



Review of the *Contaminated Sites Act 2003*

Discussion paper

SUBMISSION COVER SHEET

Complete and email this form with your submission by

Monday 24 February 2014.

**To assist us in collating stakeholder responses, please submit in Word format.
PLEASE DO NOT SEND PDF DOCUMENTS**

Submissions will be published on the DER webpage, however, personal contact details will not be made public.

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

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

Environmental Consultant

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	<input type="checkbox"/>	Other (specify)	<input type="checkbox"/>
Environmental consultant	<input checked="" type="checkbox"/>	Planning consultant	<input type="checkbox"/>		<input type="checkbox"/>

Contact person			
Position			
Email		Fax	
Phone		Mobile	
Postal address		State	
Suburb / city		Post code	
Number of pages (including this cover sheet)			

Review of the
Contaminated Sites Act 2003
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Response template

To get the most out of your feedback, **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)**. Comments are most helpful if they:

- contain a clear rationale;
- provide evidence to support your view;
- describe any alternatives we should consider; and
- where possible provide data which could inform a costs and benefits analysis of the issue such as how often the issue arises and what direct and/or indirect costs or savings would be incurred if the change was made.

What will happen to the information I provide?

After the comment period has closed (24 February 2014), we will review and consider all stakeholder feedback and produce a detailed report for consideration by the Minister for the Environment. The review report will be tabled by the Minister in Parliament. All submissions received will be published on the DER website (personal contact details will not be made public).

Thank you

We would like to thank you for your time in contributing to 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.

(1) Duty to report

Under s.11(4) of the Act, the following persons have a duty to report a site:

- an owner or occupier of the site
- a person who knows, or suspects, that he or she has caused, or contributed to, the contamination
- an auditor engaged to provide a report that is required for the purposes of this Act in respect of the site.

If any other person becomes aware of a known or suspected contamination, they **may** report it, but are **not** obliged to do so.

In the Consultation paper we asked: Should a person with the professional knowledge or ability to identify contamination have a duty to report it?

Proposed way forward – include an ‘environmental consultant’ in the persons with a duty to report under s.11

The intent here is that the reporting obligation would apply to environmental consultants engaged for investigation or remediation purposes [an appropriate definition of ‘environmental consultant’ would need to be included in the Act]. It is suggested that for an environmental consultancy, the onus would be on the project manager to ensure that known/suspected contamination is reported to DER in the appropriate timeframe. It is not intended that a reporting obligation would apply to other professionals such as a field technician sampling wells, a laboratory technician conducting laboratory analyses or to someone conducting a survey at the site.

1.1	<p><i>Do you support the proposed change?</i></p> <p>Please remember to provide specific examples and information on the possible financial consequences of making or not making the proposed change. You may also wish to offer an alternative solution.</p>
1.1	NO
1.2	<p><i>If your answer is no, why do you not support the proposed change?</i></p>
1.2	<p>The Contaminated Sites Act (2003) currently embodies a practical and pragmatic approach to identification and management of contaminated sites. In this, the persons with a duty to report are clearly defined and comprise those liability groups which accord with the principles of the act (i.e. the polluter pays principle) or are otherwise responsible as owners/occupiers/mortgages/lessees or who have other specific duties under the Act (i.e. the auditor).</p> <p>In this respect the duties to report are efficiently aligned with the persons specifically identified under the current Act who are responsible for remediation (or other action) to address contamination issues. In particular, the duty to report (with the exception of the auditor) quite correctly rests with those who have the decision making authority and resources (e.g. financial, administrative and legal) to take action with respect to</p>

contamination (e.g. commissioning assessments, remediation etc).

Whilst the intention of this proposal is understood, it adds a layer of complexity to the currently clearly defined process in which the potential future benefits are, in practice, likely to be marginal. In particular, the role of the environmental consultant is, in essence, as an advisor to a client – typically including provision of advice in relation to this matter. However, the duty to report already rests with the client who meets the definition of one of the relevant persons under the Act. In almost all cases, placing the duty to report upon an environmental consultant will duplicate the duty to report that already exists. In the (hopefully) rare case where a relevant polluter/owner/occupier intentionally does not fulfil this duty, the Act already has provision for ‘any other person’ to report a site.

The current Act is also practical in that the persons with a duty to report under the current Act are clearly identifiable. The proposal details (above) seek to define an ‘environmental consultant’ with the apparent intention of placing a duty of reporting upon a ‘project manager’. In practice, the ‘project manager’ may not actually be a person with the professional knowledge or ability to identify contamination. Examples include (but are not necessarily limited to) projects where:

- A range of technical inputs from other individuals (particularly with respect to risk assessment/toxicology) are required to make such a decision.
- Contamination assessment is one component of a multidisciplinary project and the ‘project manager’ is from another discipline (e.g. project management or engineering).

In practice, incorporating a duty to report upon a clearly identifiable person is likely to be complex and difficult to transcribe meaningfully into the Act. This runs the risk of future ambiguity and misinterpretation which would be to the detriment of the current Act and potentially counterproductive to the intention of the proposal.

If this proposal has to be implemented, it would be more practical to place the duty to report upon the corporate entity undertaking the environmental consultancy work as this is more easily identifiable (and more closely reflects the contractual arrangements which define the environmental consultancy’s involvement with the site in question that may ultimately trigger a duty to report).