

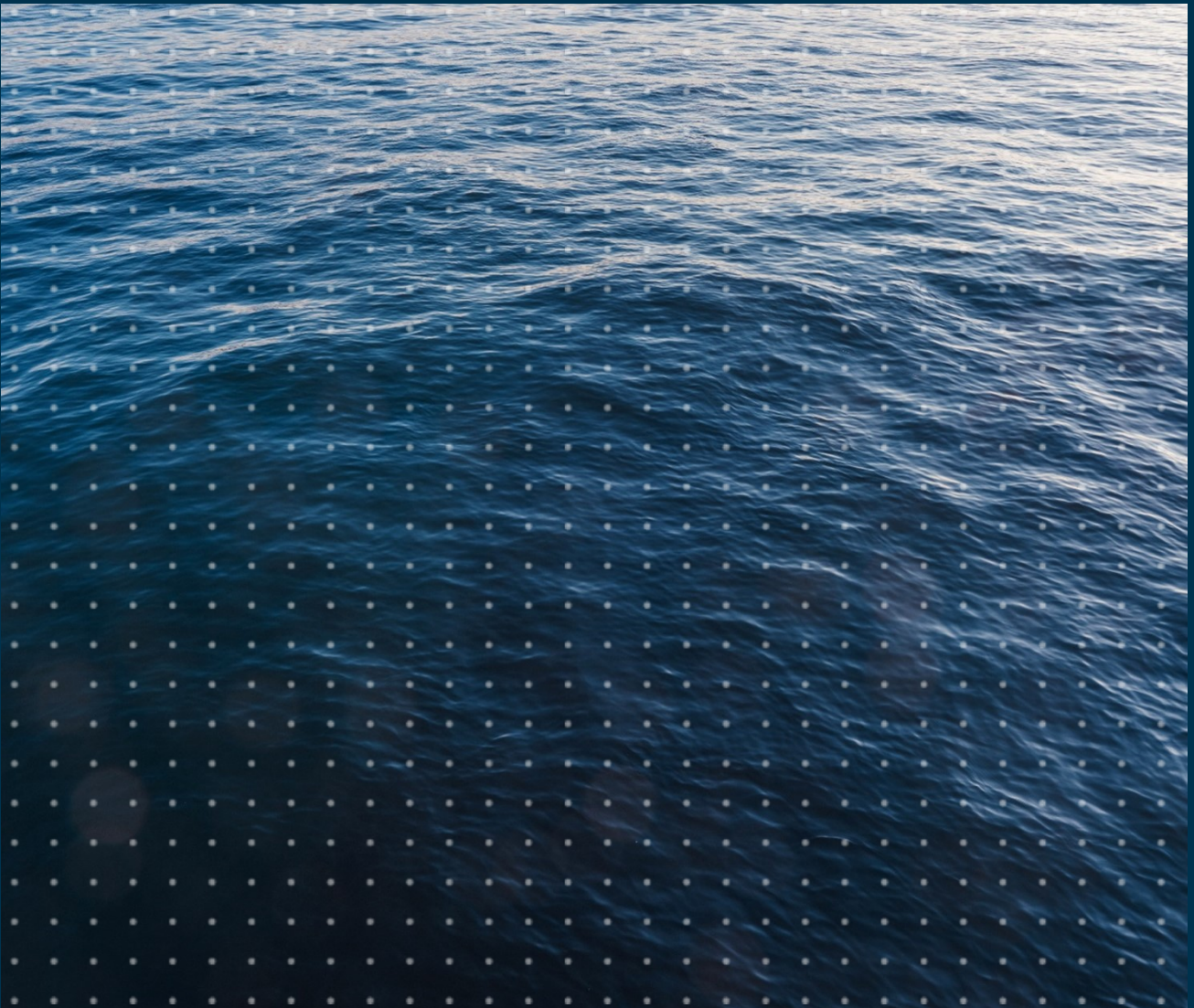


Environment Protection Authority

Regulatory Impact Statement

Proposed Contaminated Land Management Regulation 2022

DRAFT FOR CONSULTATION



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The NSW Government is proposing to remake the Contaminated Land Management Regulation 2013.

The Regulation's aim is to support the operation of the *Contaminated Land Management Act 1997* to reduce the potential risks posed to human health and the environment from significantly contaminated land.

The EPA proposes to remake the Regulation to provide for continuation of, and improvement to, administrative aspects of contaminated land management including cost recovery, operation of the NSW site auditor scheme, and penalty notice amounts.

This Regulatory Impact Statement (RIS) details the EPA's analysis of the costs and benefits of the proposed remake of the Regulation.

