



Consultation summary

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

Version: Final

June 2017

Document control

Document version history

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1 Background

The draft *Contaminated Sites Guideline: Identification, reporting and classification of contaminated sites in Western Australia* was released for public consultation from 18 September 2015 to 12 November 2015.

This guideline was prepared to help landowners, industry, consultants and auditors, and other interested parties understand the requirements for identifying and reporting contamination and other requirements of the [Contaminated Sites Act 2003](#) (CS Act) and the [Contaminated Sites Regulations 2006](#) (CS Regulations).

The Department of Environment Regulation (DER) thanks all respondents for taking the time to respond to the consultation.

The guideline has been finalised after consideration of the issues raised and the comments submitted.

2 Submissions

Eleven submissions were received from the organisations listed in Table 1.

Table 1. Consultation submissions received

Name
Association of Mining and Exploration Companies (AMEC)
Chamber of Minerals and Energy (CME)
City of Cockburn
Department of Water
Hydrosolutions Pty Ltd
Iluka Resources Ltd
Roy Hill
Urban Development Institute of Australia (WA) Inc. (UDIA)
Water Corporation
Wesfarmers Chemicals, Energy and Fertilisers
Western Power

3 Main issues

A summary of the main issues arising from the public consultation submissions and DER's response is set out below. A detailed list of comments and DER response is provided at Appendix A.

Submissions are available on DER's webpage.

3.1 Key terms

3.1.1 Definitions relating to 'site'

Submissions requested clarification of the respective roles of DER and the landowner with respect to differentiating the contaminated and uncontaminated portions of a land parcel and the use/application of Deposited Plans for Interest Purposes Only (DP-IPO).

DER has revised the text and clarified the DP-IPO process in section 7.8.

3.1.2 Definitions relating to 'contaminated'

Submissions requested clarification of definitions related to the term 'contaminated'.

DER has made minor revisions to the definitions section and provided additional cross-references to the relevant sections of the [Contaminated Sites Guidelines](#) and the [National Environment Protection \(Assessment of Site Contamination\) Measure](#) where these terms/concepts are addressed in greater detail.

Additional text and examples relating to acid sulfate soils and mining activities have been included with respect to disturbance of naturally occurring substances.

3.1.3 Definition of person responsible

Submissions requested inclusion of information to assist with understanding the hierarchy of responsibility for remediation of contaminated sites.

DER acknowledges that the hierarchy as presented in the CS Act is complex. DER considers that the many factors involved make it difficult to provide a simplified hierarchy in the form of a flow chart or other graphic. Additional text on the information taken into account by the [Contaminated Sites Committee](#), when making a determination of responsibility for remediation, has been included at section 8.1.

3.2 Legislative framework

3.2.1 Contaminated sites register

One peak body advocated that DER further investigate the extent of information provided via the online public database, as well as the range of classifications and reports for which information is made available, in the interests of procedural efficiency and administrative expediency. This issue was also raised by several stakeholders, notably local government, in the [Review of the Contaminated Sites Act](#).

DER accepts that stakeholder expectations regarding availability of information online have changed since the CS Act was passed by Parliament; however, the means of access to information on contaminated sites is prescribed under the CS Act.

DER notes that a legislative amendment is required to enable information on additional classifications to be included on the public database.

3.3 Identification of known and suspected contaminated sites

Submissions requested further guidance on circumstances when DER would consider a person would know or suspect contamination was present.

Additional clarification has been provided.

3.4 Reporting known and suspected contaminated sites

Submissions requested clarification on:

- reporting requirements with respect to auditors when engaged in a voluntary capacity;
- circumstances when DER may be made aware of potential contamination other than via the prescribed form;
- jurisdiction of the CS Act when a site is licensed under Part V of the *Environmental Protection Act 1986*; and
- notification of additional contamination/materially different contamination at a reported site.

In response, section 6 of the document has been substantially revised to address these issues.

3.5 Classification of reported sites

3.5.1 Notice of classification

One peak body indicated that it would be beneficial for a landowner to be given advance notice that their property was about to be classified. This would then give the landowner the opportunity to contact stakeholders informally, prior to receipt of the notice of classification from DER (which may result in adverse reactions if the landowner had not made prior contact with them).

If a site is reported by a person other than the site owner/occupier, DER will generally write to the site owner/occupier to require submission of materially relevant information prior to classifying the site.

DER considers that this process already provides the site owner with advance notice that a site is about to be classified.

3.5.2 Confidentiality of submitted information

One submitter requested further information on how DER treats confidential information (not just the identity of a person reporting a site), particularly when all materially relevant information must be reported.

Confidentiality is addressed in s.96 of the CS Act and prohibits unauthorised use of information. Public access to information held by DER is available under [Freedom of Information arrangements](#) unless it is available under the CS Act via a request for a Basic Summary of Records or a Detailed Summary of Records.

