



Government of Western Australia
Department of Health

Alan Sands
DER2013/000684

Your Ref: DER2013/006841-1
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Dear Mr Sands

CONTAMINATED SITES ACT 2003 REVIEW

Thank you for your letter of 5 December 2013 requesting feedback on the Review of the *Contaminated Sites Act 2003* Discussion Paper. The Department of Health (DOH) wishes to provide the following comments.

Item 1 – Duty to Report. *Do you support the proposed change? If your answer is no, why do you not support the proposed change?*

The DOH supports the proposed change, but is of the view that clarification is required regarding a person with 'professional knowledge'. The rationale for this support is to ensure that all reasonable and practicable steps to prevent or minimise any harm to public health are taken and the proposal removes any commercial incentive for consultants not to report known contamination. It is suggested that the person with professional knowledge be someone that has been engaged by the site owner/occupier or a government authority to assess any potential contamination of the site.

Item 2 - Site classification scheme. *Do you support no change to the classification system? If not, what modifications or alternative course of action do you propose?*

The DOH supports the new classification of "contaminated - further investigation required" and that this should only be used where there is known contamination. This allows for immediate listing of sites where more information is needed for assessment of environmental and health risks.

This new classification should be applied to sites where there is suspected immediate potential for environmental or health risks which can be determined via qualitative assessment. The investigations required would then provide more detailed information on the type, quantity and extent of contamination and possible exposures. Registration of these sites and mandatory disclosure of these sites should also be required.

Environmental Health Directorate

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The existing classification of "possibly contaminated – investigation required", could still be used for sites where there is limited evidence of contamination (contamination has not been proven) or are lower priority, that is exposure is unlikely or concentration is unlikely to present an environmental or health risk and further evidence of the type and quantity of any possible contaminants and any associated environmental and health risks is needed to adequately classify the site before registration on the contaminated sites database.

The "Contaminated - Remediation Required" classification could then be used for high priority sites with known contamination and with known potential for environmental or health risks.

Suggested Time Frames for action based on the above classifications are:

- Immediate action: Contaminated – Remediation Required: Known contamination and existing potential for environmental or health exposures. Likely to result in environmental or health impacts if no action is taken.
- Medium priority action: Contaminated – further investigation required: Information to be provided within 3 – 6 months.
- Low priority action: Possibly contaminated - investigation required. Information to be provided within 6 – 36 months, depending on site specific requirements, (eg. land use and any information available regarding possible contamination and exposures).

If the new classification system is not adopted, then an alternative would be to better define and prioritise action for sites classified as possibly contaminated - investigation required and contaminated - remediation required, based on the above principles.

Item 3 – Mandatory Disclosure. The DOH does not have any comment to make.

Item 4 – The Contaminated Sites Committee. 4.1 *Do you support the proposed changes?*

The DOH does not support the proposed changes. It is believed that the proposed changes will introduce significant and unnecessary delays into an already lengthy process. It would be preferable for the existing arrangements to be continued.

4.2.1 *Do you support SAT review of the Contaminated Sites Committee's primary decisions?*

4.2.2 *Do you support SAT becoming the review decision-maker in place of the Contaminated Sites Committee for appeals against classification and notices served under the Act?*

The DOH does not support the proposed changes in items 4.2.1 and 4.2.2. The DOH has had considerable experience in State Administrative Tribunal (SAT) proceedings and has noted the time it takes for resolving issues via the SAT and that this includes

pre-hearing consultation phases. The DOH is not resourced to undertake frequent SAT cases in relation to contaminated sites. The DOH also prefers the Contaminated Sites Committee to review appeals due to their expertise and experience in relation to contaminated sites issues. The SAT would not have this level of expertise and both parties would then need to present expertise to the SAT hearing.

The DOH would like to raise an additional issue of resourcing in terms of assessment capabilities. The DOH cannot currently meet the statutory time frames of the Department of Environmental Regulation (DER). I note that the DOH does not have statutory time-frames under the Act though the DER does. The DOH however, does have a Memorandum of Understanding (MoU) with the DER and does work towards facilitating DER meeting its statutory time frames. During peak periods the DOH has difficulty in meeting these time lines. This is particularly problematic at the end of the calendar financial years when there is a greater influx of industry and proponents submissions.

Should you have any enquiries related to this submission please contact Kelly Crossley on 9388 4999 or kelly.crossley@health.wa.gov.au.

Yours sincerely



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EXECUTIVE DIRECTOR
PUBLIC HEALTH AND CLINICAL SERVICES DIVISION

25th February 2014