



Review of the *Contaminated Sites Act 2003*

Consultation paper

SUBMISSION COVER SHEET

Complete and email this submission form by **Friday 28 September 2012**.

To assist us in collating stakeholder responses,
please submit in Word format (.doc or .docx)

PLEASE DO NOT SEND PDF DOCUMENTS

Email to: consitesreview@dec.wa.gov.au

This submission is written on behalf of (individual or organisation name):

Western Australian Local Government Association

Please indicate which best describes you / your organisation:

Academic	<input type="checkbox"/>	Member of the public	<input type="checkbox"/>	Professional association	<input type="checkbox"/>
Auditor	<input type="checkbox"/>	Industry	<input type="checkbox"/>	Real estate	<input type="checkbox"/>
Community group	<input type="checkbox"/>	Legal practitioner	<input type="checkbox"/>	State agency	<input type="checkbox"/>
Developer	<input type="checkbox"/>	Local Government	Yes	Other (specify)	<input type="checkbox"/>
Environmental consultant	<input type="checkbox"/>	Planning consultant	<input type="checkbox"/>		<input type="checkbox"/>

Personal details provided below will not be included in the *Summary of Submissions Report* for the consultation paper or made public

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Contaminated Sites Act 2003
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Response template

How best to use this document to have your say

One of the ways you can provide feedback to the Consultation Paper is by providing written responses to the questions below. To get the most out of your feedback, along with raising issues for discussion, please provide examples and relevant data to support your view (e.g. how the issue affects you, information regarding costs incurred and how frequently the issue arises). We are also interested in hearing your views on possible solutions to the issue(s) you are raising.

What will happen to the information I provide?

After submissions to the Consultation Paper close, we will review and consider all stakeholder feedback and produce a detailed Discussion Paper. Your private information (i.e. information that will specifically identify a person) will NOT be released to the public, unless you give us permission to do so. The Discussion Paper will summarise the issues identified and propose possible solutions. The Discussion Paper will be released for public comment prior to preparation of the Review Report for the Minister for the Environment. The Review Report will be tabled by the Minister in Parliament.

Thank you

We would like to thank you for your time in providing input into this review process. This stakeholder consultation will provide valuable information for us to consider and incorporate into improving the operation of the CS Act and Regulations and the way we do our business.

Please complete in WORD format (.doc or .docx.)

DUTY TO REPORT

Q1 ***Should a person with the professional knowledge to identify contamination have a duty to report it?***

Comment

Yes. This would ensure that consultants employed to assess site contamination have a responsibility to report their findings. The contamination may become a risk to the environment and human health if left unreported.

Example

Most consultants are proactive in reporting possible contaminated sites. However, some consultants report third party sites impacted by an adjoining site, without consulting the owner of the site being reported. This is of concern to Local Government.

'Professional knowledge' must be clearly defined to ensure only consultants with a professional relationship to the site are included. A new legal obligation to report that is too broadly defined, may have unintended consequences.

A Local Government may have sufficient information to suspect or know that contamination is present on a privately owned premise. However, there should be no obligation for the Local Government to report, as some officers may lack enough experience to provide "expert comment".

The Association requests an amendment that requires consultants to always report their findings, even if no contamination is found at the site.

It would be helpful to have a record of all investigations. If the threshold for contamination changes, a site originally found as uncontaminated, may need to be reclassified. Documentation from the original investigation would provide valuable insight.