3.6 Action required in response to site classifications

3.6.1 Person required to take action

Submissions were made regarding the legal obligations for abiding with timeframes included in a Notice of Classification, and that other regulatory instruments were available to DER for this purpose where the risk of contamination warranted a directive for implementation of specific actions and timeframes for those actions. In all other circumstances, the submitter maintained that it was more practical for owners/occupiers to negotiate timeframes for action with DER.

Submissions were also made that the indicative timeframes in the draft guideline may not be achievable for all sites, particularly where strict quarantine procedures limit the mobilisation of equipment.

Many submissions to the consultation paper on the review of the CS Act requested clearer direction on actions required in response to site classification and the timeframes for those actions. In response, DER included indicative timeframes in the guideline. Dates are specified by DER in the Notice of Classification for sites considered to be a high priority where prompt action is required to remediate or investigate a site. DER considers that the Notice of Classification forms the first step to serving a clean-up or investigation notice if appropriate action is not being taken.

DER acknowledges that persons/organisations responsible for multiple sites will need to develop a prioritised schedule for their sites. DER has amended the text in section 8.3 to include reference to logistical factors such as quarantine requirements.

3.7 Disclosure of contamination during land transactions

Suggestions were made by submitters to improve the clarity of the text. One submitter suggested that disclosure should be an obligation for land classified as *possibly contaminated – investigation required*.

DER has considered the suggestions and revised the text accordingly.

DER considers that the memorial on title should alert potential purchasers, lessees and mortgagees of the classification under the CS Act. DER notes that a change in legislation would be required for mandatory disclosure to apply to sites classified as *possibly contaminated – investigation required*.

3.8 Certificate of contamination audit

Submissions queried whether DER approval was required for transfer of land classified as *possibly contaminated – investigation required*.

DER confirms that a site classified as *possibly contaminated – investigation required* may be sold or leased without approval from DER.

3.9 Transfer of responsibility

Submissions queried whether responsibility for remediation is transferrable without undertaking a full site investigation in circumstances where the site is classified as *possibly contaminated – investigation required*.

A Certificate of Contamination Audit (CCA) is required to proceed with the s.30 transfer process. CCAs are only applicable to sites where DER can be certain about the contamination status of the site, and excludes sites classified as *possibly contaminated – investigation required*. DER confirms that a detailed site investigation is therefore required as this is a necessary precursor to establishing that the site is contaminated and that remediation is required.

Appendix A – Detailed comments and DER response

Draft document section/ issue		Comment	DER response
3.1.1 (and 7.6.4)	definition – boundary of site	<p>Section 3.1.1 of the guidelines provides important commentary in relation to distinguishing contaminated and uncontaminated portions of a land parcel, through registration of an interest only deposited plan. However, the language used within this section (i.e. it may be ‘desirable’ to distinguish between) would appear to indicate that the responsibility to initiate any process with respect to delineating a contamination, rests with the land owner or interested party for whom such a differentiation may be advantageous. <i>If this interpretation is correct, the business-as-usual approach would seem to take a ‘guilty until proven innocent’ approach to the classification of an entire site based on the cadastral boundary, rather than the extent of contamination.</i></p> <p>Where a report/assessment of a site delineates the extent of contamination and the portion of a parcel subject to a corresponding classification, the site boundary and ‘contamination boundary’ should be distinguished as a matter of course. If this provision is not intended to place sole responsibility for initiating such a distinction with the landowner, the roles in respect to this process should be clearly set out within the guideline text.</p>	Text revised and process clarified in section 7.8.
3.2.1	definition – contaminated	It would be helpful if the guideline emphasised that there are two parts to the definition of ‘contaminated’ – ie (i) above background, and (ii) presents or has the potential to present a risk. This is often a point of confusion and it would help the industry if the DER acknowledged that these two distinct elements need to be satisfied. Note: the guideline does provide some guidance on background concentrations (3.2.4) and risk (3.2.5).	Text revised and additional cross-references included. Addressed in paragraph two.
3.2.1	definition – contaminated	<p>S3.2.1, 3rd sentence:</p> <ul style="list-style-type: none"> • Add ambient air/dust after ‘...surface water of a site...’ • What about dust? 	Text revised.