Summary

As the State's primary environmental regulator, the Environment Protection Authority (EPA) partners with business, government and the community to reduce pollution and waste, protect human health, and prevent degradation of the environment.

Preventing, managing and remediating contaminated land can protect human health and the environment from the risks posed by contaminated land and allow land to be put to beneficial use. The EPA regulates the management of significantly contaminated land under the *Contaminated Land Management Act 1997* (CLM Act) to protect people and the environment by reducing risks from contaminated land.

The CLM Act provides the legislative framework for assessing and managing significantly contaminated land in NSW, and establishes the NSW Site Auditor Scheme (site auditor scheme) that allows the EPA to accredit individuals as site auditors.

The proposed Contaminated Land Regulation 2022 (the proposed regulation) would be made under the CLM Act and would replace the Contaminated Land Regulation 2013 (CLM Regulation 2013), maintaining its existing provisions with minor amendments that:

- require 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
- enable the EPA to waive or refund the accreditation fee payable by a site auditor in certain circumstances
- align certain penalty notice amounts for penalty notice offences under the CLM Act with similar offences under other environmental legislation
- prescribe the EPA's protocol for determining monetary benefits
- require site auditors to provide additional information in annual returns to the EPA.

The proposed regulation should provide ongoing support for effective administration and enforcement of the CLM Act, including EPA cost recovery and accreditation of site auditors, at least cost to the community. It should also improve support for site auditors who require extended leave in certain situations, by allowing accreditation fees to be waived or refunded. The requirement for site auditors to include more information in annual returns will help the EPA better assess the auditors' work.

1. Introduction

1.1. Purpose of this document

The CLM Regulation 2013 is a principal regulation made under the CLM Act and includes provisions supporting the achievement of the Act's objectives (**1.2.1 CLM Regulation 2013**). Following publication in the NSW Government Gazette, it commenced on 1 September 2013. The *Subordinate Legislation Act 1989* (SL Act) requires a principal regulation to be reviewed every five years to make sure it remains relevant and effective.

Regulations automatically repeal if not remade after 5 years from the date that they were made. The Premier approved requests from the Minister for Environment to postpone the automatic repeal of the CLM Regulation 2013 on 1 September 2018, 2019, 2020 and 2021 to allow for any impacts on the regulation arising from review of the CLM Act. The CLM Regulation 2013 is due to automatically repeal on 1 September 2022.

The EPA has reviewed the CLM Regulation 2013 as required by the SL Act, and found scope for improvements through the minor amendments contained in the proposed regulation. The EPA has prepared this document which is a Regulatory Impact Statement (RIS) for the proposed regulation. The RIS covers the economic and social costs and benefits of the proposed regulation and alternative regulatory approaches. The EPA is giving the community an opportunity to comment on the RIS and on the proposed regulation before it becomes law (**1.5 Consultation**).

The SL Act, section 5 and Schedule 2, outline the specific matters a RIS must address. This RIS complies with these requirements, including the requirement to address the NSW Government's seven 'better regulation principles' (**Appendix A**).

1.2. Purpose of the proposed regulation

The proposed regulation is necessary to:

- support the EPA's ongoing administration of the CLM Act, to protect human health and the environment, and
- regulate to prevent, manage and remediate contaminated land.

The objective of the proposed regulation is to remake the CLM Regulation 2013, with minor amendments to provide for continuation of, and improvement to, administrative aspects of contaminated land management including operation of the site auditor scheme, cost recovery and penalty notice amounts.

1.2.1. CLM Regulation 2013

The proposed regulation would retain the provisions of the CLM Regulation 2013, including provisions for:

- the rate at which the EPA may recover its costs associated with orders and/or voluntary management proposals for contaminated land
- the fees payable for accreditation as a site auditor
- the time within which an application for renewal of accreditation must be made
- the content of the annual returns prepared by site auditors
- annual indexation of the cost-recovery rate and site auditor fees with movements in the Public Sector Wage Price Index for NSW
- penalty notice amounts for certain offences under the CLM Act
- the minor amendment of statutory guidelines that do not require consultation
- the time frame for the EPA to provide a statement of reasons for certain decisions.

The EPA charges a fee to recover its costs associated with orders it has issued or voluntary management proposals, it has approved, for contaminated land. The hourly rate for the fee is set under clause 4(2) of the CLM Regulation 2013. The hourly fee is adjusted on 1 September each year under clause 10 of the CLM Regulation 2013, in line with movements in the Public Sector Wage Price Index for NSW published by the Australian Bureau of Statistics (ABS). From 1 September 2021, the cost-recovery fee was \$101 per hour. (**5.2.1 Cost-recovery fees**).

