



Department of
Environment and Conservation

Contaminated Sites Management Series

SITE CLASSIFICATION SCHEME

November 2006

Preface

The Department of Environment and Conservation (DEC)¹ has prepared the *Site Classification Scheme* guideline to provide information to site owners and occupiers, contaminated site auditors, government authorities, industry and other interested parties about the process of site classification, in accordance with the *Contaminated Sites Act 2003*. The guideline provides DEC's interpretation on how classifications are allocated under the *Contaminated Sites Act 2003*.

Please direct any enquiries about the guideline to:

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Department of Environment and Conservation

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Limitations

The guideline is intended for use by site owners and occupiers, contaminated site auditors, government authorities, industry and other interested parties who are stakeholders of land that may be classified by DEC under the *Contaminated Sites Act 2003*. The guideline provides DEC's policy interpretation of how sites should be classified under the *Contaminated Sites Act 2003*. Competent people should be engaged to provide specific advice in relation to the assessment and management of contaminated sites.

The guideline should be used in conjunction with the texts referred to in the guideline and any other appropriate references.

¹ Previously Department of Environment (DoE), and before that, Department of Environmental Protection (DEP)

Disclaimer

The information presented in this document is provided voluntarily as a public service. The information provided is made available in good faith and is believed accurate at the time of publication. However, the document is intended to be a guide only and should not be seen as a substitute for obtaining appropriate advice or making prudent inquiries. The information is provided solely on the basis that readers will be responsible for making their own assessment of the matters discussed therein and that they should verify all relevant representations, statements and information. Changes in legislation, or other circumstances, after the document has been published may impact on the accuracy of any information or advice contained in the document and readers should not rely on the accuracy of information presented in this document.

Information presented in this document does not constitute, and is not intended to be used as legal advice or used as an interpretive instrument. In the event of any inconsistency between this document and relevant legislation, provisions of the relevant legislation will prevail.

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Contaminated Sites Management Series

The guideline is part of a management series developed by DEC to provide guidance on the assessment and management of contaminated sites in Western Australia. The management series guidelines encourage consistent and accurate reporting by informing consultants, industry and landowners of the information required by DEC to enable appropriate management of contaminated sites in WA.

The Contaminated Sites Management Series contains the following guidelines:

- Assessment Levels for Soil, Sediment and Water;
- Bioremediation of Hydrocarbon Contaminated Soils in Western Australia;
- Certificate of Contamination Audit Scheme;
- Community Consultation;
- Contaminated Sites and the Landuse Planning Process;
- Contaminated Sites Auditors: Guidelines for Accreditation, Conduct and Reporting;
- Development of Sampling and Analysis Programs;
- Disclosure Statements;
- Potentially Contaminating Activities, Industries, and Landuses;
- Reporting of Known or Suspected Contaminated Sites;
- Reporting on Site Assessments;
- Site Classification Scheme;
- The Use of Risk Assessment in Contaminated Site Assessment and Management: Guidance on the Overall Approach; and
- Use of Monitored Natural Attenuation for Groundwater Remediation.

Reference to and compliance with these guidelines should ensure that the general requirements of DEC are satisfied.

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1. Introduction

The objectives of the guideline are to provide landowners, occupiers, public authorities, and industry with an understanding of:

- **the site classification process**
- **the site classification notification process**
- **the site classification appeals process**
- **the issuance of regulatory notices**
- **registration of memorials on Certificate(s) of Title**
- **how a site's classification can be changed**
- **how to access records of known or suspected contaminated sites and the contaminated sites database.**

1.1 Objectives

The objectives of the guideline are to ensure a consistent methodology for the identification and classification of contaminated sites, and to assist with the transfer of information through the contaminated sites database. The guideline provides owners and occupiers, government authorities, industry and other interested parties who are stakeholders with contaminated sites with an understanding of:

- the site classification process
- the site classification notification process
- the site classification appeals process
- the issuance of regulatory notices
- registration of memorials on Certificate(s) of Title
- facilitation of a change to a site's classification and how a site's classification can be changed
- how to access records of known or suspected contaminated sites and the contaminated sites database.