3.2.2	substances that can present a risk of harm	S3.2.2, 2 nd sentence: what about dust?	Text revised.
3.2.2	definitions – substance and risk	<p>While s3.2 of the guidelines makes reference to the definitions of ‘substance’ and ‘risk’, no reference is made to the term ‘contaminated’ within this section. While s3.2.2, in conjunction with s3.3.5 set out the relevant factors when considering the risk posed by a substance (i.e. toxicity, concentration and extent), reference to the requirement for a linkage between the source and receptor appears to have been omitted. Specifically, the third element in substantiating a contamination as set out within the s.4 definition of ‘contaminated’ (CS Act) has not been established i.e. that the presence of a contaminant, above background concentration presents, or has the potential to present “a risk of harm to human health, the environment or any environmental value.”</p> <p>This is an important point of distinction, as the presence of a substance alone may not indicate that a site is ‘contaminated’ under the statutory definition. While UDIA notes that reference to receptors, source pathways and linkages are made in the examples at s5.3, 5.4 and ‘Appendix A’, the identification and explanation of this important third element should be included upfront when making reference to relative risks.</p>	<p>The objective of section 3 is to provide definitions and provide direction on where the subject matter is dealt with in more detail in the guideline.</p> <p>The issue is complex and is addressed in section 5. The second example in Table 3 (example scenario – known contamination – potential risk of harm) was included to illustrate that in the case of ‘potential risk of harm’ that the pathway could be (reasonably) completed in the future.</p>
3.2.3	disturbance of naturally occurring substances	<p>This section does not appear to provide for any cross-jurisdictional consultation, particularly in regards to mining proposals and mine closure plans. For example, a geochemical evaluation of an ore body may demonstrate that once exposed to ambient air, oxidation will occur and may result in sulphuric acid. Management of this is identified as part of the Mining Proposal submitted through the Department of Mines and Petroleum (DMP). In addition to completing a Mining Proposal it appears that an additional risk assessment will need to be completed to assess risk to human health and the environment in accordance with the processes referenced under the CS Act. AMEC considers that any</p>	<p>The process is clarified in DER Fact Sheet: <i>Mine sites and the Contaminated Sites Act 2003</i> (in prep) – which makes it clear that there should be no duplication.</p> <p>Additional examples have been added to Appendix A.</p>

		potential duplication in requirements from regulators should be avoided.	
3.2.3	disturbance of naturally occurring substances	Recommended inclusion of additional text, explicitly linking abstraction (for both use and dewatering) and the potential for generation of acid sulphate soils. Both generic information and simple examples may assist. Some opportunities are: 3.2.3 Disturbance of naturally occurring substances p5. Text could be added about dewatering and drawdown. e.g. Some naturally occurring substances can present a risk of harm when they are disturbed, dewatered or if groundwater is abstracted. This may result in a site being contaminated....	Text revised and additional examples added to Appendix A.
3.2.3	disturbance of naturally occurring substances	There is a significant difference in the mechanism of the contamination of the examples. Radiation and asbestos are just the movement of the material into contact with humans or environment. Whereas, acid sulphate generation is a chemical reaction that is promoted by disturbance. The DER should consider highlighting the differences. Acid sulphate soils can be impacted by in-situ dewatering rather than physical disturbance and no guidance is provided. Similarly, sediments in waterways and lakes can be disturbed through both natural and anthropogenic drying and could allow the release of contaminants.	Text revised and additional examples added to Appendix A.
3.2.3	disturbance of naturally occurring substances	Provide further clarification of potential situations of the disturbance of naturally occurring substances and the requirement for reporting as a contaminated site in s 3.2.3	Text revised and additional examples added to Appendix A.
3.2.6	environmental values	This section explicitly states that EVs include BU or an ecosystem health condition. Further the definition of contamination under the Act includes EVs. However, there is no clarity on how this applies to an operating mine or approved mine project where DMP has accepted mining works and management of ecosystem health, and only now may be subject to reporting as a suspected site and registered as such. It is not clear how this is to fit in with primary and secondary environmental approvals and mine closure.	Refer to DER <i>Fact Sheet: Mine sites and the Contaminated Sites Act 2003</i> (in prep).

3.2.6	environmental values	Table 1 – Aesthetics* – There should only be the requirement to cover aesthetics in a contaminated sites assessment where the land use is expected to provide aesthetic enjoyment, eg parks, public open space, public thoroughfares or residential areas. It should not be a requirement to consider this within an industrial zone unless a land use change is proposed.	Consideration of aesthetics is relevant to all land uses; however, different expectations apply – refer to relevant guidance in the NEPM (Schedule B1 section 3.6).
3.2.6	environmental values	Current and potential use of water – This should be potential based on the current land use zoning (or proposed if re-zoning is planned). It is unreasonable to have to consider potential uses for water that are unrealistic eg drinking groundwater in a previous industrial area.	Text revised to include reference to ‘current and reasonable potential uses’.
3.2.7	substances excluded from the CS Act	S3.2.7, blue box, (f): define what is a correct application	Correct application is defined in regulation 4(5).
3.2.7	substances excluded from the CS Act	The last sentence could be worded more clearly.	The wording needs to be read in context with the preceding text in section 3.2.7.
3.3	definition of remediation and relative risk of harm	<p>Further to the comment made above (3.2.2), the definition of ‘remediation’ is directly linked to the elements comprising the definition of ‘contaminated’. In addressing the linkage between contaminants and harm in calculating risk, elements (c) & (d) of remediation (s.3 CS Act) operate to include any action which ‘breaks the linkage’ between a substance and reduction of its effect (harm) within the definition. It is important to note that the remediation of a site may take a number of forms, with somewhat simple solutions capable of reducing or mitigating risk of harm in some circumstances.</p> <p>Consideration of remediating factors should consider the relative risk of harm associated with a substance, based on site specific factors. Narrow and/or risk adverse approaches to assessment of remediating actions has the potential to result in over-remediation, or even sterilisation of land for urban uses. It is important also to consider the current state governments strategic land use planning priorities, with a</p>	<p>Site management as a means of preventing exposure to contamination (that is breaking the linkage between a substance and reduction of its effect) is discussed in Contaminated Sites Guideline <i>Assessment and Management of Contaminated Sites</i> (DER, 2014).</p> <p>DER supports investigation and remediation to the extent necessary to address unacceptable risks to human health, the environment and environmental values. The suggested scenarios are consistent with a site classification of ‘<i>remediated for restricted use</i>’. This concept is embedded in DER (2014).</p>