Q2	<i>Are the requirements for reporting known or suspected contamination clear?</i>
Comment	Example
<i>Yes. However, a few small changes to the fact sheet could improve the process further.</i>	<i>It is clearly defined in DEC’s publication ‘How do I report a Site – Contaminated Sites Fact Sheet 04’</i>
<i>Change the order of information presented in the document. DEC could shift the information about the reporting form to the top of the document, and then follow with the background information.</i>	
<i>Include a link to the reporting form the first time the reporting form is mentioned, instead of further down the page.</i>	
<i>Include a reporting form as a second page on the fact sheet.</i>	

SITE CLASSIFICATION SCHEME

Q3	<i>In circumstances where contamination has been identified but requires further investigation to determine whether clean up is required for the current or proposed land use, would a new classification as ‘contaminated – investigation required’ be helpful?</i>
Comment	Example
<i>Yes, this additional classification would be useful especially if a preliminary investigation revealed contamination.</i>	<i>It may reduce redevelopment delays when a proposed land use is not highly sensitive.</i>
<i>If contamination is confirmed, it is not appropriate or accurate to classify the site as “potentially Contaminated – investigation required”</i>	

<p><i>The DEC should be empowered to issue a statutory timeframe requiring proponents to commence site investigation by a certain date, or identify when site investigations will occur. Attaching a timeline to the classification would strengthen the process.</i></p>	<p><i>The Association notes that this requirement could have an impact on Local Government. The Association requests that the DEC continues to work closely with Local Government, recognising the unique operating requirements and decision making process.</i></p> <p><i>This is discussed in greater detail in the general discussions section, issue 1 – Remediation Costs</i></p>
<p><i>The DEC should be empowered to specify what kind of investigation should be completed, and a date that it should be completed by.</i></p>	
<p><i>There should be a statutory timeframe requiring the DEC to begin assessment of a report or new site information.</i></p>	
<p><i>Generally a site is investigated before it can be determined as 'contaminated.'</i></p>	
<p>Q4 <i>Are there other circumstances where changes to the classification system would be helpful? Please provide example(s) to support your view.</i></p> <p>Comment <i>No, there are no other circumstances where classification changes would be helpful to Local Government.</i></p>	<p>Example</p>

NOTIFICATION OF SITE CLASSIFICATION

Q5	<i>If you have received, or read a notification of site classification, did you understand what actions were required?</i>	Example
Comment	<i>Only a few Local Governments reported that they had received a notification. These Local Governments understood what actions were required.</i>	
Q6	<i>Do you have any suggestions for improving the clarity of the information provided?</i>	Example
Comment	<i>Notifications of site classifications are written in a legalistic manner. They are not easy to understand and require cross referencing with the Act. Notifications should be written in plain English, clearly identifying the issues, actions and timelines.</i>	<i>Local Governments advised that site classification notifications are unnecessarily adversarial.</i>

HIERARCHY OF RESPONSIBILITY

Q7	<i>Has the hierarchy for responsibility been helpful?</i>	Example
Comment	<i>Yes, it is important that the polluter remains ultimately responsible for contamination on a site, regardless of whether they are the owner or not.</i>	
Q8	<i>Is the hierarchy sufficiently clear?</i>	Example
Comment	<i>It would be helpful for the DEC to publish explanatory notes and a decision tree type diagram. This would help the reader to determine who is responsible for remediation in a given situation.</i>	

AVAILABILITY AND VALUE OF INFORMATION PROVIDED UNDER THE ACT

Q9	<i>Is the process for obtaining information on contaminated sites clear and easy to use?</i>	Example
	Comment <i>No. Full contaminated sites data should be publically available and free of charge.</i>	
	<i>If full and free public access is not possible, full access should still be given to decision making authorities, i.e. Local Government.</i>	<i>Full access would allow planning officers to immediately refer all relevant development applications to the DEC.</i>
		<i>Information could be provide through a password protected website.</i>
	<i>If full access is not possible, and the current operating framework remained, The Association recommends information should be provided within 10 to 15 working days of making a request.</i>	
	<i>Data Access is discussed in detail in the general discussion section, issue 3 - Data Sharing.</i>	
Q10	<i>Is the information provided in a Basic Summary of Records useful? How could it be improved?</i>	Example
	Comment <i>No. Full contaminated sites data should be publically available and free of charge.</i>	
	<i>If full and free public access is not possible, Full Access should still be given to decision making authorities, i.e. Local Government.</i>	<i>Full access to spatial data would:</i>
	<i>A central repository of information would reduce duplication of effort (with respect to planning), as well as providing accurate, secure information should the structure of Local Government change in the future.</i>	<ul style="list-style-type: none"> • <i>Ensure accurate information is used in the Local Government planning process</i> • <i>Ensure Local Governments are using up-to-date information, as many Local Governments have created their own internal contaminated sites databases using the information available on the public database and in notifications from DEC.</i>
	<i>If full access is not possible, and the current operating framework remained, The Association recommends that a Basic Summary of Records</i>	<i>A basic summary of records gives a good general overview of the site. It is useful but limited.</i>