The guideline does not cover the investigation of contaminated sites. Guidance on the investigation of contaminated sites is provided in the *Development of Sampling and Analysis Programs* (DEC, 2001), *Reporting on Site Assessments* (DEC, 2001) and *Assessment Levels for Soil, Sediment and Water* (DEC, 2003) guidelines.

The guideline does not provide information on DEC's requirements for reporting of known or suspected contaminated sites. For more information on how to identify and report known or suspected contaminated sites to DEC, please refer to the *Reporting of Known or Suspected Contaminated Sites* guideline (DEC, 2006). For specific guidance on how to report the various stages of site investigations (e.g. preliminary site investigations (PSIs), detailed site investigations (DSIs), remediation and validation), refer to the *Reporting on Site Assessments* guideline (DEC, 2001).

Where a disclosure statement is prepared, please refer to the guideline *Disclosure Statements* (DEC, 2006).

2. Site classification scheme

- **Site classifications are central to the CS Act.**
- **Sites are classified based on the presence and extent of contamination and the risk that the contamination poses to human health, the environment or any environmental value.**
- **There are seven possible classifications listed in the CS Act including *report not substantiated, possibly contaminated – investigation required, not contaminated - unrestricted use, contaminated – restricted use, remediated for restricted use, contaminated – remediation required and decontaminated.***
- **Sites classified as *contaminated – restricted use, remediated for restricted use* and *contaminated – remediation required* will be listed on the contaminated sites database.**
- **A site classification can be appealed, with rights to appeal depending on the classification allocated.**

The guideline provides information on each of these classifications in terms of the processes involved in classifying sites, who receives notification of classification, rights of appeal against the classification, and access to information contained in DEC records and on the contaminated sites database.

The *Contaminated Sites Act 2003* (CS Act) provides for the identification, recording, assessment, management and remediation of contaminated sites in Western Australia.

Any person may report a known or suspected contaminated site to DEC, but the CS Act places a duty (under Section 11(4)) on the following people to report such sites to DEC:

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

Sites reported to DEC will be classified (in consultation with the Department of Health) based on:

- the presence of substances above background concentrations
- the level of investigation performed at the site (land, surface water, groundwater)
- the risk a substance may pose, or potentially pose to human health, the environment, or any environmental value
- the level of remediation performed at the site.

To identify contaminated sites, and manage the transfer of information on sites such that land values are not adversely affected but that all relevant parties are aware of contamination issues, the CS Act contains a site classification scheme for known or suspected contaminated sites within Western Australia. The site classification scheme contains the following seven categories based upon the information available on a site:

- *Report not substantiated - a report provides no ground to indicate possible contamination of the site.*
- *Possibly contaminated - investigation required - there are grounds to indicate possible contamination of the site.*
- *Not contaminated - unrestricted use - after investigation, the site is found not to be contaminated.*
- *Contaminated - restricted use - the site is contaminated but suitable for restricted use.*
- *Remediated for restricted use - the site is contaminated but has been remediated so that it is suitable for restricted use.*
- *Contaminated - remediation required - the site is contaminated and remediation is required.*
- *Decontaminated - the site has been remediated and is suitable for all uses.*

Once a site is reported to DEC under the provisions of Section 11 or 12 of the CS Act, DEC (in consultation with the Department of Health) will allocate one of the above classifications to the site. This will generally be completed within 45 days of DEC receiving the report.

A memorial must be registered on the Certificate(s) of Title for the site if it is classified as *possibly contaminated – investigation required*, *contaminated – restricted use*, *remediated for restricted use*, *contaminated – remediation required*, if an investigation notice, clean up notice or hazard abatement notice is issued in relation to the site, or a charge has been placed on land in favour of the State or nominated public authority on the site. Section 5 of the guideline provides more information in relation to registration of memorials.

DEC will keep records of known or suspected contaminated sites reported to it. Sites classified as *contaminated - restricted use*, *remediated for restricted use*, or *contaminated – remediation required* will appear on the contaminated sites database. Section 6 of the guideline provides more information in relation to access to DEC records on contaminated sites.

Appendix A of the guideline provides a summary of the site classifications, notification, memorials, appeals, and access to information processes.