		greater focus now being placed on maximising the potential of 'existing cleared land'. The remediation of previously contaminated sites in a timely, cost efficient and commercially viable manner will be key to unlocking land as we seek to house a population of 3.5 million in Perth.	
3.3	definition of remediation	CS Act definition of remediation part (b) restriction, or prohibition, of access to, or use of, the site – Does this mean entire lot? Should it say 'or the part of the site that is contaminated'?	In practice, this can mean either the whole site or the contaminated area of the site. Note that site classifications are applied to the relevant cadastral land parcel.
3.4	hierarchy of responsibility	S3.4, 3rd sentence "Part 3 of the act...": it would be useful to include the hierarchy here.	The objective of section 3 is to provide definitions and direction on where the subject matter is dealt with in more detail in the guideline. Refer to the additional text added in section 8.1.
3.4	hierarchy of responsibility	UDIA understands that previous requests for a simplified hierarchy of persons responsible for remediation has been addressed within comments at s8.1 of the guidelines, with DER unable to provide 'site specific guidance' on the application of Part 3 Division 1 (CS Act). However, it may be possible to create a flow chart, graphic or other simple illustration to depict the factors considered in determining such a hierarchy and applicable weightings. Any means by which Part 3, Division of the CS Act can be better understood should be further investigated. Feedback received by UDIA has indicated that the determination of 'responsible person' has traditionally been a significant source of confusion.	DER acknowledges that the hierarchy as presented in the CS Act is complex. DER considers that the many factors involved make it difficult to provide a simplified hierarchy in the form of a flow chart or other graphic. Refer to the revised text in section 8.1 regarding the information taken into account by the Contaminated Sites Committee when determining responsibility for remediation.
4	Table 2 contaminated sites register	The order of classification in the table is not consistent with Table 4, and could cause confusion.	Text edited to be consistent with the order in Schedule 1 of the CS Act.

4	Figure 1	<p>Clarifies that a Form 1 is not required when new information on a reported site is submitted, and further supported in section 6.4. It appears inconsistent that there are time frames for classifications for Form 1 and MAR submissions but not reclassifications or updating of records.</p> <p>For sites that are classified as Decon, NC-UU or RNS no further action is required unless the site is subject to ongoing potentially contaminating activity. It is not clear, however, if there is a change in guideline concentration with no ongoing potentially contaminating activity whether this still applies.</p>	<p>Statutory timeframes apply to the classification of a site and updating of records. There are no timeframes specified in the CS Act for reclassification.</p> <p>This would need to be a site-specific consideration.</p>
4	contaminated sites register	<p>S4, 2nd sentence ‘...DER by certain persons...’; it would be useful to state such as whom here.</p>	<p>Cross-reference to section 6.1 included.</p>
4	contaminated sites register	<p>Section 4 of the guidelines states that “all reported sites are recorded on the contaminated sites register”, with table 15 within s 9.1 going on to provide further information on the public accessibility of this information. While a basic summary of some classifications (namely; contaminated – remediation required, contaminated – restricted use and remediation for restricted use) are available immediately at no fee, further information with respect to these and other classifications are available subject to delay and cost. From a process perspective, many practitioners and land holders are required to conduct further investigation in carrying out due diligence, and will be subject to cost and delays (in some cases significant).</p> <p>UDIA is supportive of the work completed in establishing an online data base and commends DER on its successful implementation, towards improving the level of transparency that exists. <i>DER should however further investigate the extent of information provided via the online public database, as well as the range of classifications and reports for which information is made available in the interest of procedural efficiency and administrative expediency.</i></p>	<p>DER accepts that community expectations regarding availability of information online have changed since the CS Act was drafted; however, the means of access to information on contaminated sites is prescribed under the CS Act.</p> <p>Requests to DER for a BSR are processed in date order and generally responded to within 10 working days.</p> <p>Requests to DER for a DSR are processed in date order and generally responded to within 10 working days.</p> <p>DER advocates that consultants submit a DSR request at the start of any contaminated sites project to ensure they have access to all environmental reports held by DER.</p>

