



Contaminated Sites Guidelines: Identification, reporting and classification of contaminated sites in Western Australia

Department of Environment Regulation

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About CME

The Chamber of Minerals and Energy of Western Australia (CME) is the peak resources sector representative body in Western Australia funded by its member companies, which generate 95 per cent of the value of all mineral and energy production and employ 80 per cent of the resources sector workforce in the state.

The Western Australian resources sector is diverse and complex, covering exploration, processing, downstream value adding and refining of over 50 different types of mineral and energy resources.

In 2014-15, the value of Western Australia's mineral and petroleum production was \$99.5 billion. Iron ore accounted for approximately \$54 billion of production value to be the state's most valuable commodity. Petroleum products (including LNG, crude oil and condensate) followed at \$24 billion, with gold third at \$9 billion.¹

Notwithstanding the recent decline in the price of several export commodities, the estimated value of royalty receipts the state received from the resources sector still composed over 16 per cent of estimated total state revenue in 2015-16, or around \$4.4 billion.²

As at September 2015, there was approximately \$171 billion in resources sector projects committed or under construction in Western Australia and a further \$110 billion in proposed or possible projects.³

Recommendations

CME recommends:

- The following statement is deleted from Section 6.1.3 "*Any new information (hard copy and electronic format) should be provided to DER as soon as it becomes available (refer to section 7.7 of this guideline)*" and is replaced with "*Significant new information, with the potential to alter the classification of a site, should be provided to the DER as soon as reasonably practicable.*"
- The requirement for reporters to complete a "*new Form 1, or other written communication to DER for sites that have been previously reported*" is limited to circumstances where a new risk or increase in risk to a receptor/s is identified.
- Section 6.5 is amended to state "*It is an offence under s 94 of the CS Act to provide false or misleading information or to fail to disclose relevant information when reporting a known or suspected site or when responding to a formal, written request for information under the Act by the CEO, a delegated officer or the Contaminated Sites Committee*".
- The following statement is deleted from Section 7.6.4 of the Guidelines "*Note this procedure is only applicable to large land parcels (such as pastoral leases and mining tenements) and 'large' urban blocks prior to subdivision.*"
- Table 6 "*Potential restriction on use*" is updated to state "*Buildings are required to be designed and constructed with appropriate vapour mitigation measures (such as impermeable membranes and passive venting) where there is a risk to human health or the environment.*"

¹ Department of Mines and Petroleum (DMP), 2015, *Mineral and Petroleum Industry 2014-15 Review*, www.dmp.wa.gov.au/1525.aspx, p. 1

² Government of Western Australia, 2015, *2015-16 Budget, Budget Paper No. 2 Volume 2*, www.ourstatebudget.wa.gov.au/Budget-Papers, pp. 541 & 593

³ DMP, 2015, *loc. cit.*

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- Directives for action and timeframes are not included in Notices of Classification and reasonable timeframes for action continue to be developed and refined through negotiation with DER.
- Section 8.3 is updated to include provisions for campaigned programs for detailed site investigations (DSI).

Context

CME welcomes the opportunity to review and provide comment on the Department of Environment Regulation (DER) draft *Contaminated Sites Guidelines: Identification, reporting and classification of contaminated sites in Western Australia* (the Guidelines).

The purpose of this document is to provide guidance on the identification, reporting and classification of contaminated sites in Western Australia within to the legislative framework provided by the *Contaminated Sites Act 2003* (CS Act) and the *Contaminated Sites Regulations 2006* (CS Regulations) and the revised national site assessment framework provided in the *National Environment Protection (Assessment of Site Contamination) Measure 1999*.

The new guideline replaces the following three existing guidelines from the Contaminated Sites Management Series:

- Reporting of known and suspected contaminated sites (2006)
- Site classification schemes (2006)
- Certificate of contamination audit scheme (2000)

CME supports the Guidelines, however a number of recommended changes are proposed for consideration in Table 1 below.

Feedback on the Guidelines

Table 1: CME feedback on the Guidelines

Section 6.1.3 Penalties for providing false or misleading information
<p>Section 6.1.3 of the Guidelines states “Any new information (hard copy and electronic format) should be provided to DER as soon as it becomes available (refer to section 7.7 of this guideline).”</p> <p>Section 7.7 describes “new information” as:</p> <ul style="list-style-type: none">• Clarification of certain details such as the site history and location of site infrastructure;• Submission of additional monitoring data; and• Submission of additional reports such as site investigation, remediation and validation reports. <p>Additionally, “significant new information” is described and this information could result in reclassifying sites under section 13(2) of the CS Act.</p> <p>The submission of any new information will create a significant administrative load for both reporters and DER. CME considers the requirement to provide new information should be limited to “significant new information” which has the potential to alter the classification of a site.</p> <p>CME recommends the following statement is deleted from Section 6.1.3 “Any new information (hard copy and electronic format) should be provided to DER as soon as it becomes available (refer to section 7.7 of this guideline)” and is replaced with “Significant new information, with the potential to alter the classification of a site, should be provided to the DER as soon as reasonably practicable.”</p>

Section 6.4 How to report a known or suspected contaminated site

Section 6.4 of the Guidelines states “*DER recommends that a new Form 1, or written notification, is provided to DER for sites that have previously been reported if:*

- *Additional contamination has occurred at the site as a result of further pollution events or incidents; and/or*
- *Additional contamination has been identified that is materially different in nature or location to the contamination already reported.”*

Repeated reporting and updated *Notices of Classification* as a result would increase the administrative burden for both reporters and the DER. Initial reporting can be based on a single suspected substance and therefore the discovery of additional contaminants of concern is highly likely through a thorough, staged investigation process. Operational sites may also experience loss of containment events involving the same contaminants of concern which do not change the overall contamination risk profile.

