of the statements for all contaminated sites we regulate under the CLM Act on the public register. Councils are also required to note site audit statements on the planning certificates.

Feedback

Site auditors may pass on the costs of the extra time, and associated costs, of providing the additional information in annual returns.

EPA response

Site auditors generally include most of the additional information in annual returns already, so we do not expect that formalising these in the CLM Regulation will increase fees.

Penalty notice amounts amendment

Increasing the amounts payable for certain penalty notice offences under the CLM Act to align with the *Protection of the Environment Operations Act 1997*.

Feedback

Penalty notice amounts should vary on a site-specific basis.

EPA response

Legislation empowers the EPA to issue penalty notices to deal with one-off breaches that can be remedied easily. This requires consistency and certainty in penalty amounts.

Feedback

The higher penalties would be a financial and social burden on some landholders.

EPA response

The penalties only apply to land subject to the CLM Act and in certain circumstances. The *EPA Regulatory Policy* explains the eight elements we consider when deciding on regulatory action and how we consider them as a whole and individually. They are: influence, listen, educate, enable, act, enforce, monitor and require.

Other suggested amendments

Site auditor fees

Feedback

Site auditors should declare the fees they receive for their audits.

EPA response

The setting of site auditor fees and the provision of information about these fees are business decisions made by individual site auditors. Site auditor fees may vary. Which site auditor to engage to undertake site audit work is a matter for the person engaging the site audit services.

Availability of site auditors

Feedback

Allow use of *suitably qualified persons*, as Queensland regulations do, so there is less reliance on a very limited number of site auditors.

EPA response

The EPA recognises a number of contaminated land certification schemes and requires the use of certified consultants for preparing or approving reports for regulated sites. The EPA does not think that the supply of site auditors is limited. This view is based on our reviews of site auditor annual returns, which include information on the number of site audits completed by auditors each year.

NSW Environment Protection Authority

Email: info@epa.nsw.gov.au

Website: www.epa.nsw.gov.au

EPA 2022P3956

August 2022

The EPA [disclaimer](#) and [copyright](#) information is available on the EPA website.