5.1	role of environmental consultants	S5.1, 2st sentence, typo, objects should be objectives, “..by certain persons...” add (refer to Section 6.1) and add a statement that consultants are excluded from this requirement.	<p>Wording as written is correct – refer to s.8 of the CS Act (Object and principles).</p> <p>Reference to section 6 has been included.</p> <p>The suggested statement regarding specific requirements regarding environmental consultants is not appropriate to the introduction for section 5, the comment however is addressed in section 6.1.</p>
5.2	potentially contaminating activities and land uses	‘DER considers that knowledge, or evidence of, activities and land uses such as landfilling, burial of waste or illegal dumping of waste may provide sufficient grounds to know or suspect a site is contaminated’– Should this include discharges and poor environmental management?	Text revised to include suggestion.
5.2	potentially contaminating activities and land uses	Consider site assessment of any site known to have been used for a potentially contaminating activity, not just those where there is a proposed change of land use to more sensitive land use	Additional text included in section 5.2.
5.3	known contamination	<p>Some guidance around when the DER considers a person ‘knows’ a site is contaminated would be useful, particularly in the context of companies. See for example the second paragraph section 5.4, where DER discusses what they consider is required for a person to ‘suspect contamination’.</p> <p>For example, does the DER consider that a person ‘knows’ because initial monitoring results indicate contamination, or only after the results of a confirmatory investigation become known?</p> <p>Does a company (who owns the land and therefore has a duty to report) ‘know’ of contamination from the very moment a site-based employee is provided the results of a consultant’s investigation report?</p>	<p>Under the <i>Interpretation Act 1984</i>, person or any word or expression descriptive of a person includes a public body, company, or association or body of persons, corporate or unincorporated.</p> <p>Additional information has been added to section 6.4.2 (what do the statutory timeframes mean?).</p>

5.4	suspected contamination	3rd sentence 'In the opinion of DER...'; This is a contentious statement and is potentially open to abuse or misapplication – I think it would be wise to add further clarification here (N.B of course it should be suspected, and rightly so!).	Text revised.
5.4	suspected contamination	[Text] box, 2nd bullet: “Non-trivial quantities...”; I suggest that you should consider giving some examples of what would qualify as non-trivial quantity, since this will vary from chemical to chemical! (or physical property, e.g. radioactive material!)	Statement qualified.
5.4	suspected contamination	<p>Reporting a site as contaminated imposes significant constraints on land parcels and subsequently industry. The constraints include but are not limited to:</p> <ul style="list-style-type: none"> - financial liabilities. - internal human resource costs for managing CS. - the onus to go through the rigorous (and expensive) contaminated sites process. - stakeholder management issues. <p>Overly conservative reporting of sites prior to establishing the presence of a pathway and receptor (i.e. contamination) can un-necessarily impose the above constraints on a site without improving overall risk management.</p>	<p>The factors taken into account by DER when prioritising sites for action are discussed in section 8.</p> <p>Regarding the comment on overly conservative reporting, the definition of ‘contamination’ in the CS Act includes contamination which has the potential to present a risk of harm.</p>
6.1	duty to report	4th paragraph: What about auditor’s duty in the case of a VAR? – should be stated here	Refer to the wording of s.11(4)(c).
6.1	duty to report	While the guidelines commentary in regard to duty to report within s6.1, does address circumstances in which a person suspects a site may have already been reported, it does not address whether a duty still exists in circumstances where DER has been informed by means other than a Form 1 submission. Such a circumstance may arise for instance, where a proponent receives a planning condition relating to the investigation and/or remediation of the site. In such a circumstance, the planning authority may reasonably be assumed to have consulted	Section 6 of the document has been substantially revised to clarify reporting requirements.

		<p>directly with DER.</p> <p>This section of the guidelines should be amended to address various means by which DER may be made aware of a sites potential contamination, other than via a Form 1.</p>	
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).” 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. <i>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.</i></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>	<p>DER is required to keep accurate and up to date records (s.20).</p> <p>The text has been revised to clarify reporting requirements including submittal of new information (section 7.9).</p>
6.2	reporting prescribed premises	<p>The clarification with respect to prescribed premises and the operation of the <i>Environmental Protection Act 1986 WA</i> is welcomed. The distinction made between a licence to emit or discharge substances and the contamination of land is of particular importance, with a licence</p>	Noted.

		confirmed not to negate any statutory reporting requirements under the CS Act.	
6.2	reporting prescribed premises	'Contamination issues at the site will be regulated under the CS Act, all other matters will continue to be regulated under the EP Act' – Note difficulties of managing contamination issues separately to licensing, when they are difficult to separate. Can DER provide clarity on the scope of each department?	Section 6 of the document has been substantially revised to clarify reporting requirements, including in section 6.2, that a licence does not negate statutory obligations under the CS Act.
6.3	reporting pollution incidents	Add: "Examples relating to spillage events are included in Appendix A"	Text revised.
6.4	how to report	<p>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:</p> <ul style="list-style-type: none"> · 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." <p>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.</p> <p>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.</p> 	Section 6 of the document has been substantially revised to clarify reporting requirements, including notification of additional contamination in section 6.3.3.