CME recommends the requirement for reporters to complete a “new Form 1, or other written communication to DER for sites that have been previously reported” is limited to circumstances where a new risk or increase in risk to a receptor/s is identified.

Section 6.5 Information required to be reported

Section 6.5 states “*It is an offence under s 94 of the CS Act to provide false or misleading information or to fail to disclose relevant information when reporting a known or suspected site or when responding to a DER request to provide information on a site.”*

CME considers this section should be updated to more accurately reflect section 94(d) and 94(i) of the CS Act. A formal, written request for information made under the CS Act by the CEO, a delegated officer or the Contaminated Sites Committee should be stated as such, at the time the request is made.

CME recommends Section 6.5 is amended to state “*It is an offence under s 94 of the CS Act to provide false or misleading information or to fail to disclose relevant information when reporting a known or suspected site or when responding to a formal, written request for information under the Act by the CEO, a delegated officer or the Contaminated Sites Committee”.*

Section 7.4.3 Restrictions on use

Table 6 lists typical examples of restrictions on use which may be applied to a site. The table includes the following example scenario:

Example scenario	Potential restriction on use
Hydrocarbons in groundwater present a potential vapour intrusion risk.	Buildings are required to be designed and constructed with appropriate vapour mitigation measures (such as impermeable membranes and passive venting).

CME considers the “*Potential restriction on use*” for this scenario may be excessive for construction of buildings for commercial or industrial purposes. The requirement to construct buildings with appropriate vapour mitigation measures should be limited to

circumstances where there is a risk to human health or the environment.

CME recommends Table 6 “Potential restriction on use” is updated to state “Buildings are required to be designed and constructed with appropriate vapour mitigation measures (such as impermeable membranes and passive venting) where there is a risk to human health or the environment.”

Section 7.6.4 Differentiating contaminated and non-contaminated parts of a land parcel

Section 7.6.4 limits the applicability of Interest Only Deposited Plans (IODP) to “...large land parcels (such as pastoral leases and mining tenements) and ‘large’ urban blocks prior to subdivision.” CME considers this mechanism would also be of value in differentiating contaminated and non-contaminated parts of rural and industrial landholdings. The basis for DER restricting the use of IODPs is unclear and the requirement should be removed.

CME recommends the following statement is deleted from Section 7.6.4 of the Guidelines “Note this procedure is only applicable to large land parcels (such as pastoral leases and mining tenements) and ‘large’ urban blocks prior to subdivision.”

Section 8.3 Timeframes for action

Section 8.3 describes a process and timeframes if action is required to address contamination at a site. These actions and timeframes for completion may be incorporated into *Notices of Classification*.

Provision of general advice on what further information is required to adequately characterise a site is valuable on a *Notice of Classification*, however the legal obligations for abiding to timeframes stipulated under a *Notice of Classification* are unclear.

Where the risk of the contamination warrants a directive for implementation of specific actions and timeframes for action, CME considers there are other regulatory instruments for this purpose. In all other circumstances it is more practical for owners and/or occupiers to negotiate timeframes for action with DER.

The ability for owners and/or occupiers to negotiate timeframes would also address issues associated with contaminated sites located in remote areas where mobilising equipment can be challenging.

CME recommends directives for action and timeframes are not included in *Notices of Classification* and reasonable timeframes for action continue to be developed and refined through negotiation with DER.

Historically, owners and/or occupiers have undertaken campaigned programs for detailed site investigations (DSI) of known and suspected contaminated sites. In some cases, the campaigned programs have taken approximately 3 years which was accepted by the DER.

Section 8.3 of the Guidelines stipulates:

- ‘High priority sites’ require a DSI within 6 months (and additional detailed investigation works would normally be expected to be completed within a further 6-9 months depending on their complexity); and
- ‘Standard priority sites’ require a DSI within 9 months (and subsequent stated of detailed investigations should reasonably be completed at 6-12 month intervals).

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The requirements above may not be achievable for all sites, especially where strict quarantine procedures limit the mobilisation of equipment. CME considers a campaign program would be an appropriate option in these circumstances and provision for such approach should be included in the Guidelines.

CME recommends Section 8.3 is updated to include provisions for campaigned programs for DSL.

Conclusion

CME welcomes the review and the opportunity to comment on the *Contaminated Sites Guidelines: Identification, reporting and classification of contaminated sites in Western Australia* and looks forward to ongoing engagement with DER.

If you have any further queries regarding the above matters, please contact Kirrillie Caldwell, Policy Adviser - Environment, on (08) 9220 8507 or k.caldwell@cmewa.com.

Authorised by	Position	Date	Signed
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