<p><i>should include:</i></p> <ul style="list-style-type: none"> • <i>Known contaminants at the site; and</i> • <i>Impact on the environment and human health.</i> 	
<p><i>This is discussed in detail in the general discussion section, issue 3 Data Sharing.</i></p>	
<p>Q11 <i>Do you have any suggestions for improving the usability of the public database?</i></p> <p>Comment</p> <p><i>No. Full contaminated sites data should be publically available and free of charge.</i></p>	<p>Example</p>
<p><i>The database should be updated regularly to ensure the information is accurate.</i></p>	
<p><i>Include the following information on the public database:</i></p> <ul style="list-style-type: none"> • <i>Sites classified as ‘possibly contaminated - investigation required’;</i> • <i>Include any additional classifications created after the review; and</i> • <i>Certificates of contamination.</i> 	
<p><i>If full access is not possible, and the current operating framework remained, the Association recommends any additional classification, such as ‘possibly contaminated – investigation required’ should be publically available. If this information was freely available, the voluntary investigations process could be fast tracked as landholders would react to ‘a black mark’ on their land title. It would also enable potential land buyers and developers to make better informed and timelier decisions.</i></p>	<p><i>Currently this information is only available through written request and at a fee. This process is restrictive to Local Government business, potentially causing important Local Government decisions to be made without all the available information.</i></p>
<p><i>If full access is not possible, and the current operating framework remained, the Association recommends that a timeframe be introduced that requires DEC to respond to information requests by.</i></p>	<p><i>The turn-around times for receiving a summary of records from the DEC can be very slow (in some cases, several weeks).</i></p>
<p><i>Data access is discussed in detail in the general discussion section, issue 3 Government Data Sharing.</i></p>	

Q12 *If a new classification of ‘contaminated – investigation required’ is introduced, do you agree that information on these sites should be made publically available on the contaminated sites database?*

Comment

Yes. For the same reasons as ‘possibly contaminated – investigation required’ should be on the public database.

It is important that DEC is upfront and discloses this information if it available, even if the information could draw negative attention.

Please see question 11 for further information.

Example

MANDATORY DISCLOSURE REQUIREMENTS

Q13 *Are the mandatory disclosure requirements clear?*

Comment

Yes – very clear for Local Government.

Example

Q14 *Have you encountered difficulties in knowing when to make a disclosure?*

Comment

Not an issue for Local Government. The Act is very clear.

Example

Q15 *Do you have any suggestions for improving the disclosure process?*

Comment

Consultants should be required to submit a report in all cases, even when the site is found to be uncontaminated.

