

Contaminated Land Management Amendment Act 2008

Presentation to IAH NSW Chapter: 11 May 2009

Dr. James Smith
Senior Associate

Deacons – Environment and Planning Group



The intelligent alternative

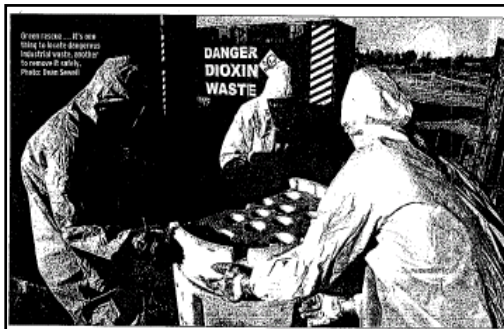


Contaminated land... growing in profile

- Increased profile in the Courts... sale of contaminated land (contract, negligence, misleading and deceptive conduct, s.52, 53A TPA) litigation in Federal Court and Supreme Courts
 - *Manwelland v Dames & Moore*
 - *Charben Haulage v. Environmental & Earth Sciences;*
 - *Noor Al Houda Islamic College v. Bankstown Airport*
- Development of contaminated land / brownfield sites
- Estimated 100,000 potentially contaminated sites in Australia with clean up costs estimated at \$5bn (CRC CARE)
- Cost of investigation and remediation increasing (minimum \$50K to multi millions)
- Profile in 'public mind' (*Toxic secrets of the underground*, Insight, SMH)

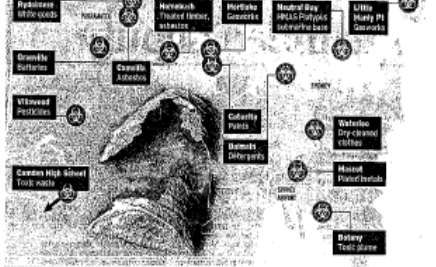
www.deacons.com.au

The intelligent alternative



POLLUTION BY POSTCODE

A sample of hotspots in need of clean-up



Toxic secrets of the underground

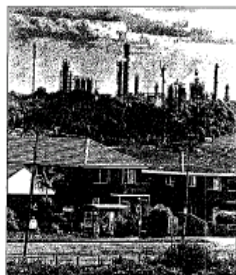
The legacy of years of unregulated industrial activity is pools of poisons beneath our feet, writes John Huxley.

WE often turn on a tap to get water to drink, but beneath our feet, there is a hidden world of toxic chemicals, and that the water has been sitting in it for years was made for us, long after the tap was closed. In the case of a small town in New South Wales, the water is still contaminated by dioxin, a highly toxic chemical.

It was just like this, says Peter, a geologist, recalling the real-life story of how a single water tap took on a contamination that had been dumped into the ground in the 1950s, and now to contaminate it. You could almost call it the dioxin tap.

In the past week alone, the NSW Government announced plans to remediate another site, a former pesticide plant at Villawood.

