



New South Wales

# **Environmentally Hazardous Chemicals Amendment Act 1996 No 16**

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New South Wales

# **Environmentally Hazardous Chemicals Amendment Act 1996 No 16**

Act No 16, 1996

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An Act to amend the *Environmentally Hazardous Chemicals Act 1985* to provide for the accreditation of persons as site auditors of chemically contaminated land. [Assented to 13 June 1996]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Environmentally Hazardous Chemicals Amendment Act 1996*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

**3 Amendment of Environmentally Hazardous Chemicals Act 1985  
No 14**

The *Environmentally Hazardous Chemicals Act 1985* is amended as set out in Schedule 1

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## Schedule 1 Amendments

(Section 3)

### [1] Part 5, Division 1, heading

Insert “**Division 1 Contaminated premises**” immediately below the heading to Part 5.

### [2] Part 5, Division 2, heading

Insert “**Division 2 Restoration of contaminated premises**” after section 33.

### [3] Section 35 Directions for restoration of premises

Insert after section 35 (4):

(4A) The Authority may under subsection (1), by a notice referred to in that subsection, direct the occupier of premises to cause any prescribed remedial action taken in purported compliance with such a notice to be reviewed by a site auditor accredited under Division 3 within a reasonable time specified in the direction.

### [4] Part 5, Division 3

Insert after section 36:

#### Division 3 Audits of contaminated premises

##### 36A Definitions

(1) In this Division:

*site audit* means an independent review of remedial action taken in respect of premises that are or may be contaminated, for the purpose of determining either or both of the following:

- (a) the nature and extent of the action taken,
- (b) what remedial action or further remedial action, if any, is necessary for the premises to be suitable for any specified use or range of uses.

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**site audit statement** means a written statement by a site auditor of the findings of a site audit.

**site auditor** means a person for the time being accredited under this Division as a site auditor.

- (2) A reference in this Division to a site audit for the purposes of a statutory requirement is a reference to a site audit carried out or to be carried out in order to secure compliance with:
- (a) a requirement under section 35, or
  - (b) a requirement imposed by any environmental planning instrument made under the *Environmental Planning and Assessment Act 1979* or any development consent given under that Act, or
  - (c) any other requirement imposed by or under an Act,

but does not include a site audit carried out or to be carried out only in order to secure compliance with a legal obligation arising from an agreement or arising in such other circumstances as the regulations may prescribe.

**36B Site audits for purposes of statutory requirements**

- (1) An individual must not:
- (a) carry out a site audit for the purposes of any statutory requirement, or
  - (b) make any representation, or cause or allow any representation to be made, to the effect that he or she is prepared to carry out a site audit for the purposes of any statutory requirement,

if the individual is not accredited under this Division or while his or her accreditation is under suspension.

- (2) A body corporate must not:
- (a) purport to carry out a site audit for the purposes of any statutory requirement, or
  - (b) make any representation, or cause or allow any representation to be made, to the effect that it is capable of doing so.

Maximum penalty: 50 penalty units.

**36C Application for accreditation or renewal of accreditation as site auditor**

- (1) An application for accreditation, or renewal of accreditation, as a site auditor must be:
  - (a) made in such manner and form as the Authority may approve, and
  - (b) supported by such information as the Authority may require, and
  - (c) accompanied by the application fee prescribed by the regulations.
- (2) The Authority may require an applicant to furnish to the Authority, within such time as may be specified, such further particulars as the Authority considers necessary to determine the suitability of the applicant for accreditation or renewal of accreditation.
- (3) An application for accreditation or renewal of accreditation is to be referred by the Authority to an accreditation panel convened by the Authority, consisting of 4 or more members each having relevant expertise, of whom:
  - (a) one is to be an officer of the Authority, and
  - (b) one is to be appointed to be representative of community environmental groups, and
  - (c) one is to be appointed to be representative of industry, and
  - (d) one is to have tertiary teaching qualifications in a discipline relevant to contamination of land.

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- (4) The Authority may require an applicant to appear before the accreditation panel and undergo such examination as to his or her knowledge as the panel considers necessary to determine the suitability of the applicant for accreditation or renewal of accreditation.
- (5) Only an individual is eligible for accreditation as a site auditor.

**36D Accreditation as site auditor**

- (1) The Authority must grant accreditation as a site auditor to a person who complies with section 36C and who meets the criteria for the time being approved by the Authority in relation to:
  - (a) relevant experience and expertise in contaminated site work, and
  - (b) proven high standards of integrity and objectivity, and
  - (c) understanding of the impacts of contaminated sites on the environment, public health and safety, and
  - (d) understanding of relevant legislation and associated policies, and
  - (e) understanding of the methods for assessing and managing contaminated sites, and
  - (f) access to relevant areas of expertise and resources, and
  - (g) knowledge of relevant scientific literature, and
  - (h) insurance, and
  - (i) any matter prescribed by the regulations,and who has paid the prescribed annual accreditation fee in respect of the year for which accreditation is granted.
- (2) Unless application for renewal is made within the time allowed by the regulations, accreditation as a site auditor expires 12 months from the date it was granted or last renewed.