Example

TIMEFRAMES FOR INVESTIGATION AND REMEDIATION

<p>Q16 <i>Do you have any suggestions that may assist responsible persons in undertaking more timely investigations and clean ups?</i></p> <p>Comment</p> <p><i>Many of the contaminated sites that Local Governments are responsible for (such as landfills) were contaminated either:</i></p> <ul style="list-style-type: none"> • <i>While under State Government control; or</i> • <i>While the best management practices of the time (i.e. the current law) were adhered to.</i> <p><i>The State Government should recognise the history of these sites and provide funding assistance to Local Governments.</i></p>	<p>Example</p> <p><i>The City of Gosnells has spent approximately \$3 million on the investigation and remediation of the Former Liquid Waste Disposal Site in Southern River. In the 1970s the Western Australian Health Department promoted this site for the receipt of liquid wastes south of the Swan River. As there were virtually no limitations on the type of waste that was dumped, the City was left the legacy clean up following closure. The cost of clean-up has far exceeded any income that was received.</i></p> <p><i>A similar occurrence happened again in the 1980s when the Health Department classified the City's landfill site suitable for the disposal of certain products, which today can only be disposed of at a Class IV landfill. If it was determined that all past and existing landfill sites require remediation, there is no way that Local Government could fund the exercise.</i></p>
<p><i>The DEC should provide a voluntary model procedure for Local Governments to use if they suspect that a privately owned site requires reporting under the Ac. The model procedure should include suggested letter templates for advising responsible persons (i.e. landholders) and include clear advice of what the landholder should do next, and what information the landholder should provide in response to the Local Government.</i></p> <p><i>Brochures should make a clear distinction between the role for the DEC as</i></p>	<p><i>A Local Government may have grounds to suspect contamination but choose to consult the landholder first before reporting the site to DEC, Existing options available to Local Governments (such as submitting a Form 1, or placing a planning condition) may be premature or excessive in some cases.</i></p> <p><i>There have been situations when a Local Government</i></p>

<p><i>the authority responsible for administering the Act, and the role of Local Government. In particular it should outline that the Local Government is not the appropriate party to assess contamination reports written by consultants.</i></p>	<p><i>has consulted a property owner, and the property owner has responded by providing a consultants investigation or decontamination report directly to the Local Government to assess.</i></p>
<p><i>Review the DEC Guideline “Contaminated Sites and Land Use Planning Process.” Ideally the review guidelines would be jointly written by the DEC and the WAPC.</i></p> <p><i>While the Act does not ‘require’ a Local Government to report a privately owned site, the Land use guideline identifies Local Governments as having a role in identifying sites which need reporting. The DEC should either:</i></p> <ul style="list-style-type: none"> <i>• Provide further guidance on when a Local Government should ‘suspect contamination of a privately owned site, so that the Local Government is consistent when deciding whether to report a site on a general duty of care; or</i> <i>• Provide a checklist of information to request from a development application to satisfy that Local Government that the applicant/ landowner, based on sufficient investigation is satisfied there is no grounds to suspect contamination as there the Act and guidelines, such as Declaration regarding any contaminated investigation or remediation work that has been conducted in the site in the past (provide reports).</i> 	<p><i>DEC Contaminated Sites Branch has proven to be very helpful at providing officer-level advice on a case-by-case basis and should be commended for this. However, reducing the need for a case-by-case approach may save time for DEC, Local Government, Landholders and developers. The “Contaminated Sites and Land Use Planning Process.” Guideline suggests that a Local Government officer determines whether contamination may be an issue by assessing available information and asking the applicant for further information if necessary. However, it is unclear what would constitute grounds to impose a contamination condition. This means that the planning process can be delayed while the Local Government officer is collating and requesting information with no certainty that they will end up any closer to deciding whether contamination is an issue.</i></p>
<p><i>There should be clear timelines for starting a site investigation. This is practically concerning when the site has no value. In this case, inaction by liable parties is largely driven by avoiding financial liability, rather than protecting health/environment.</i></p>	<p><i>Despite the fact that the Act now provides the State with the ability to force a responsible party to investigate a site, the DEC appears to be reluctant to issue investigation notices.</i></p>

It would be beneficial for the DEC to have a formal priority sites register that would allow the DEC to check that responsible parties are actively investigating high priority sites, instead of delaying action. This register should also be made available for the public to view, as an additional mechanism to encourage investigation.

