

15 June 2023

NSW Environment Protection Authority  
Locked Bag 5022,  
PARRAMATTA NSW 202124

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**RE: Submission on EPA's Position Statement: Management of Asbestos-Contaminated Sites**

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The Australian Sustainable Business Group (ASBG) welcomes the opportunity to comment on the proposed [Position Statement: Management of Asbestos-Contaminated Sites](#) and other general comments relating to asbestos issues.

The [Australian Sustainable Business Group](#) (ASBG) is a leading environment and energy business representative body that specializes in providing the latest information, including changes to environmental legislation, regulations and policy that may impact industry, business and other organisations. We operate in NSW and Queensland and have over 100 members comprising of Australia's largest manufacturing companies and other related businesses.

## 1 Introduction

In general, the Position Statement provides clarity over the treatment of asbestos contaminated soils and land (ACS) before the materials become asbestos wastes. This is welcomed as a Position Statement as it provides certainty in how to manage ACS. It also addresses ASC limited to management under the Contaminated Land Management legislation and draws a line where waste legislation takes over, which ASBG considers requires further clarification.

A main part of the Position Statement is that the Western Australian Asbestos Guidelines are not an approved Guideline. ASBG understands that the treatment of ACS is legislatively different from Western Australia. This is largely due to legislative differences on what is asbestos waste between NSW and Western Australia.

## 2 When is it Asbestos Waste?

ASBG has made many submissions in relation to asbestos, largely relating to asbestos wastes, its definition and handling, which are available on the ASBG website. Some of the key submissions which relate to the Position Statement (hotlinks used) include:

- [ASBG's Submission on Asbestos Waste Bill 2018](#)

This dealt with asbestos waste defined to include the presence of asbestos. Consequently, asbestos in waste has no limit where only a non-presence is acceptable. This is often interpreted as a zero level. Hence asbestos has the only zero level compared to all other environmental contaminants. ASBG pointed out this will lead to perverse outcomes where asbestos waste is unnecessarily removed for disposal despite the increased exposures, filling diminishing landfill space in the greater Sydney area. ASBG notes these issues are outside the scope of the Position Statement, but are also important for the management of ACS.

- [ASBG's Submission on the On-Site / Off-Site Rule - 2019](#)

This submission is the basis for a key point in the Position Statement. ASBG made this submission calling for the NSW EPA to generate Guidelines to better define what and when is a material onsite or offsite. Where onsite and offsite applies is a complex issue with differing outcomes depending on which section of the EPA is making a decision. In short the EPA's waste section made many presentations including at ASBG seminars stating along the lines:

- A material including asbestos soils is not a waste for regulatory purposes if it remains on site. If it goes offsite to a destination it becomes subject to waste regulations including definitions etc. If it remains onsite then Contaminated Land Management legislation applies.
- Onsite is considered quite broadly, generally referring to a lot or set of lots, which are covered under a planning instrument such as a Development Approval or Consent or environmental instrument such as an Environment Protection Licence. Note a reasonable number of EPLs that identify land lots separated by distance, such as >100m, are considered onsite in relation to material management.

However, after undertaking many presentations to ASBG and other representative bodies, explaining the onsite off site rule, an ASBG member was served with a Clean Up Notice (CUN) on land of multiple lots being prepared for a residential development under one planning instrument. EPA enforcement inspectors decided some asbestos waste was offsite as it was moved from one lot to another, hence the CUN, even though it was under one planning instrument. This CUN cost the contractor about \$1 million to dispose of the asbestos waste.

In 2019 an EPA Executive Director indicated he agreed and that Guidelines clarifying the EPA's position on what is meant by onsite and offsite will be made. In 2021, ASBG again raised the need for the Guidelines, with the EPA E Director, but nothing has yet emerged.

To improve the effectiveness of the Position Statement, Guidelines identifying what is onsite or offsite is needed. Such Guidelines will provide much needed clarity on *when is it asbestos waste or not*, for both the professionals managing ASC and the regulators overseeing and enforcing the rules.

***ASBG recommends the EPA develop publically available Guidelines to define what they mean by onsite, and subject to the CLM Act and offsite subject to waste legislation in dealing with material management.***

### 3 Dealing with Asbestos Risks

Some consultants certified under the EPA's Contaminated land consultant certification policy may not necessarily understand asbestos contamination or its risk assessment. This small minority are permitted to complete Remedial Action Plans using the point:

- Remediation is undertaken in accordance with a remedial action plan that has been written or approved by an EPA-accredited site auditor or a consultant certified under the EPA's Contaminated land consultant certification policy

ASBG suggests the point be should be modified to include that accredited consultants should also be equipped with or supported by other professionals who have detailed knowledge asbestos contamination and risk management.

This submission has been prepared with the input and assistance of members of ASBG's Policy Reference Group (PRG).

Should you require further details and clarification of the contents of this submission please contact me.

**Yours Sincerely**



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