The EPA also charges an application fee for site auditors and yearly accreditation fees. These fees are set under clauses 6 and 7 respectively of the CLM Regulation 2013 and are adjusted annually under clause 10 in line with the ABS's Public Sector Wage Price Index for NSW. From 1 September 2021, the application fee for accreditation as a site auditor is \$1,199 and the accreditation fee for a period one year or less is \$8,377. (**5.2.2 Accreditation fees**).

There are currently 45 site auditors accredited by the EPA under the site auditor scheme. Annual returns received by the EPA in 2021 from the 46 site auditors who were accredited at that time

showed 307 site audit statements were issued following 244 statutory audits and 63 non-statutory audits during 2020–21.

1.3. What is changing?

There are only a few, minor changes proposed to the CLM Regulation 2013. They add provisions to:

- require 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
- enable the EPA to waive or refund the accreditation fee payable by a site auditor in certain circumstances where an auditor is not actively working – for example, due to ill-health or parental leave
- require additional particulars of each site audit to be included in annual returns prepared by site auditors for submission to the EPA. The particulars are
 - whether the audit is a statutory site audit
 - the end date of a terminated audit and the reason for the termination
 - the date of issue of a revised or amended statutory site audit and the reason for the revision or amendment
- increase the amounts payable for certain penalty notice amounts, and align penalty notice offences under the CLM Act (for example, where a statutory site audit is completed by someone who is not an accredited auditor) with similar offences in other environmental legislation
- prescribe the protocol for calculating monetary benefits.

Details of the proposed changes are set out in **Appendix B**.

1.4. Who does the Regulation apply to?

The proposed regulation will apply to:

- anyone responsible for contaminated land that has been notified to the EPA
- anyone served with an order under the CLM Act to manage compliance with site investigation, management and/or remediation, including a
 - preliminary investigation order
 - management order
 - ongoing maintenance order
- anyone responsible for a voluntary management proposal from a landowner that outlines how contamination will be managed at a site (which the EPA may accept with or without conditions).

The proposed regulation will also apply to site auditors who are accredited under the site auditor scheme and anyone who applies to be accredited under the scheme.

1.5. Consultation

Site auditors were advised of the preparation of the proposed regulation and the likely proposed amendments to the CLM Regulation 2013 when they met with the EPA on 29 October 2021 (meeting minutes).¹

¹ <https://www.epa.nsw.gov.au/your-environment/contaminated-land/site-auditor-scheme>

The proposed regulation and this RIS will be exhibited on the EPA's public website and [Have Your Say](#) website, and a notice calling for submissions will be published in the *NSW Government Gazette* and advertised in the *Sydney Morning Herald* and *Daily Telegraph*. The EPA is consulting with the community and contaminated land management professionals, including site auditors, peak industry bodies and local councils before finalising the draft regulation.

The EPA welcomes submissions from the community and stakeholders and will consider any matters raised in finalising the proposed regulation.

Please complete submissions by answering the questions provided in the [online survey form](#) available on the [Have Your Say](#) website. Submissions can also be sent by email to CLM.Consultation@epa.nsw.gov.au

Submissions will be accepted until five weeks after the notice calling for submissions has been advertised. Dates are on the [Have Your Say](#) website.

2. Contaminated land management

2.1. Contaminated land

2.1.1. The risks

Land contamination can pose risks to human health and the environment and can result in land being unsuitable for various uses.

2.1.2. Regulatory framework

The CLM Act sets the framework for assessing and managing significantly contaminated land in NSW and establishes the site auditor scheme. The CLM Regulation 2013 supports the EPA's administration of the CLM Act and the operation of the site auditor scheme.

The framework for assessing and managing significantly contaminated land includes a duty to notify the EPA of potential contamination of land. Once notified, the EPA assesses the contamination to determine if it is significant enough to warrant regulation under the CLM Act, and to determine who is the responsible for contamination of the land.

The EPA regulates management and remediation of significantly contaminated land on a case-by-case basis by applying the various regulatory tools provided by the CLM Act. The EPA also regulates activities to prevent land contamination under the *Protection of the Environment Operations Act 1997* (POEO Act). Contaminated land that is not regulated by the EPA is managed by planning authorities through the planning and development process.

2.1.3. Site auditor scheme

The EPA administers the site auditor scheme, which aims to make sure human health and the environment is protected through appropriate management of contaminated land, particularly during changes in land use.

The scheme provides a pool of accredited site auditors who can be engaged to provide independent expert reviews of information about the possible or actual contamination of a site, including technical reviews of investigation, remediation and validation work conducted by contaminated land consultants.