More and more, governments are again looking over their



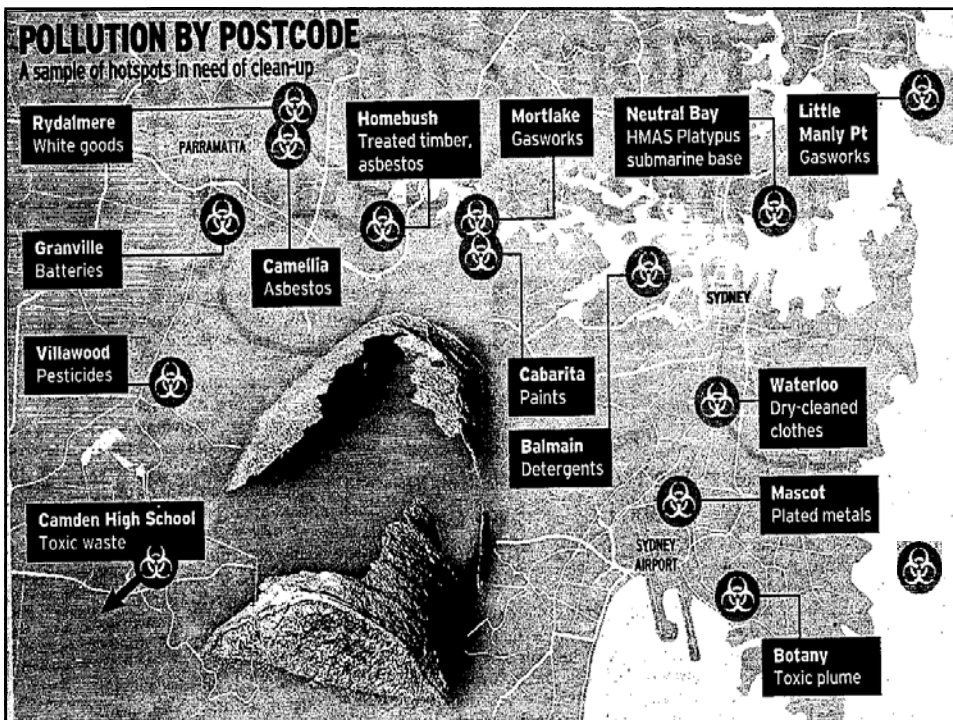
Back spot... the dioxin plant in Botany, Peter James Dean

Sydney speaks

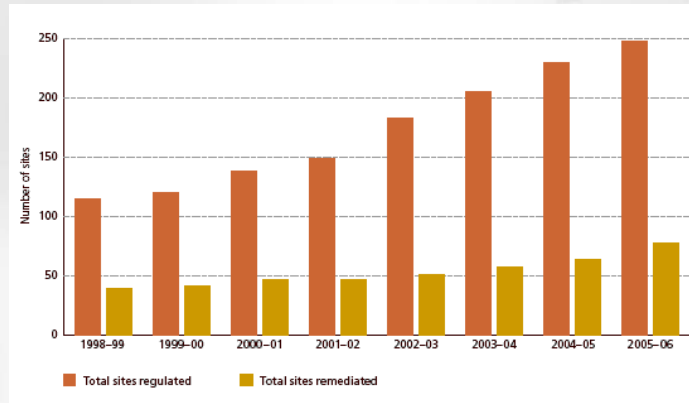
Presented by a local story on industry, they reported their experiences of exposure to toxins. This has led to a growing awareness of the hidden world of toxic chemicals beneath our feet. In the case of a small town in New South Wales, the water is still contaminated by dioxin, a highly toxic chemical.

The hidden world of toxic chemicals beneath our feet is a growing concern. In the case of a small town in New South Wales, the water is still contaminated by dioxin, a highly toxic chemical.

The hidden world of toxic chemicals beneath our feet is a growing concern. In the case of a small town in New South Wales, the water is still contaminated by dioxin, a highly toxic chemical.



Progress with remediation of sites regulated under the CLM and EHC Acts

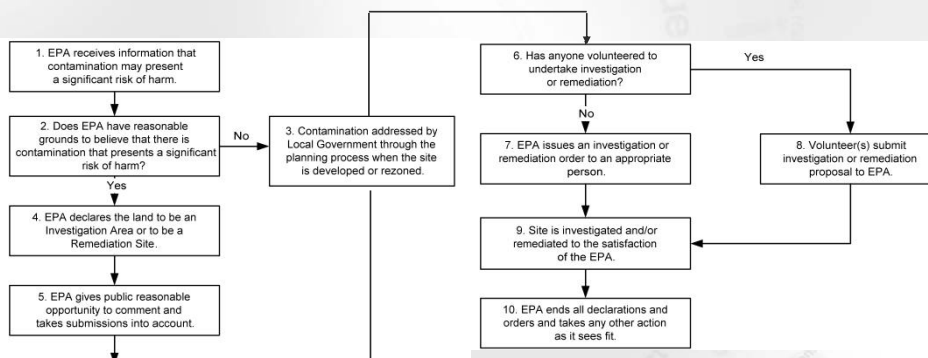


Source: NSW State of the Environment 2006

Types of sites currently regulated under the CLM Act

Land uses	Affected sites %	Typical contaminants
Petrol station	22	Petroleum hydrocarbons, benzene, toluene, ethylbenzene, xylenes
Other industry	17	Various contaminants
Landfill	12	Metals, volatile organic compounds, ammonia, methane
Chemical industry	12	Various organic chemicals, metals
Gasworks	11	Polycyclic aromatic hydrocarbons, cyanide, metals
Metal processing works	9	Metals, volatile organic compounds
Unclassified	9	Various contaminants
Other petroleum	8	Petroleum hydrocarbons, benzene, toluene, ethylbenzene, xylenes

Steps in regulating sites under the current Act



Amendment history

Minister for the Environment to undertake a review of the Act after the fifth anniversary (Section 116).