SOURCE SITES AND AFFECTED SITES

Q17 *Should source site owners have a duty under the CS Act to notify affected land owners (as well as DEC), as soon as they become aware that contamination has migrated offsite?*

Comment

The polluter should not independently notify other affected landowners. The DEC needs to either:

- Undertake this role (and recovering costs from the polluter to do so); or*
- Determine what the polluter should say when notifying landowners, and the timeline that this should be completed by.*

This type of action is necessary to ensure there is a consistent and accurate description of the issue, including the risk to health and the environment. DEC also needs to consider what steps to take if a landowner is unavailable and remedial action is required.

It is important that affected land owners know their property has become contaminated as it could potentially impact on human health. A landowner could unknowingly be using a bore to draw contaminated water for use.

Example

In April 2010, contamination from a landfill affected nearby residents. The concentrations of arsenic, polycyclic aromatic hydrocarbons and heavy metals exceeded the acceptable limit for bore water in the Dianella area. In this instance, the DEC and Department of Health provided information to the public.

<p>Q18 What implementation difficulties might be encountered if this duty was introduced?</p>	<p>Comment <i>Inconsistency would be a problem</i></p>	<p>Example <i>Recent analysis of ground water monitoring adjacent to a contaminated site identified possible contaminant movement to adjoining properties. While the Local Government felt obligated to personally advise the Landowners, it decided that it was more appropriate for DEC to communicate the information.</i></p>
<p><i>In some instances it could be difficult to prove when the source site owner was aware. There should be a designated timeframe that the source site owner should notify the affected landowner.</i></p>		
<p><i>There may be issues if a landowner objects to soil or water testing being carried out on their property.</i></p>		

CONTAMINATED SITES AUDITORS

<p>Q19 Is the role of the contaminated sites auditor sufficiently clear?</p>	<p>Comment <i>Yes, the role of the contaminated sites auditor is sufficiently clear for Local Governments.</i></p>	<p>Example</p>
<p>Q20 What additional advice could DEC provide to streamline the audit process?</p>	<p>Comment <i>The audit process is not a significant issue within the process. Having competent environmental consultants to identify the contaminants and potential risks is more labour intensive.</i></p>	<p>Example</p>

CONTAMINATED SITES COMMITTEE

<p>Q21 Should there be a time limit and requirement for all relevant documents to be sent to the Committee to decide on the</p>
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	<p><i>responsibility for remediation?</i></p> <p>Comment</p> <p><i>Yes. Delays can result in further negative impacts on health and the environment. A time limit would reduce the amount of delays in determining responsibility.</i></p> <p><i>Is there a time frame that the Committee must make a decision within?</i></p> <p><i>Time frames combined with clear communication would improve the process.</i></p>	<p>Example</p>
Q22	<p><i>What time limit (e.g. three months) would be fair to all parties?</i></p> <p>Comment</p> <p><i>Three months is a fair time limit, with the opportunity to apply for an extension.</i></p> <p><i>However, the time limit should take into account how often the Committee meets. There is no point hurriedly compiling information, if there are a limited number of Committee meetings each year.</i></p>	<p>Example</p>
Q23	<p><i>Can you suggest other ways to expedite the decision making process?</i></p> <p>Comment</p> <p><i>Ensure that there are timeframes on how often the Committee must meet, and when their decisions should be made by.</i></p>	<p>Example</p>

GENERAL FEEDBACK

Q24 ***Are there any other comments you wish to make on the effectiveness of the scheme established by the CS Act to identify, record, manage and remediate contaminated sites?***

Comment

Example

Issue 1: Remediation costs

There are a number of contaminated sites identified within the Local Government estate. Local Government is concerned about the financial implications if they are required to remediate multiple sites concurrently, or given management timeframes that do not match their budgeting cycle.

There should be a voluntary formal process for Local Governments to enter into management plans with the DEC. Management plans would reflect the decision making structure, and unique budget and tendering constraints that Local Governments must operate within. Both parties must be satisfied with the planned operations.

