

The Environment Protection Act 2017

The Environment Protection Amendment Act 2018

Victoria



Robyn Madsen | Technical Director, Contaminated Land

Peter Nadebaum | Senior Technical Director, Contaminated Land

25(1): General Environmental Duty to minimise risks to health and the environment

*A person who is engaging in an **activity** that may give rise to **risks of harm** to human health or the environment from pollution or waste must **minimise those risks, so far as reasonably practicable***

Harm: adverse effect on human health or the environment, including amenity, **psychological health**

Activity: defined broadly - includes the storage or possession of waste or any other substance or thing

Minimise: eliminate or reduce

With regard to:

Likelihood of risks eventuating

Degree of harm

What ought reasonably to know

Good: framed in terms of likelihood and consequence

Potential for argument – what should be known

What constitutes “all reasonable measures” to minimise risks from pollution or waste?

Implement an Environmental Management System

ie develop and put in place controls, processes and systems that will avoid pollution/avoid harm

Refer to/consider practices relating to OHS – very similar

Some questions for industry:

Do we already have a suitable system?

Does our system need to be improved?

Do we need a new system?

EPA Guide for Business Publication 1695 May 2018

Assessing and Controlling Risk

Purpose

This guide provides businesses with a risk management framework that can be applied to help prevent harm to human health and the environment.

This guide only addresses risks from pollution and waste.

Permanent or long-term serious environmental harm / life threatening or long-term harm to health and wellbeing.	Consequence	Severe	Medium	High	High	Extreme	Extreme
Serious environment harm / high-level harm to health and wellbeing.		Major	Medium	Medium	High	High	Extreme
Medium level of harm to health and wellbeing or the environment over an extended period of time.		Moderate	Low	Medium	Medium	High	High
Low environmental impact / low potential for health and wellbeing impacts.		Minor	Low	Low	Medium	Medium	High
No or minimal environmental impact, or no health and wellbeing impacts.		Low	Low	Low	Low	Medium	Medium
			Rare	Unlikely	Possible	Likely	Certain

Description of risk ratings

Risk level	Description
Extreme	Totally unacceptable level of risk. Stop work and/or take action immediately.
High	Unacceptable level of risk. Controls must be put in place to reduce to lower levels.
Medium	Can be acceptable if controls are in place. Attempt to reduce to low.
Low	Acceptable level or risk. Attempt to eliminate risk but higher risk levels take priority.

Likelihood				
Could happen but probably never will	Not likely to happen in normal circumstances	May happen at some time	Expected to happen at some time	Expected to happen regularly under normal circumstances



What approach/system might be sufficient?

- “Compliance codes” (Section 100) are proposed – EPA guidance – not mandatory
Maybe a **management system**, procedures and processes satisfying requirements for:
- An Environmental Management System (compliance with ISO 14001?)
 - A **safe working** environment – extended to also prevent pollution
 - Drinking water quality management or wastewater system management - extended to also prevent pollution and manage wastes
 - A “Risk-based Audit” to identify and advise on risks and requirements for management, but then need to **implement** systems to control risks

The key: look at what management system we already have in place – and make sure it satisfies the requirements for minimising risks – and is *implemented*

Key matters that need to be considered (25(4)):

- a) Use and maintain plant, equipment, processes and systems to minimise risks
- b) Use and maintain systems to identify, assess and control risks, and to evaluate the effectiveness of controls
- c) Use and maintain systems to minimise harmful effects
- d) Handle, store, use and transport substances in a manner that minimises risks
- e) Provide training to staff
- f) These all relate to “activity” and activity is very broad

Designers, consultants and contractors involved with design, manufacture, installation or supply of a substance, plant, equipment or structure:

- a) Minimise risks of harm arising from the design, manufacture, installation or supply
- b) Provide information necessary to minimise risks

Particular components for consideration

(may be missing/useful to consider)

Commitment to Avoiding Environmental Harm

Environmental Management Policy
Requirements
Agencies

Assessment of the Activities and Operations

Activities and Operational System Analysis
Review of Monitoring Data
Hazard Identification and Risk Assessment

Planning – Preventive Strategies for Avoiding Environmental Harm

Multiple Barriers
Critical Control Points

Implementation – Operational Procedures and Process Control

Operational Procedures
Equipment Capability
Materials and Chemicals
Operational Monitoring
Operational Preventive and Corrective Action