2.1 When are sites classified?

DEC will classify a site following:

- A report of a known or suspected contaminated site (under Section 11 or 12 of the CS Act) is submitted using Form 1 contained in the *Contaminated Sites Regulations 2006*. Refer to *Reporting of Known or Suspected Contaminated Sites* (DEC 2006) for more information.

- A request for a Certificate of Contamination Audit (Section 62 of the CS Act) is received. Refer to the *Certificate of Contamination Audit Scheme*, (DEC 2006) for more information on the certificate of contamination audit scheme.

Sites for which the DEC Land and Water Quality Branch already holds files, i.e. sites for which information has already been provided to DEC before the commencement of the CS Act, will also be classified.

Sites may also be classified through Western Australian Planning Commission (WAPC) and Environmental Protection Authority (EPA) referrals, and where updated information is received with respect to the contamination status of a site.

2.2 How are sites classified?

Following the submission of a report to DEC, the documentation will be assessed to ensure it provides adequate information to identify the site and classify the contamination status of the site, and to ensure, as far as possible, the information provided is accurate.

The Department of Health (DoH) will also be consulted each time a site is classified.

Section 3 of the guideline describes the site classification process and provides details about the site classification categories.

2.3 Notification of site classification

Section 15 of the CS Act includes provisions relating to the notification of site classification. Notice of the site classification will be provided in writing by DEC no later than 10 days after the determination of the classification. Notification will be provided in writing, which can be under Part 4 or Certificate of Contamination Audit. Notification will contain:

- a statement that the site has been classified under the CS Act
- the category of the site classification
- a description of the location and extent of the site sufficient to identify it
- brief reasons for the classification of the site, with reference to guidelines/standards and any other information used in the decision making process
- details of any appeal available under the CS Act in respect of the classification of the site, or inclusion of land in the site
- details of the requirements for disclosure to potential owners of certain land before change of ownership occurs.

DEC must ensure that notice of the classification of a site is given (or reasonable attempts have been made to do so) to:

- a) each owner of the site
- b) an occupier of the site
- c) any relevant public authority
- d) any other person whom, in the opinion of DEC, there is particular reason to notify

- e) a person who made the relevant report
- f) in respect of a site classified as *contaminated - remediation required*, each person who, in the opinion of DEC, may be a person responsible for remediation of the site.

Where a classification is provided following a request for a Certificate of Contamination Audit, the classification of the site will be provided on the Certificate (refer to the guideline *Certificate of Contamination Audit Scheme* (DEC, 2006). Written notification via a Certificate of Contamination Audit cannot be provided for sites classified as *report not substantiated* or *possibly contaminated - investigation required*, and will only be provided in a letter format.

DEC will update the contaminated sites database and records within 10 days of classification.

2.4 Changes to the classification of a site

Once a site has been classified, changes to the classification can be made following any investigation or remediation works conducted at the site. For example, where a site is classified as *potentially contaminated - investigation required*, and subsequent investigations conducted at the site confirm the presence of contamination at a site, then the site is likely to be re-classified as *contaminated - restricted use*, or *contaminated - remediation required*.

Similarly, where sites identified as contaminated and classified as *contaminated - restricted use* or *contaminated - remediation required* have been remediated to the satisfaction of DEC, they may be re-classified as *remediated for restricted use* or *decontaminated*. DEC may classify a site more than once, and a site is classified in the category of classification most recently conferred on it (Section 13 of the CS Act).

Changes to a site's classification can be made at any time. Where works at a site have been completed which are thought to alter the classification of the site, detailed documentation to describe those works should be presented to DEC. DEC will assess the information presented and, in consultation with DoH, alter the site's classification as necessary.

Following re-classification of a site, DEC will again notify all parties listed in Section 2.3, and DEC's contaminated sites database and records will be updated as soon as practicable or no later than 10 days after reclassification.

DEC may classify a site more than once, and a site is classified according to the classification most recently conferred on it.

2.5 Appeals on classifications

Section 3 of this guideline provides information in relation to appeal rights relating to each classification. The system for appeal is set out under Section 18 of the CS Act.