2.1.4. Financial assurances

The EPA has discretionary powers to require a financial assurance under the CLM Act, the POEO Act and other environmental legislation, to guarantee funding for clean-up if a regulated party is unable or will not pay for clean-up and remediation of land that has been contaminated by pollution incidents or industrial activities. This strengthens the 'polluter pays' principle and reduces the risk of the NSW Government becoming responsible for the environmental liabilities. The CLM Act allows a financial assurance to be required from a person who is subject to a management order, ongoing maintenance order or a restrictive or positive public covenant.

2.2. Proposed changes to the CLM Regulation 2013

2.2.1. Site auditor scheme

Part 4 of the CLM Act provides for site audits including the accreditation of site auditors (section 50 of the CLM Act).

Accreditation as a site auditor

The EPA seeks applications for site auditor accreditation from qualified and experienced people approximately every three years. When people apply to the EPA for accreditation as a site auditor, their applications must be reviewed by a panel convened by the EPA. The accreditation panel must make a recommendation to the EPA on each application: the EPA may accept or reject the recommendation.

If the EPA approves an application for accreditation as a site auditor, it can specify a period for which the accreditation remains in force. The period is usually one to three years: three years is the maximum (CLM Act, section 51(4) and section 52(7)). Accreditation fees are based on the accreditation period.

A site auditor must also apply to the EPA to renew their accreditation before it expires. An auditor must do this not more than 60 days and not less than 30 days before expiry of the current accreditation period (clause 8 of the CLM Regulation 2013).

Waiver or refund of accreditation fees

The EPA aims for continuous improvement in regulatory performance, including ongoing monitoring and review of available regulatory tools and systems.

The EPA meets formally with site auditors twice a year and communicates with them regularly outside those meetings. Some site auditors have raised with the EPA the possibility of applying to have their accreditation fees refunded or waived in situations where they require leave from work and so are unavailable to undertake site audit work. The CLM Regulation 2013 does not prescribe any circumstances where the EPA can consider waiving or refunding an accreditation fee.

The proposed regulation includes provisions setting out circumstances when the EPA can refund or waive accreditation fees for accredited site auditors – namely, when they:

- are taking leave for a minimum period of 6 months and maximum period of 1 year or, if special circumstances exist, more than 1 year but not more than 2 years (the period of leave), and
- will not be undertaking any work relating to site audits, including reviewing reports for the leave period.

If the expiry date for a site auditor's accreditation falls during a period of leave referred to above, the proposed regulation provides that the site auditor should apply for renewal of their accreditation before they start the period of leave and up to 30 days before expiry of the accreditation period.

The proposed regulation would allow accredited site auditors to apply in writing for a refund or waiver when they are on leave and allow the EPA to refund or waive the fee. The fee may be

refunded or waived on a pro-rata basis depending on the period of leave. The site auditor's accreditation period would continue to run for the period of leave. The maximum accreditation period would remain three years.

2.2.2. Penalty notice amounts

Legislation empowers the EPA to issue penalty notices to deal with one-off breaches that can be remedied easily. The EPA has reviewed the available penalty notice amounts that it can issue under the CLM Act for some contaminated land offences. The penalty notice amounts that are set under clause 11 and Schedule 1 of the CLM Regulation 2013 have not changed since 2008 and are low in comparison to penalty notice amounts for comparable offences in other environmental legislation.

Schedule 1 of the proposed regulation provides for increases to the penalty notice amounts to align them with penalty notice amounts for similar offences in other environment protection legislation, including under the Protection of the Environment Operations (General) Regulation 2021. The existing and proposed penalties amounts for offences under the CLM Act are detailed in **Appendix B**.

2.2.3. Policies and guidelines about financial assurances

The EPA has published guidance for:

- estimating the costs of actions a regulatory party must undertake under certain statutory instruments, including management orders, ongoing maintenance orders and positive and restrictive public covenants and
- calculating the amounts of a financial assurance that the EPA may require in the form of a bank guarantee.

This guidance includes:

- the draft *Financial Assurance Policy*, to help regulated companies or individuals identify when the EPA may require a financial assurance
- a draft *Guideline on Estimating Financial Assurances*, to help regulated companies or individuals to obtain an independent assessment of costs where the EPA has determined that a financial assurance is required.

The proposed regulation makes provision for the EPA and anyone required to provide a financial assurance under the CLM Act to take into account the:

- *Financial Assurance Policy* the EPA has prepared and published in the *NSW Government Gazette* in relation to the content of requirements in management orders, ongoing maintenance orders and positive and restrictive public covenants for financial assurances; and
- *Guideline on Estimating Financial Assurances* the EPA has prepared and published in the *NSW Government Gazette* in relation to the calculation of the amount of financial assurances required.

2.2.4. Calculating monetary benefits

'Monetary benefit' means monetary, financial or economic benefits.