6.4	how to report	Form 1 submission for additional contamination – This could mean a series of form one submissions for complex operating sites. Please provide examples of where this would and would not be applicable.	<p>Section 6 of the document has been substantially revised to clarify reporting requirements including notification of additional contamination in section 6.3.3.</p> <p>The nature and extent of contamination is materially relevant to the site classification.</p>
6.4	how to report	Form 1 submission of materially different contamination – Additional reporting should not be required for large complex sites if contamination is within the same lot and there is no change in the beneficial use options.	<p>Section 6 of the document has been substantially revised to clarify reporting requirements including notification of additional contamination in section 6.3.3.</p> <p>The nature and extent of contamination is materially relevant to the site classification.</p>
6.5	Information required to be reported	<p>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.”</p> <p>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.</p> <p>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”.</p>	<p>Section 6 of the document has been substantially revised to clarify reporting requirements, including offences (section 6.1.1) and notification by DER that a site has been reported and request to provide all materially relevant information (section 6.5).</p>
6.6.2	what do the statutory time	<p>I suggest last sentence should be in bold: “DER does not believe...”</p> <p>[Text] box, 2nd sentence, I suggest last sentence should be in bold: “It</p>	Text revised.

	frames mean?	is not good practice...”	
7.1.1	sites classified as RNS	2nd bullet: I suggest that additional clarification should be added here	Text integrated into the section on site classification process (now appears as section 7.2.2).
7.2.1	consultation with Department of Health	2nd sentence: “The time frame for the DOH...”; I comment that everywhere else within this text, that the DER/ the Client, the Owner/ Occupier/ the Auditor/ the Consultant etc. are required to do things within a specific timeframe; this should also be applied to DoH reporting requirements	The 45 day statutory timeframe for site classification applies; however, DER may ‘stop the clock’ when detailed advice is required from another agency.
7.4	notice of classification	Some members have indicated that it would be beneficial for a land owner to be notified prior to ‘(d) any other person whom... there is a particular reason to notify’, as well who and at what point (timeline) they will be advised. In circumstances where utilities, adjoining land holders and other stakeholders are advised, it would be preferred that the subject land holder be given the opportunity to address such parties informally, prior to receipt of formal notification which may result in various adverse response if they have not previously been made aware.	There is no requirement for a site owner to wait until DER has classified a reported site before engaging with adjacent landowners and other relevant stakeholders. If a site is reported by a person other than the site owner and/or occupier, then DER will generally write to the site owner/occupier to obtain additional materially relevant information prior to classifying the site – which serves the dual purpose of providing the site owner advance notice that the site has been reported and is to be classified.
7.4 - 7.6	restrictions and memorials	With respect to site classifications and their relationship to memorial and restrictions on use, a table summarising the classifications which may give rise to such controls, would be beneficial as a point of clarity.	Table 16 added.
7.4.1	nature and extent of contamination	2nd bullet: what about soil vapour?	Text revised (section 7.5.2).

7.4.3	restrictions on use	<p>Table 6 lists typical examples of restrictions on use which may be applied to a site. The table includes the following example scenario: hydrocarbons in gw present a potential VI risk. “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.”</p> <p>CME considers the ‘Potential restriction on use’ for this scenario to 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.</p> <p>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.</p>	Text revised (section 7.5.4).
7.6.1	registration of memorials	<p>In practice there is a significant disconnect in the order in which classifications and memorials are received. The classifications are always received first however memorials are often received months later and the order in which they arrive seems random.</p>	<p>Batches of memorials are lodged with Landgate in date order of site classification. It is acknowledged that some delays may occur at various stages, including preparing and lodging memorials, processing by Landgate, and issuing notifications of memorial lodgement.</p>
7.6.3	restricted instrument memorials	<p>Questions:</p> <ul style="list-style-type: none"> - Is a restricted instrument memorial lodged on all sites classified as ‘contaminated – remediation required’? - Is it lodged against other land parcels? If so, what sites? - How does a landowner know if a restricted instrument memorial is lodged against a land parcel (i.e. other than Landgate)? 	<p>A restricted instrument is not registered on all sites classified as ‘contaminated-remediation required’. As stated (<i>refer 7.6.3 in new version of the guideline</i>), it is applied to severely contaminated sites and to source sites.</p> <p>The landowner can:</p> <ol style="list-style-type: none"> 1. refer to the notification of site classification or notification of memorial lodgement from DER; or

			2. obtain a basic summary of records (at no charge) from the online contaminated sites database.
7.6.4	differentiating contaminated and non-contaminated parts of a land parcel	<p>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.</p> <p>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."</p>	Text revised (section 7.8). Note change in abbreviation to DP-IPO to align with Landgate terminology.
7.6.4	differentiating contaminated and non-contaminated parts of a land parcel	<p>Procedure applicable to large land parcels – This should apply to all large sites – what about industrial lots where more than 50% is just bushland? Specify what Large is.</p>	Text revised (section 7.8).
7.7, 8.4 & 9.2	New information, progress reporting & FOI	<p>It would be helpful if the DER could provide further detail on how the DER will treat confidential information (not just the identity of a person reporting a site) that is provided to the DER, particularly if DER's expectation is that all information must be reported.</p>	<p>Confidentiality of information is expressly considered in s.96 of the CS Act.</p> <p>Public access to information is addressed in section 9 including information available under FOI.</p>
8	Action required in response to site classifications	<p>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</p>	<p>Refer revised text in section 8.3.</p> <p>Indicative timeframes are provided in the guideline. Dates may be specified in the Notice of classification for sites where prompt action to remediate or investigate a site is required. The</p>