Verification of Discharges

Discharge Quality Monitoring
Stakeholder Satisfaction
Short-term Evaluation of Results
Corrective Action

Incident and Emergency Response

Communication
Incident and Emergency Response Protocols

Employee Awareness and Training

Employee Awareness and Involvement
Employee Training

Community Involvement and Awareness

Community Consultation
Communication

Research and Development

Investigative Studies and Research Monitoring
Validation of Processes
Design of Equipment

Documentation and Reporting

Documentation and Records Management
Reporting

Evaluation and Audit

Long-term Evaluation of Results
Discharge Quality Management Audit

Review and Continual Improvement

Senior Management Review
Environmental Improvement Plan

Principles

14 Principle of proportionality *(new)*

A decision, action or thing directed towards minimising harm or a risk of harm to human health or the environment should be proportionate to the harm or risk of harm that is being addressed.

more effort and resources to high risk issues, less to low risk issues

15 Principle of primacy of prevention *(new)*

Prevention of harm to human health and the environment is preferred to remedial or mitigation measures.

consistent with the GED

Principles *(cont)*

17 Principle of polluter pays *(old)*

Persons who generate pollution and waste should bear the cost of containment, avoidance and abatement.

19 Principle of evidence-based decision-making *(new)*

Actions or decisions under this Act should be based on the best available evidence in the circumstances that is relevant and reliable

Ties in with the 'state of knowledge'

Principles *(cont)*



22 Principle of accountability *(new)*

Members of the public should—

- (a) have access to reliable and relevant information in appropriate forms to facilitate a good understanding of issues of harm or risks of harm to human health and the environment and of how decisions are made under this Act; and
- (b) be engaged and given opportunities to participate in decisions made under this Act, where appropriate to do so; and
- (c) have their interests taken into account in decisions made under this Act.

Much greater transparency going forward

Information to be kept on the Public Register (S456)

Must include the following

- any enforceable undertaking
- any licence issued by the Authority that is in force
- any permit or registration issued or granted by the Authority that is in force
- any site management order that is in force
- any preliminary risk screen assessment statement
- any environmental audit statement
- any better environment plan

Implemented via 'Victoria Unearthed'

Protection of Water



waters includes the following—

- (a) a reservoir, tank or billabong;
- (b) an anabranch, canal, spring, swamp;
- (c) a natural or artificial channel, lake, lagoon, waterway or dam;
- (d) tidal water, coastal water or groundwater."

groundwater means any water contained in or occurring in a geological structure or formation or an artificial landfill below the surface of land

Duties

- **Duty to take action to respond to harm caused by pollution incident** *so far as reasonably practicable, restore the affected area to the state it was in before the pollution incident occurred*
- **Duty to notify Authority of notifiable incidents** *notify the Authority, as soon as practicable; \$10,000 threshold (incl. investigation)*
- **Duty to manage contaminated land** *minimise risks of harm; identify, investigate, manage*
- **Duty to notify of contaminated land** *A person in management or control of land must notify; person's skills; knowledge and experience; could practicably seek advice; \$50,000 threshold (incl. investigation)*

Preliminary risk screen assessments (s204-207)

- assess the likelihood of the presence of contaminated land
- to determine if an environmental audit is required
- if an environmental audit is required, to recommend a scope for the environmental audit
- Issue preliminary risk screen assessment statement

Environmental audits (s208-212)

One type of audit

- *to assess the nature and extent of the risk of harm to human health or the environment from contaminated land, waste, pollution or any activity*
- *recommend measures to manage the risk*
- *all audits will have a scope, EPA will specify set scope for particular audits*
- **All audits will result in the issue of a Statement and associated report**
- *contaminated land – Statement specifying suitability for use subject to any recommendations*

Notices (s.476)



- **Improvement notices** remedy the contravention, or the matters or activities
- **Prohibition notices** prohibit the person from engaging in the activity
- **Notice to investigate** investigate whether the relevant circumstances exist
- **Environmental action notice** clean up, remediate, remove waste, cease accepting waste, reduce stockpiles
- **Site management order** long term risk management, possible financial assurance, on title
- **Non-disturbance notices** stop the use / prevent activities up to 7 days

Better environment plans (s180)

- Allow innovative ways to comply with the Act
- Voluntary collaboration