The EPA's protocol for calculating monetary benefits was published in the *Government Gazette* on 1 February 2019 and is available on the [EPA website](https://www.epa.nsw.gov.au/-/media/epa/corporate-site/resources/legislation/191398-protocol-for-calculating-monetary-benefit-orders.pdf).²

² <https://www.epa.nsw.gov.au/-/media/epa/corporate-site/resources/legislation/191398-protocol-for-calculating-monetary-benefit-orders.pdf>

committing the offence. Section 95A(3) of the CLM Act provides for the regulation under the Act to prescribe a protocol to be used in determining the amount that represents the monetary benefit acquired by the offender or accrued or accruing to the offender.

The proposed regulation includes provision for prescribing the EPA's protocol for calculating monetary benefits.

This proposal is consistent with Section 141 of the Protection of the Environment Operations (General) Regulation 2021, which prescribes the protocol as the method for determining a monetary benefit for the purposes of section 249 of the POEO Act.

3. Alternative options

Different regulatory proposals to support the operations of the CLM Act have been considered.

3.1. Option 1: The base case – do nothing

The 'do nothing' option would allow the CLM Regulation 2013 to lapse on 1 September 2022, without the introduction of a new regulation.

This would result in the EPA not being able to:

- set an administrative cost rate to recover its costs involved in the administration of orders and voluntary management proposals under the CLM Act
- set fees payable for accreditation as a site auditor
- adjust the cost-recovery fee rates, or site auditor application, accreditation and renewal fees, in line with changes to public sector wages
- require site auditors to include specific information in annual returns.

The first point – not being able to set a rate for recovering costs – could make it difficult to recover administrative costs incurred in regulating the investigation and remediation of land required under the CLM Act.

This might mean the NSW Government would need to cover these costs, and NSW taxpayers would have to contribute a larger proportion of the cost of maintaining the contaminated land management framework. This would be inconsistent with the 'polluter pays' principle.

The second point – not being able to set site auditors' fees – would make it difficult to administer the site auditor scheme.

If the CLM Regulation 2013 lapsed, this might also result in insufficient information being provided in annual returns submitted to the EPA by site auditors to support an effective assessment of the quality of their work.

Option 1 would also reduce regulatory options for enforcing environmental legislation in response to non-compliance to protect human health and the environment, as it would mean no penalty notice amounts are set for offences under the CLM Act.

3.2. Option 2: The remake of the existing CLM Regulation 2013

The remake of the CLM Regulation 2013 without any amendments would allow the EPA to continue to:

- set an administrative cost rate to recoup the costs involved in the administration of orders and voluntary management proposals under the CLM Act
- set fees payable for accreditation as a site auditor
- set the time within which an application for renewal of accreditation must be made

- set fees payable for accreditation as a site auditor
- set the time within which an application for renewal of accreditation must be made
- set the content of the annual returns prepared by site auditors
- apply annual indexation of the cost-recovery rate and site auditor fees in line with movements in the Public Sector Wage Price Index for NSW
- set penalty notice amounts for certain offences under the CLM Act
- make minor amendments of statutory guidelines that do not require consultation
- maintain a required time frame for the EPA to provide a statement of reasons for certain decisions.

3.3. Option 3: The proposed regulation – the preferred option

The proposed regulation would remake the CLM Regulation 2013 with minor amendments to:

- require 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
- enable the EPA to waive or refund the accreditation fee payable by a site auditor in certain circumstances
- require additional information to be included in the annual return that a site auditor must submit to the EPA, namely
 - whether the audit is a statutory site audit
 - the end date of a terminated audit and the reason for the termination
 - the date of issue of a revised or amended statutory site audit and the reason for the revision or amendment
- increase the amounts payable for certain penalty notice offences under the CLM Act.

This option would continue to support the achievement of the CLM Act's objectives – namely, to adequately protect human health and the environment from the risks posed by contaminated land – by maintaining the CLM Regulation 2013's provisions and adding improvements. The requirement for additional information to be included in annual returns prepared by site auditors will assist the EPA to better assess the work undertaken by site auditors. Including provisions for potential waiver or refund of accreditation fees in certain circumstances will benefit site auditors who require leave from work for extended periods.

Increasing penalty notice amounts will make them proportionate to the environmental and human health risks posed by non-compliance, align them with similar penalty notice amounts in other environmental legislation, and provide a strong deterrent.

For these reasons Option 3 is the preferred option.

4. The proposed regulation – policy context

The proposed regulation is consistent with the NSW Government's commitment to enhancing the quality of life of the people of NSW through its key policy priorities. These policy priorities include 'well connected communities with quality local environments'.