	<p>Classification are unclear.</p> <p>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.</p> <p>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.</p> <p>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:</p> <ul style="list-style-type: none">· ‘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). <p>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.</p> <p>CME recommends Section 8.3 is updated to include provisions for campaigned programs for DSI.</p>	<p>notice of classification forms the first step to serving a clean-up or investigation notice if appropriate action is not undertaken.</p> <p>Campaigned programs are addressed in section 8.3.</p>
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8.1	persons required to take action	<ul style="list-style-type: none"> • box: Comment: this is the “polluter pays” principal, however this does not appear to be applied to other areas of Government policy, e.g. “Direct-Action!” • 2nd paragraph, last sentence “It is acknowledged...DER is unable to provide site-specific guidance...” Query – why not? – Clarify! • 3rd paragraph, 2nd sentence “...A decision on responsibility...: I suggest that this should be in bold 	<p>Noted.</p> <p>Refer revised text in section 8.1 regarding the information taken into account by the Contaminated Sites Committee when determining responsibility for remediation.</p>
8.1	persons required to take action	<p>Comment - the responsibility for investigating affected land is an area of concern. In practice, unless a source site is owned by a good Corporate Citizen, the owner of the affected site is responsible for investigating the site to the extent that contamination is adequately delineated before the source owner is deemed responsible for funding managing the contamination. This is onerous on landowners. In the Corporation’s experience, an average investigation costs ~\$200, 000.</p>	<p>The CS Act makes provision under s.56 for a person to recover costs of investigation or remediation from the person responsible.</p>
8.2	Priority for action	<p>Table 9 – • 2nd example “PC-IR, ‘Potential risks..’, 2nd sentence “Prompt action is required...”; I suggest that you should provide clarification of what prompt means.</p> <ul style="list-style-type: none"> • 3rd example, “PC-IR”, “...time frame for investigation is less...”; I suggest that you should give an example of this timeframe 	<p>Indicative timeframes for action are provided in Tables 20 and 21.</p>
8.2	Factors considered by DER in assessing priority for action (PC-IR sites)	<p>Table 10 – Is there a risk assessment methodology that is available or published?</p>	<p>Factors considered by DER are provided in Table 19.</p> <p>Risk assessment methodologies are discussed in DER (2014).</p>
8.2 & 8.3	Priority for action & timeframes for action	<p>The inclusion of a priority/time frame for action is a big improvement for understanding the potential risk and urgency. However, it must be clearly indicated on all DER documentation on the site, including historically classified sites.</p>	<p>Noted.</p>

8.3.1 & 8.3.2	reporting	Table 11 & 12 – If an Auditor is engaged, should the reports be submitted to both the Auditor and DER, or initially to the Auditor and then subsequently to the DER rather than to the Auditor or DER?	Text clarified.
8.3.1 & 8.3.2	reporting	<p>The Corporation agrees with these timeframes in principle but it would like to note that they are not always achievable, especially for sites with a broad range of complexities. For example sites with multiple land parcels and land ownership and the subsequent stakeholder management required, complex funding arrangements or if complex approvals are required.</p> <p>Additionally the timeframes in 8.3.2 are onerous for large landowners such as the Corporation because of the human and financial resources required to undertake CS work over a large number of sites.</p>	The timeframes are not mandatory. Minor modifications have been made to the text to encourage organisations to develop a prioritised schedule which takes into account the risks to human health etc. as well as any logistical factors.
8.3	timeframes for action	Is an Auditor required – define.	Text clarified.
8.4	progress reporting	<ul style="list-style-type: none"> • 2nd bullet, for an MAR/ VAR? • 3rd sentence, “DER/contaminated sites officers...to meet with owners and/or consultants...” ADD and/or Auditors 	Text clarified.
8.4	progress reporting	<p>While the Corporation agrees with progress reporting in principle, the Corporation has a preference for less formal reporting. In practice this will add another layer of complexity in an already onerous and complex process.</p> <p>The Corporation understands that the Auditors are responsible for notifying DER of their engagement.</p>	<p>This section provides general advice.</p> <p>Meetings on a regular basis to discuss progress at individual sites with DER is also acceptable practice.</p>
9	access to information	It would be beneficial for easier access to information on sites which pose a risk, especially those classified as PC-IR. For example, as discussed previously, better access to information would reduce the number of people being exposed to contaminants and the poor management of contaminated media during civil works.	Access to information is prescribed in the CS Act.

