



Indonesian Legal Consultants

Contaminated Land Management

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Legal Basis

Land Contaminated Management

01

Law No. 32 of 2009 regarding Environmental Protection and Management, last amended by Law No. 11 of 2020 regarding Job Creation ("**Environmental Law**")

02

Government Regulation No. 22 of 2021 regarding Implementation of Environmental Protection and Management ("**GR 22/2021**")

03

Minister of Environment and Forestry No. 101/MENLHK/SETJEN/KU M.1/11/2018 of 2018 regarding Guidelines for Environmental Recovery of Toxic Waste and Hazardous Materials Contaminated Land ("**MOEF Reg. 101/2018**")

Approval Required for Industries that Produce Waste

STORAGE OF B3 WASTE

- Business Identification Number (for SPPL); or
- Environmental Approval (for Amdal or UKL-UPL)

COLLECTION OF B3 WASTE

- Environmental Approval; and
- Business Licensing for Management of B3 Waste.

TRANSPORTATION OF B3 WASTE

- Recommendation for Transportation of B3 Waste; and
- Business Licensing for Transportation of B3 Waste.

UTILIZATION OF B3 WASTE

- Environmental Approval; and
- Business Licensing.

PROCESSING OF B3 WASTE

- Environmental Approval; and
- Business Licensing.

LANDFILLING OF B3 WASTE

- Environmental Approval; and
- Business Licensing.

DUMPING OF B3 WASTE

Technical Approval for Dumping of B3 Waste

Part 3

If there is leakage, what to do?



Countermeasure and Remediation

PREVENTION MEASURE

- Emergency Response System
- Annual training on the emergency response system

IMMEDIATE MEASURES

- Information distribution regarding the leakage of the contaminants
- Isolation of the contaminants
- Stoppage of the contamination
- Other methods

REMEDIATION

- Identify contaminant (degree with TCLP &TK)
- Preparation of Remediation Plan (RPFLH) and submission to MOEF
- Remediation Plan (RPFLH) approved by MOEF
- Remediation actions and monitoring
- Completion of remediation, MOEF issues Remediation Completion (SSPLT)

What kind of waste you are liable?

Thresholds for TCLP & TK

If the concentration of the contaminant exceeds TCLP-A and/or TK-A, the B3 Waste contaminated soil shall be recovered based on the environmental recovery of B3 Waste category 1

If the concentration of contaminant equals to or does not exceed TCLP-A and/or TK-A and exceeds TLCP-B and/or TK-B, the B3 Waste contaminated soil shall be recovered based on the environmental recovery of B3 Waste category 2

If the concentration of contaminant equals to or does not exceed TCLP-B and/or TK-B and exceeds TLCP-C and/or TK-C, the B3 Waste contaminated soil shall be recovered based on the environmental recovery of non-B3 Waste

If the concentration of contaminant equals to or does not exceed TCLP-C and TK-C, the B3 Waste contaminated soil can be used as base coating soil

Steps and Procedures

Voluntary Environmental Function Recovery with a RPFLH Submission



- Article 15 of the MOEF Reg. 101/2018 governs that the RPFLH document shall be the basis for the implementation of the environmental function recovery of contaminated B3 Waste soil and groundwater
- Article 12 of the MOEF Reg. 101/2018 further stipulates that the RPFLH document shall be approved by the MOEF.

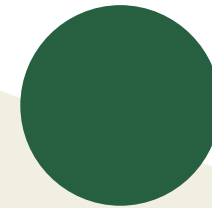
Further Steps on Environmental Recovery



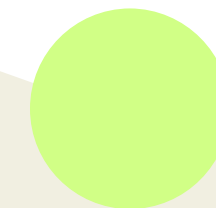
i. Collection of data and information through field verification to determine the history of the contamination, impacted areas, source of contaminant, identification of the type of B3 Waste, identification of the contaminant, scale of contamination and characteristic, lane, magnitude and frequency of the B3 Waste



ii. Scale of contamination includes determination of whether the contamination is small-scale contamination or large-scale contamination.




iii. Submission of RPFLH Document




iv. Assessment and approval of the RPFLH Document by the MOEF

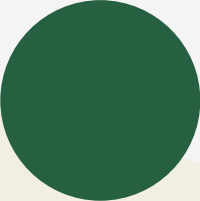
Further Steps on Environmental Recovery



v. Implementation of the RPFLH Document. The RPFLH document will be the basis for the implementation of the recovery



vi. Monthly evaluation during the recovery implementation, this includes submission of the monthly evaluation report to MOEF



vii. Amendment of the RPFLH document if based on the evaluation, the initial target of the implementation of the recovery cannot be reached.