- **July 2003** - the EPA released an *Issues Paper* for public comment.
- **October 2003** report summarising the findings of *Paper* included:
 - flexibility in the regulatory process to enable more timely regulatory action.
 - an alternative to the term 'significant risk of harm' which may help to remove the unwarranted stigma associated with some contaminated sites.
 - triggers for the duty to notify the EPA of contamination.
 - the application of the 'polluter pays' principle.
- **September 2007** – Public Consultant Draft: *Contaminated Land Management Amendment Bill 2007 (NSW)*
- **October 2007** – Public consultation and submissions closed
- **June 2008** – Bill introduced to Parliament
- **10 December 2008** – Bill assented
- **1 June 2009** - Anticipated majority of Amending Act to commence

Contaminated Land Management Amendment Act 2008

Amendments include:

Preliminary investigation orders

- Additional powers to the EPA who can require a person to undertake a preliminary investigation to determine if land is contaminated with substances that the EPA reasonably suspects is contaminating the land.

Contaminated Land Management Amendment Act 2008

Amendments include:

Management orders and Voluntary management proposals

- Management orders can include orders to investigate, remediate or maintain remediation measures - making them essentially the same as the previous investigation and remediation orders.

Contaminated Land Management Amendment Act 2008

Amendments include:

Determining the person responsible for contamination

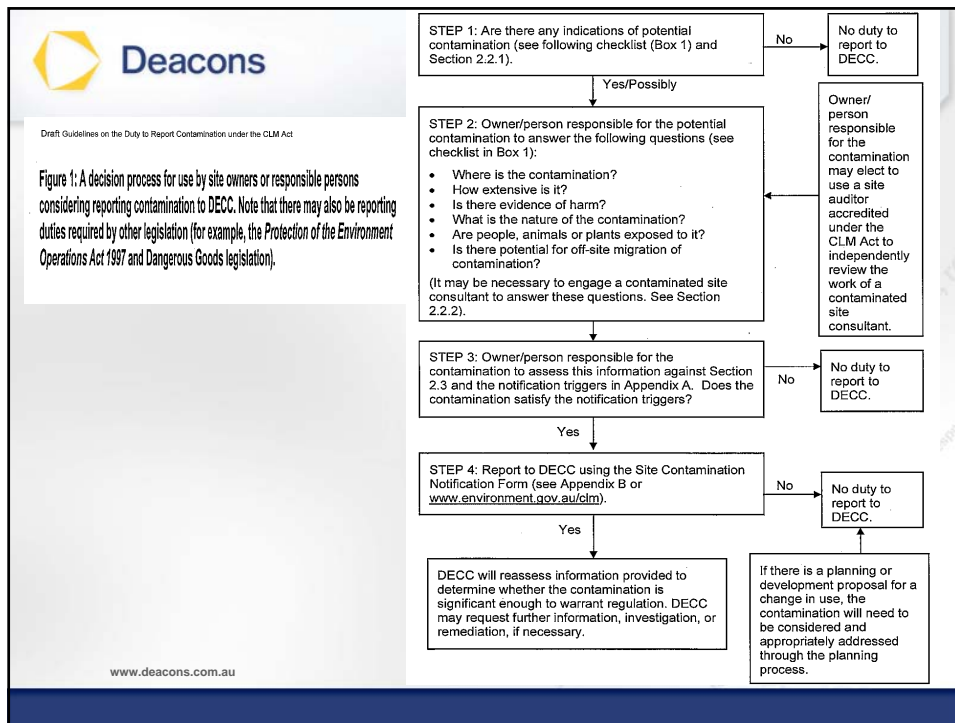
- The category of person who is 'responsible' for contamination is to be expanded to include:
 - Occupiers or owners of land who did not take reasonable steps to prevent the contamination
 - A person that carries out activities that generate or consume the same substances as those that caused contamination
 - Act or activity of the person resulted in a change in the approved use of the land and the consequent increase in the risk of harm