The proposed regulation is also consistent with the EPA's:

- **Strategic Plan 2021–24** – the aims of which include 'keeping communities safe from harmful contaminants'

- **Regulatory Policy** – the aims of which include: to reduce risks to human health and prevent harm to the environment, and protect, restore and enhance the quality of the environment, having regard to ecologically sustainable development.

5. Benefits and costs of the proposed regulation

5.1. Benefits

Ongoing recovery of regulatory costs from people responsible for contaminated land

The proposed regulation supports the EPA's recovery of the administrative costs it incurs associated with assessing and reviewing orders and voluntary management proposals from people who are responsible for the contamination and who are most likely to directly benefit from the land. This approach is consistent with the 'polluter pays' principle. It avoids the need for increased Government funding to replace lost cost-recovery revenue, which would shift costs to the community.

5.1.1. Continued and improved operation of the site auditor scheme

The proposed regulation will provide ongoing support to the operation of the CLM Act including administration of the site auditor scheme by retaining the provisions of the existing CLM Regulation 2013. The site auditor scheme improves public access to competent technical advice and provides increased certainty in the sign-off of contaminated land assessments and remediation.

The proposed regulation will provide site auditors with practical support in the form of a waiver or refund of the accreditation fee during a leave period in certain circumstances and on application to the EPA. This proposal was made in response to calls from some site auditors for the EPA to consider waiving site auditor fees in certain situations where a site auditor requires longer than usual periods of leave from work – for example, parental leave following the birth of a child, or when special circumstances apply, such as long-term illness.

5.1.2. More consistent penalty notice amounts

The proposed regulation will align the penalty notice amounts set for offences under the CLM Act with offence amounts set under other environmental legislation. This would increase penalty notice amounts for the offences of:

- failing to carry out the actions of a preliminary investigation order, management order or ongoing maintenance order issued under the CLM Act
- carrying out site audit work without being accredited
- failing to notify the EPA of contaminated land.

Higher penalty amounts should deter potentially harmful behaviours such as a corporation or person falsely representing themselves as an accredited site auditor. Industry and individuals will only be impacted by the proposed increased penalties if they do not comply with the law.

5.2. Costs

5.2.1. Cost-recovery fees

The proposed regulation would allow the EPA to continue to charge cost-recovery fees, and would lead to ongoing costs to industry or individuals arising from any fees they are required to pay the EPA. People who can be charged for cost recovery for contaminated land include:

- the business or individuals who caused the contamination
- landowners
- 'notional' owners (for example, financiers).

The EPA may require payment of costs incurred in connection with a number of activities, including:

- preparing and serving an order
- assessing and settling the terms of a voluntary management proposal
- monitoring actions under an order or an approved voluntary management proposal
- seeking compliance with an order or approved voluntary management proposal
- matters related with these activities, such as meetings, and communications.

There are no exemptions for cost-recovery fees. Regulation of individual contaminated sites can vary significantly in terms of complexity, timing and resourcing required. Cost-recovery fees are calculated using the prescribed hourly rates for time spent on recoverable activities for each regulated site. The EPA considers any concerns a person raises within 14 days of receiving a draft cost-recovery notice for comment. If no comments are received the EPA issues a final notice and invoice for payment.

Cost-recovery fees will continue to be adjusted in line with annual movements in the Public Sector Wage Price Index for NSW. The method for calculating the adjustment will not change.

Table 1 Cost-recovery fee rate changes

Operative date	Amount or fee (Clause 4, CLM Regulation 2013)
1 September 2017	\$90 per hour
1 September 2018	\$93 per hour
1 September 2019	\$96 per hour
1 September 2020	\$99 per hour
1 September 2021	\$101 per hour

Source: Contaminated Land Management (Adjustable Amounts) Notices, published on the NSW Legislation website (2017 to 2021).

Although recent trends in cost-recovery rates are upwards, the rate of increase has been low and in line with inflation, as shown in **Table 1**, *Cost-recovery fee rate changes*. The cost-recovery fee, for example, increased by \$2 per hour, from \$99 to \$101 per hour on 1 September 2021.

5.2.2. Accreditation fees

The accreditation fees are a reasonable cost for the professional recognition required to provide expert site auditor services in NSW. Recent trends in accreditation fee changes are shown in **Table 2**. Although moving upwards, they are in line in inflation. The application fee for site auditor

auditor accreditation, for example, increased by \$13, from \$1,186 to \$1,199 on 1 September 2021, while the accreditation fee increased by \$91 from \$8,286 to \$8,377 on the same date.