Amendment shall be approved by MOEF




viii. Supervision and evaluation of the environmental function recovery implementation by MOEF

Further Steps on Environmental Recovery



ix. Once the environmental function recovery target has been reached, MOEF will issue Letter of Contaminated Land Completion (Surat Status Penyelesaian Lahan Terkontaminasi or "SSPLT")



x. Biennial post-recovery evaluation for a year and submission of evaluation to MOEF

Pros and Cons for Submission of RPFLH

OPTIONS

RPFLH Submission

PROS

- The method and target of the recovery (the RPFLH) is approved by MOEF.
- Upon the completion of the recovery, the Company will obtain SSPLT.

CONS

- Need time to obtain approval of the RPFLH.
- MOEF may require a certain recovery approach.

No RPFLH Submission

- No long process to obtain approval of the RPFLH

- The recovery process is not in accordance with MOEF Reg. 101/2018.
- No SPPLT will be issued.
- Therefore, will be subject to sanctions

Why is voluntary remediation the way forward?

Potential liabilities for non-compliance of environmental function recovery:

Administrative Liability

- Written warning
- Government Coercion
- Administrative Fines
- Suspension of Business Licensing
- Revocation of Business Licensing

Criminal Liability

- Imposition of fines
- Imprisonment

Civil Liability

Qualified claimants may file a civil lawsuit for land contamination during the period of applicable statute limitation

Land Contamination Cases (Criminal)

DISTRICT COURT OF CIKARANG DECISION NO. 333/PID.B/LH/2019/PN.CKR

DEFENDANT PT Tirta Suryatex Anggun

DATE OF DECISION 14 November 2019

CLAIM

The Defendant failed to carry out proper b3 waste treatment.

DECISION

- The Defendant was held liable for illegal dumping.
- The Defendant was imposed with a fine of Rp 300.000.000,00.
- The Defendant was ordered to repair and optimize the IPAL.

DISTRICT COURT OF PEKALONGAN DECISION NO.235/PID.B/LH/2020/PN PKL

DEFENDANT Akhmad Khumaidi bin Wahidin

DATE OF DECISION 22 December 2020

CLAIM

The Defendant did not have proper IPAL or license when disposing waste.

DECISION

- The Defendant was held liable for illegal dumping.
- The Defendant was imposed a one-year imprisonment.
- The Defendant was imposed with a fine of Rp 1.000.000.000,00

Land Contamination Cases (Criminal)

**DISTRICT COURT OF PATI DECISION NO.
261/PID.B/LH/2017/PN PTI**

DEFENDANT Agus Suriyanto bin Cokro Djiyo

DATE OF DECISION 19 February 2018

CLAIM

The Defendant disposed B3 waste without permit.

DECISION

- The Defendant was held liable for illegal dumping.
- The Defendant was imposed with a fine of Rp 2.000.000,00.
- The Defendant was imposed a three-month sentence with a six months probation.

SUPREME COURT DECISION NO. 466 K/PID.SUS-LH/2017

DEFENDANT Andrian Sadikin

DATE OF DECISION 8 August 2017

CLAIM

The Defendant dumped B3 waste without proper treatment and license.

DECISION

- The cassation was rejected, and the Defendant was held liable for illegal dumping.
- The Defendant was imposed with a fine of Rp200,000,000
- The Defendant was imposed with a 1 year of imprisonment

Land Contamination Cases (Civil)

DISTRICT COURT OF CENTRAL JAKARTA DECISION NO. 303/PDT.G/LH/2018/PN JKT.PST

PLAINTIFF Aliansi Masyarakat Pemerhati Lingkungan Hidup (AMPUH)

DEFENDANT

- President Director of Aplus Pacific
- Ministry of Environment and Forestry of the Republic of Indonesia (KLHK)
- Lebak Regency Environmental Service

DATE OF DECISION 22 May 2019

CLAIM Defendant dumped B3 waste

DECISION

- Defendant 1 was held liable for contamination and/or destruction of the environment.
- Defendant 2 was held liable for omission in allowing the contamination and/or destruction.
- Defendant 1 must provide full reparation.

DISTRICT COURT OF KUALA KAPUAS DECISION NO. 51/PDT.G/LH/2018/PN KLK

PLAINTIFF The Ministry of Environment and Forestry

DEFENDANT PT Kalimantan Lestari Mandiri

DATE OF DECISION 8 May 2019

CLAIM Defendant did not carry out their legal obligation to control the fire.

DECISION

- Defendant committed unlawful acts (PMH).
- Defendant is responsible based on strict liability.
- Defendant ordered to pay compensation.
- Defendant ordered to not plant on the burnt land.



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