Issue 2: Financial assistance

Many of the contaminated sites on Local Government land were polluted while the land was under Crown management, making the Crown responsible for remediation. However, through institutional knowledge loss, not all Local Governments are aware of which sites this applies to. The DEC should know exactly what sites the State Government is responsible for, and share this information, without charge, to Local Government.

There are also some instances where Local Governments are not sure who is responsible for remediation, and would like to work closely with DEC to establish this.

It is becoming increasingly difficult for Local Government to access information,

DEC carried out an investigation of asbestos contamination in Mosman Park, and then issued a regulatory notice to the Town of Mosman Park. However, in this instance the Local Government was aware of when the contamination occurred, and was able to prove that the State Government was responsible for management.

Some historical landfill sites were run by Local Governments to accommodate municipal, commercial and industrial waste. These landfills were operated under the Health Act 1911, and management was considered appropriate at the

as many of the land transfers from Crown to Local Government management occurred more than 20 years ago.

Issue 3: Data sharing

Each council should have full access to DEC's contaminated site data within the Local Government boundaries. DEC is a central repository for contaminated sites data and in some instances holds better information about contaminated sites than Local Government. Better access to DEC's data would improve Local Government's ability to manage and remediate contaminated sites, and better inform other Local Government decisions.

Full access to data will enable Local Governments to make better informed decisions when working under other legislation.

Full access to contaminated sites data will also ensure that information is not lost during institutional changes such as council amalgamations.

time. However since this time, the conditions of the Act and landfill management have changed.

There is poor connectivity between the Contaminated Sites Act 2003 and the Planning and Development Act 2005. Town planners will place conditions on a site if it is known to be contaminated. However, many of the Local Governments only use the contaminated sites public database to inform their decisions, as this is the only information they have access to. This database excludes uninvestigated sites for confidentiality reasons. Local Governments believe that more informed planning decisions could be made if they had full access to the contaminated sites information.

Some types of rezoning, such as recoding a large residential site from R20 to R80, may not trigger external review. In these instances, a council may initiate a recoding without realizing it is on a contaminated site.

Local Government Reform is currently underway, which will potentially shift Local Government boundaries and merge some councils together. Local Government is concerned that contaminated site information could be lost during council

	<p><i>amalgamations, and believes that access to DEC's information would ensure their future work is better informed.</i></p>
<p><i>Issue 4: Interface with other legislation</i> <i>This review is a good opportunity to examine how the Contaminated Sites Act interacts with other legislation and requirements, such as Waste Avoidance and Resource Recovery Act 2007, and the waste tracking system. Local Government is aware of instances when the system seems to be failing and requests that the DEC also examines this as part of its review.</i></p> <p><i>In addition, Local Government questions whether State Government should play a greater role in highly hazardous waste disposal.</i></p>	<p><i>Local Government is aware of a number of cases where Waste Acceptance Orders have been issued, but the waste has never arrived. It appears that no investigation was carried out, which means the waste was potentially disposed of in other places.</i></p> <p><i>Red Hill Waste Management Facility, operated by Eastern Metropolitan Regional Council, is the only licensed Class IV landfill in the State. This means that the ratepayers of the member councils are effectively subsidising the management of Class IV waste from all waste generating sectors across the State.</i></p>
<p><i>Issue 5: Contamination consultants' advice should refer to the Act</i> <i>There should be a legal requirement for contamination consultants' advice to state how their investigation and findings relate to the Act and guidelines. This requirement should apply regardless of whether the site has been reported the client has requested advice in terms of the Act. Consultants should be required to state the following in their final report to the client:</i></p> <ul style="list-style-type: none"><i>• That the work they have done has been undertaken in accordance with the Act and guidelines.</i><i>• That the site investigation and report refers to the entire land parcel, or if only parts of it, then which part(s).</i><i>• Whether or not they believe the site requires reporting in terms of the Act.</i> <p><i>This would remove ambiguity as to whether the client, as a responsible person</i></p>	

has an obligation to report under the existing provisions of the Act

DRAFT