All appeals on a site's classification must be made within 21 days of receipt of notification of the classification (unless the notification itself indicates there is a longer appeal period), and must be made in writing to the Contaminated Sites Committee setting out the grounds and facts upon which the appellant relies (Sections 18 and 79 of the CS Act). Pending the determination of an appeal, the classification of the site stands.

Appeals should be sent to:

Contaminated Sites Committee
Suite 2, Level 13
Allendale Square
Perth WA 6000

3. Classifications

- **The site classification scheme contains seven classifications:**
 - *report not substantiated*
 - *possibly contaminated – investigation required*
 - *not contaminated – unrestricted use*
 - *contaminated – restricted use*
 - *remediated for restricted use*
 - *contaminated – remediation required*
 - *decontaminated.*
- **Sites classified as *contaminated – restricted use, remediated for restricted use, and contaminated – remediation required* will appear on the contaminated sites database.**
- **DEC will maintain records of all known or suspected contaminated sites reported to it.**

3.1 Report not substantiated

Where a report (under Section 11 or 12 of the CS Act) of a site presents inadequate or inaccurate information, or does not detail grounds to indicate possible contamination of the site, DEC will classify the site as *report not substantiated*.

Where a site is classified as *report not substantiated*, it does not indicate that DEC is providing any clearance for the site in relation to the absence of contamination, only that there is insufficient information to determine whether or not a site is contaminated or possibly contaminated at that point in time, or to support a requirement for further investigation of the site.

3.1.1 Notification

Where a site is classified as *report not substantiated*, written notification will be provided to the parties referred to in Section 2.3. Subsequent owners and occupiers of sites can request (in writing) a summary of records (using Form 2 - available from DEC's website) and paying the prescribed fee.

A Certificate of Contamination Audit cannot be issued for sites classified as *report not substantiated*.

3.1.2 Memorial

A memorial will not be registered on the Certificate(s) of Title of a site that is classified as *report not substantiated* (refer to Section 5 of this guideline).

3.1.3 Appeal

Only the person who reported the site can appeal the *report not substantiated* classification.

3.1.4 Information access

Sites classified as *report not substantiated* will not be listed on the contaminated sites database. A summary of records on these sites can be provided to members of the public following the submission of a written request to DEC and payment of the prescribed fee (refer to Section 6 of this guideline).

3.2 Possibly contaminated - investigation required

When a site report submitted to DEC is considered to be accurate and provides grounds to indicate possible contamination, or where further investigations are required to adequately delineate contamination or determine the risk it poses, the site will be classified as *possibly contaminated - investigation required*.

This classification informs stakeholders that the site is possibly contaminated, and that further investigations are required to confirm the presence or absence of contamination, or delineate contamination.

A site will remain classified as *possibly contaminated - investigation required* until an investigation is completed and the contamination status of the site is determined. Following the provision of investigation reports and, where required, a contaminated site auditor report to DEC, the site can then be reclassified (refer to Section 2.4 of the guideline).

An example of the application of this classification is where a preliminary site investigation (PSI) indicates that there is a potential for the site to be contaminated due to current and/or historical activities at the site, and further investigations involving the collection and laboratory analysis of soil and groundwater samples is required to confirm the presence or absence of contamination. Any site that is suspected of being contaminated by a groundwater plume, including plumes originating from adjacent sites, may be classified in this category.

A site classified as *possibly contaminated – investigation required* will remain so until such time as it has been reclassified as *not contaminated – unrestricted use, contaminated – restricted use, remediated for restricted use, contaminated – remediation required, or decontaminated*.

Where investigation of a possibly contaminated site is required, no specific timeframe for investigation is set out in the CS Act. However if appropriate action is not being taken voluntarily, DEC may issue an investigation notice (refer to Section 4 of the guideline). Prior to any approvals being granted for redevelopment or change of land use, investigations will be required at the site to assess contamination and the results reported to DEC.

3.2.1 Notification

Where a site is classified as *possibly contaminated – investigation required*, written notification will be provided to the parties referred to in Section 2.3. Subsequent owners and occupiers of sites can request information from DEC via a written request for a summary of records (using Form 2 available from DEC's website) and payment of the prescribed fee. Subsequent owners and occupiers will also be able to observe whether there is a memorial on the Certificate(s) of Title.