Contaminated Land Management Amendment Act 2008

Amendments include:

Duty to report - Constructive knowledge

- an owner of land or a person whose activities have contaminated land will be required to report contamination as soon as it practicable after the person becomes aware or ought reasonably have been aware of the contamination.
- Removes the SRoH Test and introduces an element of constructive knowledge so that an obligation to report contamination may exist even when there is an absence of actual knowledge of the contamination.



Deacons

Draft Guidelines on the Duty to Report Contamination under the CLM Act

Box 1: Checklist for use by site owners and persons responsible for contamination to report contamination to DECC

STEP 1: Indications of possible contamination

Owner/ person responsible for the potential contamination to review site history and record and to undertake a site inspection to check whether:

- the site or adjacent sites may be associated with potential contaminating activities
- the site or adjacent sites may be associated with complaints about pollution or illegal dumping of wastes
- there are gaps or doubts about the site history
- there are any chemical or physical indicators of contamination as per Section 2.2.1.

If the answers to all of the above are 'No', reporting to DECC is not required under section 60 of the CLM Act.

STEP 2: Assessing the site

Once the indicators of contamination have been identified, check that:

- a comprehensive site assessment has been conducted
- site assessment and reporting follow *Contaminated Sites: Guidelines for Consultants Reporting for Contaminated Sites* (EPA NSW 1997).
- the checklist for Exposure Assessment in Appendix VII of *Contaminated Sites: Guidelines for the NSW Site Auditor Scheme* 2nd edition (DEC 2006) has been addressed.
- any evidence of, or potential for, migration of contaminants from the site and its adjacent sites has been appropriately addressed.
- results of the assessment are assessed against the notification requirements in Section 2.3 and Appendix A.

If a contaminated land consultant is engaged to clarify the level of contamination, check that:

- the consultant has appropriate qualifications and is experienced in contaminated site assessment and remediation (refer to [Where to find a consultant?](#) on the DECC website for further information).
- the consultant has a good understanding of the CLM Act, in particular the reporting obligations under section 60 of the CLM Act.

www.deacons.com.au

alternative

Contaminated Land Management Amendment Act 2008

Amendments include:

Offset arrangements

- The Minister may, if considered to be in the public interest to do so, enter into offset arrangements with a person responsible for the contamination of land under which the person provides **assistance** (other than direct monetary assistance) to communities affected by the contamination.
- Assistance may, amongst other things, include:
 - the provision of community facilities or
 - community services or
 - the establishment and operation of environmental or resource projects.

Contaminated Land Management Amendment Act 2008

Amendments include:

Other significant amendments

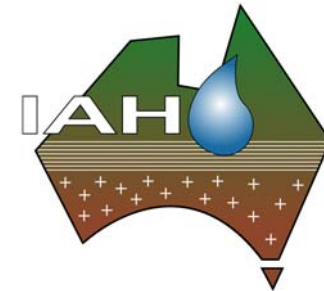
- Removal of the 'no knowledge' defence so that directors and managers can be liable for a breach of the Act regardless of whether they had any knowledge of the circumstances that gave rise to the breach by the corporation.
- Enable management orders to be issued to any one or more persons who are responsible for the contamination of land .
- The EPA's powers expanded to allow the issue of clean-up and prevention notices for 'significantly contaminated' land under the *Protection of the Environment Operations Act 1997* (NSW).

INTERNATIONAL ASSOCIATION OF HYDROGEOLOGISTS

Australian National Chapter NSW Branch



2009 Seminar Series



This presentation is made available by IAH NSW in the interests of promoting discussion, critique and exchange of knowledge.

The content, products, methods, equipment, findings or recommendations of these presentations are not endorsed by IAH NSW or by UNSW who has offered to host the presentations on their website

www.connectedwaters.unsw.edu.au