Table 2 **Accreditation fee changes**

Operative date	Application amount/fee (Clause 6, CLM Regulation 2013)	Accreditation amount or fee for a period of one year (Clause 7(a)) CLM Regulation 2013)
1 September 2017	\$1,103	\$7,710
1 September 2018	\$1,129	\$7,892
1 September 2019	\$1,159	\$8,098
1 September 2020	\$1,186	\$8,286
1 September 2021	\$1,199	\$8,377

Source: Contaminated Land Management (Adjustable Amounts) Notices published on the NSW Legislation website (2017 to 2021)

6. Analysis and conclusions

Of the regulatory proposals considered in this RIS to support the operations of the CLM Act, Option 3 is considered the preferred option that would deliver the most benefit to NSW, at the least cost to the community.

If Option 1 is adopted, it would create a gap in funding to support the contaminated land management framework. This would require the NSW Government to fill this funding gap, meaning there would be an increase in the contribution NSW taxpayers make towards the administrative cost of the framework.

Adopting Option 1 would also reduce regulatory options for enforcing environmental legislation in response to non-compliance to protect human health and the environment.

Option 2 would maintain the status quo but would not align the penalty notice amounts with other environmental legislation. It would also not provide practical support for site auditors to seek a waiver/refund of accreditation fees when on a period of extended leave. Information gaps relating to the particulars provided in annual returns prepared by site auditors would not be addressed under Option 2.

Appendix A: Better regulation principles

Under the *NSW Government Guide to Better Regulation* (NSW Treasury 2019), for new and amending regulations, a Regulatory Impact Statement (RIS) is required to address the 'better regulation principles' set out in the guide. (This is in addition to meeting the requirements of the *Subordinate Legislation Act 1989*.) These principles have been applied throughout this RIS as detailed in **Table 3**.

Table 3 Compliance with better regulation principles

Better regulation principle	CLM issue	Compliance under the RIS
Principle 1: The need for government action should be established. Government action should only occur where it is in the public interest, that is, where the benefits outweigh the costs.	Government action is needed to remake the Regulation to support the operations of the CLM Act. Regulating the remediation of contaminated land contributes to maintaining the health, wellbeing and safety of the community and benefits industry by avoiding economic losses from remediation and development delays. Site auditors play a valuable role in providing expert technical advice and increased certainty in the sign-off of contaminated land assessments and remediation, and benefit from the maintenance of professional standards and quality through accreditation. These benefits outweigh the costs to industry and site auditors arising from cost-recovery and accreditation fees.	Section 1 Section 2 Section 5
Principle 2: The objective of government action should be clear.	The amendments seek to strengthen the effectiveness of the Regulation to support the objectives of the CLM Act to meet improved environmental and human health outcomes from an increased ability to prevent, manage and remediate pollution, and maintain standards of remediation review, enforce the laws with appropriate penalties and require polluters to pay.	Section 1
Principle 3: The impact of government action should be properly understood, by considering the costs and benefits (using all available data) of a range of options, including non-regulatory options.	The proposed amendments are minor changes to the Regulation to address gaps in information currently provided by site auditors, incorporate new guidelines and to align penalty notice amounts with similar offences under other environment legislation including the POEO Act. They will not impose any significant additional regulatory or administrative costs on business or the community.	Section 3 Section 4 Section 5

Better regulation principle	CLM issue	Compliance under the RIS
Principle 4: Government action should be effective and proportional.	Penalty notices can assist in deterring non-compliance with the law. The proposed amendments to the Regulation's provisions relating to penalty notice amounts are consistent with penalty notice amounts for similar offences under the POEO Act. Industry and individuals will be impacted by increased penalties only if they do not comply with the law.	Section 2 Section 5
Principle 5: Consultation with business, and the community, should inform regulatory development.	The EPA has advised site auditors of the proposed remake of the Regulation and likely amendments. The EPA has included provisions in the proposed regulation (Option 3) for waiving or refunding accreditation fees in certain circumstances, in response to concerns raised by some site auditors.	Section 2
Principle 6: The simplification, repeal, reform, modernisation or consolidation of existing regulation should be considered.	Repeal of the Regulation was considered under the base case option. This option would not provide sufficient support for achieving the objectives of the CLM Act and protection of human health and the environment from risks posed by contaminated land.	Section 3
Principle 7: Regulation should be periodically reviewed, and if necessary reformed, to ensure its continued efficiency and effectiveness.	The EPA undertakes a continuous process of review of Regulations it administers.	

Appendix B: Proposed amendments

Table 4 sets out the details of the minor amendments proposed to the Regulation.