9.3	community engagement	3rd paragraph, last sentence: “In the case of ...”; I suggest that this should be in bold	Text revised.
10.1	mandatory disclosure requirements	, last sentence: “DER recommends...”; I suggest that this should be in bold.	Text revised.
10.2	Discretionary disclosure	2nd para – The guideline includes a throw-away reference to a landowner’s duty of care. If the audience of this guideline includes members of the public, then it would help if the DER gave a very high level description of what that duty is.	Text clarified.
10.2	Discretionary disclosure	last sentence: “DER recommends...”; I suggest that this should be in bold.	Text revised.
10.2	Discretionary disclosure	DER recommends that prospective purchasers are made aware of contamination status – Suggest wording is stronger than 'recommends'. This should be an obligation.	Noted.
11.2	persons to whom a notice may be given	last sentence: “A notice given...”; I suggest that this should be in bold.	Text revised.
11.4	appeal rights	(penultimate sentence in bold) - Can the DER confirm that an aggrieved person would not be able to make an appeal to the Supreme Court of WA on a matter of law.	Refer s.82(2).
12.1	Purpose of a CCA	last sentence, I suggest “...a CCA is required to be obtained...” should be in bold	Text revised.
12.1	Purpose of a CCA	Is DER approval required for transfer of land which is PC-IR? CCA are not issued for PC-IR	A site classified as <i>possibly contaminated – investigation required</i> may be sold or leased without approval from DER.

12.2	request for a CCA	last sentence, I suggest that the reasons for the refusal by DER should also be given.	Text clarified.
13.1	transfer of responsibility	Dot point 3 - If the site is PC-IR, is the responsibility for remediation not transferrable to a purchaser without undertaking a full site investigation?	Transfer of responsibility for remediation under s.30 does not apply to sites classified as ' <i>possibly contaminated – investigation required</i> '. The s.30 process requires a Certificate of Contamination Audit for the site – if a site is classified as PC-IR, then there is insufficient information for DER to be certain of the contamination status of the site and a CCA cannot be issued.
APP A	examples of known and suspected	Add further examples of known or suspected contaminated sites associated with mining activities and potentially naturally occurring substances (i.e. acid sulfate soils and asbestos)	Additional examples added.
App A	examples of known and suspected	<ul style="list-style-type: none"> • “Groundwater impacted by petroleum hydrocarbons, example scenario, ‘...of people and pets etc” comment, I do not believe that pets are relevant to this discussion. • ‘Demolition and termite treatment”; I believe that this example is only relevant if there is a change in landuse proposed, but there is not one given in the example • ‘Asbestos structure demolition”; a) ‘The fragments are...add “are” after and & before firm 	Reference to pets deleted. Text clarified.
App A	chemical spill example	Please provide an example of where an existing contaminated site would or would not be required to report if there was a new spill.	Addressed in document section 6.3.3
APP B	examples of site	Decontaminated – Can the DER confirm that no Auditor is required in this example and the situations that this apparent exemption applies.	Text clarified to convey that there is no trigger for a mandatory auditor’s report under r.31.

	classifications		
App B	examples of site classifications	"C-RU"; 2nd paragraph, 2nd sentence, add 'contact' after 'direct'	Text revised.
general	overall comment	refer letter	Noted.
general	overall comment	The Guideline is written in clear terms and follows a logical sequence from describing the purpose of the document , describing the legislative framework and describing the types of contaminating activities (with clear examples) and how they may be classified. The document, its purpose and intent are largely supported.	Noted.
general	flowchart to aid understanding	roles and responsibilities of stakeholders	Noted.
general	flowchart to aid understanding	the relationships between site classifications and various impacts i.e. when a memorial or restriction of land use will arise, as well as any informal processes outside of those specified within legislation	Table 16 added which summarises site classifications, and applicability of restrictions on use and memorials on title. Site management is addressed in DER (2014).
general	level of detail and in text referencing	Potential confusion for some audiences re. inclusion of references to the various legislative and regulatory provisions – format review and simplification suggested – separate table or similar	Comment noted. Document text has been reviewed and some in-text referencing minimised by including footnotes; however, the nature of the subject matter (for example definitions, duties and offences), means that legislative references are necessary.

Abbreviations

APP	appendix
BSR	basic summary of records
CCA	certificate of contamination audit
C-RR	<i>contaminated – remediation required</i>
C-RU	<i>contaminated – restricted use</i>
CS Act	<i>Contaminated Sites Act 2003</i>
CS Regulations	<i>Contaminated Sites Regulations 2006</i>
CSG	Contaminated Sites Guidelines
Decon	<i>decontaminated</i>
DER	Department of Environment Regulation (WA)
DP-IPO	deposited plan for interest purposes only
DoH	Department of Health (Western Australia)
DSI	detailed site investigation
DSR	detailed summary of records
EP Act	<i>Environmental Protection Act 1986</i>
FOI	freedom of information
gw	groundwater
IODP	interest only deposited plan
MAR	mandatory audit report
NC-UU	<i>not contaminated – unrestricted use</i>
NEPM	<i>National Environment Protection (Assessment of Site Contamination) Measure 1999</i>
PC-IR	<i>possibly contaminated – investigation required</i>
r	regulation
RRU	<i>remediated for restricted use</i>
RNS	<i>report not substantiated</i>
s	section
VAR	voluntary audit report
WA	Western Australia