- (3) Except where subsection (4) applies, the Authority must renew the accreditation as a site auditor of a person:
  - (a) who complies with section 36C, and
  - (b) who meets the criteria for the time being approved by the Authority in relation to the matters referred to in subsection (1) (a)–(i), and
  - (c) who has made application for renewal within the time allowed by or under this Division, and
  - (d) who has paid the prescribed annual accreditation fee in respect of the year for which accreditation is renewed.
- (4) The Authority may refuse to renew an accreditation in respect of which a notice has been served under section 36I, until such time as it decides (if it so decides) not to revoke the accreditation.
- (5) Criteria for the time being approved by the Authority for the purposes of this section are to be made available on request to any intended applicant for grant or renewal of accreditation.

#### **36E Site audits and statements**

- (1) Every site audit commissioned for the purposes of any statutory requirement is to be carried out, and every site audit statement relating to such a site audit is to be furnished, with due regard to:
  - (a) the provisions of this Act and the regulations, and
  - (b) the provisions of any environmental planning instruments applying to the site, and
  - (c) guidelines determined from time to time by the Authority.
- (2) Notice in writing is to be given by the Authority to site auditors of guidelines determined under subsection (1) (c) and of changes made to them from time to time.

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- (3) The guidelines must provide for, among other things, the avoidance of conflicts of interest that may arise in the carrying out of any site audit.

**36F Notification of site audits**

- (1) A site auditor, on being requested by any person other than the Authority to carry out a site audit (whether for the purposes of any statutory requirement or otherwise) on any land, must within 7 days of receiving the request send to the Authority a statement in writing specifying the name of the person making the request and the location of the land.

- (2) A site auditor must supply:
- (a) the Authority, and
  - (b) the council for the area in which the land is situated,

with a copy of any site audit statement prepared by the site auditor in relation to any land. The copies are to be furnished at the same time as the statement is furnished to the person who commissioned the site audit.

- (3) A site auditor must promptly furnish the Authority with such further information, in support of or otherwise relating to a site audit statement, or concerning any site audit carried out by the site auditor, as the Authority may require.

**36G Annual returns and other notifications**

- (1) A site auditor must, not later than 21 days before expiry of the site auditor's current accreditation, furnish the Authority with a return showing the site audits carried out or commenced by the site auditor during the period commencing:
- (a) on the date of accreditation, in the case of a site auditor in his or her first year of accreditation, or
  - (b) 30 days before his or her accreditation was last renewed, in any other case,

and ending on the date of lodgment of the return.

- (2) The return must include any particulars of a kind prescribed by the regulations in respect of each site audit mentioned in the return.
- (3) A site auditor must, within 14 days after any material change in the circumstances of his or her employment (that is, any change that bears on any information or statement furnished to the Authority in support of or in connection with an application for accreditation or renewal of accreditation), notify the Authority of the change.

#### **36H False audits or information**

A site auditor must not, in or in connection with a site audit or a site audit statement, make any statement that he or she knows to be false or misleading in a material particular.

Maximum penalty: 200 penalty units or imprisonment for 2 years, or both.

#### **36I Revocation or suspension of accreditation**

- (1) The Authority may, by notice in writing served on a site auditor, require the site auditor to show cause, by reply in writing within 14 days, why his or her accreditation should not be revoked on any grounds specified in the Authority's notice, being one or more of the following:
  - (a) the site auditor no longer meets the criteria approved under section 36D that were in force when the site auditor's accreditation was last granted or renewed,
  - (b) the site auditor has contravened any of the provisions of this Division,
  - (c) the site auditor is not carrying out sufficient bona fide site audits to justify continued accreditation,
  - (d) the site auditor's accreditation under any provisions of a law of a State or Territory of Australia that, in the opinion of the Authority, are provisions that correspond to this Division, has been revoked,
  - (e) any other ground prescribed by the regulations.

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- (2) The Authority must take into account any reply given in due time under subsection (1), and may make such further enquiries as it thinks fit, but may revoke the accreditation of a site auditor if it remains satisfied, on the grounds specified in its notice under that subsection, that the accreditation should be revoked.
- (3) The Authority may, if it thinks fit, by its notice under subsection (1), suspend the accreditation from the time the notice is served until it decides whether or not to revoke the accreditation.

**36J Holding out**

- (1) An individual must not make any representation, or cause or allow any representation to be made, to the effect that the individual is accredited under this Division if he or she is not so accredited or while his or her accreditation is under suspension.
- (2) A body corporate must not make any representation, or cause or allow any representation to be made, to the effect that it is accredited under this Division.

Maximum penalty: 50 penalty units.

[Minister's second reading speech made in—  
Legislative Assembly on 24 April 1996  
Legislative Council on 6 June 1996]