Table 4 Proposed amendments to the Regulation

Contaminated Land Management Regulation 2013	Proposed regulation	Reason
Not applicable	<ul style="list-style-type: none"> Includes new provisions to require 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 <i>Contaminated Land Management Act 1997</i> (CLM Act). 	Adopt the EPA's <i>Financial Assurance Policy</i> and make provision for the <i>Guideline on Estimating Financial Assurances</i> .
Not applicable	Includes new provisions to enable the EPA to waive or refund the accreditation fee payable by a site auditor under certain circumstances.	To prescribe the circumstances in which the EPA can waive or refund site auditor accreditation fees in response to concerns raised by site auditors of the cost impact of fees during extended periods of leave when they are unable to undertake site audit work.
Penalty notice amounts are prescribed for certain offences under the CLM Act (Schedule 1) (details in Table 5).	Amends Schedule 1 of the Regulation to increase the amounts payable for certain penalty notice offences under the CLM Act (details in Table 5).	To align the penalty notice amounts for penalty notice offences under the CLM Act with amounts for similar penalty notice offences under other environmental legislation.
Prescribes particulars to be included in annual returns from site auditors.	Extends the particulars to be included in the annual return, to include: <ul style="list-style-type: none"> whether the audit is a statutory site audit the termination date of a terminated audit and the reason for the termination the date of issue of a revised or amended statutory site audit statement and the reason for the revision or amendment. 	To make minor administrative changes relating to the particulars included in annual returns submitted to the EPA by site auditors accredited under the NSW site auditor scheme.
Prescribes a penalty notice amount for general offences relating to authorised officer powers under the CLM Act.	Does not prescribe a penalty notice amount for general offences relating to authorised officer powers under the CLM Act.	Minor administrative change. Part 9 Authorised Officers of the CLM Act, including, Division 5 General, s 89(1) Offences has been repealed. The CLM Act now picks up the authorised officer powers contained in Chapter 7 of the <i>Protection of the Environment Operations Act 1997</i> .

Not applicable	Makes provision for the EPA's <i>Guidelines on recovering monetary benefits from environmental offenders</i> and prescribes the protocol for calculating monetary benefits.	This protocol should be used in determining the amount that represents the monetary benefit acquired by an offender or accruing to an offender who has failed to comply with the CLM Act.
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Table 5 sets out the proposed increases in the penalty notice amounts for certain offences under the CLM Act.

Table 5 Penalty notice amounts

Offence under the CLM Act	Existing penalty notice amount	Proposed penalty notice amount
Section 10 Preliminary investigation orders	\$1,500	\$7,500
(5) A person must not, without reasonable excuse, fail to comply with a preliminary investigation order.	(Individuals) \$5,000 (Corporations)	(Individuals) \$15,000 (Corporations)
Section 14 Management orders	\$1,500	\$7,500
(6) A person served with a management order must not, without reasonable excuse, fail to comply with any direction or other requirement specified by the order within the time specified by the order.	(Individuals) \$5,000 (Corporations)	(Individuals) \$15,000 (Corporations)
Section 28 Ongoing maintenance orders	\$1,500	\$5,000
(4) A person must comply with an ongoing maintenance order that is served on the person.	(Individuals) \$5,000 (Corporations)	(Individuals) \$10,000 (Corporations)
Section 48 Statutory site audits	\$750	\$7,500
(1) Individuals, or	(Individuals)	(Individuals)
(2) Corporations must not make any representation of, or carry out, a site audit unless accredited.	\$1,500 (Corporations)	\$15,000 (Corporations)
Section 60 Duty to report contamination	\$750	\$4,000
(1) A person whose activities have contaminated land must report contaminated land to the EPA in writing in accordance with this section	(Individuals) \$1,500 (Corporations)	(Individuals) \$8,000 (Corporations)
(2) an owner of land that has been contaminated (whether before or during the owner's ownership of the land) must report contaminated land to the EPA in writing in accordance with this section.		

Glossary

Compliance: Meeting the environmental standards and protections as set out by a licence, order, notice, Code or other approval under the appropriate Act and associated regulations that the EPA administers.

Contaminated land: Land that has been used for industrial, agricultural, waste disposal or other purposes, leading to it contain substances in land or groundwater that are potentially harmful to human health or the environment. Defined in the *Contaminated Land Management Act 1997* as:

the presence in, on or under the land of a substance at a concentration above the concentration at which the substance is normally present in, on or under (respectively) land in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the environment.

Contaminated land management: The management approach of contaminated land to prevent harm to human health and the environment. Approaches can include a range of options including investigation, containment of the contamination, removal and treatment and ongoing monitoring dependent on the type and extent of the contamination.

Environmental liabilities: The potential costs of remediating a site due to any environmental harm caused by activities occurring on the site.

Financial assurance: A type of security provided by the responsible person or company, it includes the likely costs and expenses of the EPA in directing and supervising the carrying out of actions.

Monetary benefit: Monetary benefit means monetary, financial or economic benefits.

Penalty notice: A notice issued for an offence under legislation administered by the EPA. They are designed primarily to deal with minor breaches.