3.2.2 Memorial

For sites classified as *possibly contaminated – investigation required*, memorials will be registered on the Certificate(s) of Title as soon as practicable with a copy of the registered memorial given to the site owners, Western Australian Planning Commission, Department of Health, local government, and other responsible authorities of the land (e.g. Midland Redevelopment Authority) (refer to Section 5 of the guideline).

A Certificate of Contamination Audit cannot be issued for sites classified as *possibly contaminated - investigation required*.

3.2.3 Appeal

Appeals against the classification of sites as *possibly contaminated – investigation required*, can only be made by the owner and/or occupier of the site.

3.2.4 Information access

Sites classified as *possibly contaminated - investigation required* will not be listed on the contaminated sites database. A summary of records held by DEC on these sites will be provided to members of the public following the submission of a written request to DEC and payment of the prescribed fee (refer to Section 6 of the guideline).

3.3 Not contaminated - unrestricted use

Where investigations at a site conclude that there is no contamination at a site, the site will be classified as *not contaminated - unrestricted use*.

Examples of sites attributed this classification are when:

- a PSI identifies that there is no potential for a site to be contaminated as the current and/or historical site activities have not involved any potentially contaminating activities (such as intensive farming activities, storage of hazardous material and industrial processes)
- where a site has the potential to be contaminated due to current and/or historical processes, but where investigations involving the collection and laboratory analysis of soil and groundwater samples have shown that the site has not become contaminated by these activities.

3.3.1 Notification

Where a site is classified as *not contaminated – unrestricted use*, written notification will be provided to the parties referred to in Section 2.3. Subsequent owners and occupiers of sites can request information from DEC via a written request for a summary of records (using Form 2 available from DEC's website) and paying the prescribed fee.

For sites classified as *not contaminated - unrestricted use*, a Certificate of Contamination Audit may be issued on request and the submission of the required documents, along with the payment of the prescribed fee.

3.3.2 Memorial

A memorial will not be registered on the Certificate(s) of Title of a site that is classified as *not contaminated – unrestricted use* (refer to Section 5 of the guideline). If the site was previously classified as *possibly contaminated – investigation required*, the memorial will be withdrawn following reclassification of the site as *not contaminated – unrestricted use*.

3.3.3 Appeal

Appeals against the classification of sites as *not contaminated – unrestricted use* can only be made by the owner and/or occupier of the site.

3.3.4 Information access

Sites classified as *not contaminated – unrestricted use* will not be listed on the contaminated sites database. A summary of records held by DEC on sites with this classification will be provided to members of the public following the submission of a written request to DEC and payment of the prescribed fee (refer to Section 6 of the guideline).

3.4 Contaminated - restricted use

Where investigations confirm that a site is contaminated, but where the contamination only poses an unacceptable risk to human health, the environment or any environmental value under certain land uses, the site will be classified as *contaminated - restricted use*.

An example of when this classification may be applied is:

- A site classified as *contaminated - restricted use* is one which is currently, and has historically, been used as a metal fabrication workshop. The site has surface soil contaminated with metals and minor hydrocarbons, but doesn't have groundwater contamination, or soil contamination in a location which poses a risk to groundwater or other environmental receptors.

Under the current land use, this site is seen as contaminated, but the risk to workers on the site is minimal due to limited exposure. Therefore, site remediation is not required provided the land use and operations at the site remain the same.

However, were the site to be redeveloped to a more sensitive land use, such as residential lots, remediation would be required due to an increased risk to future occupiers of the site based on an increased exposure to the contaminants.

3.4.1 Notification

Where a site is classified as *contaminated – restricted use*, written notification will be provided to the parties referred to in Section 2.3. Subsequent owners and occupiers of sites can request information from DEC via a written request for a summary of records (using Form 2 available from DEC's website) and payment of the prescribed fee. Subsequent owners and occupiers will also be able to observe whether there is a memorial on the Certificate(s) of Title and there must be mandatory disclosure from the seller before change of ownership occurs. Notification of the classification may also be provided to any public authorities.

At least 14 days before the completion of a transaction which would result in another person becoming an owner, mortgagee or lessee of land in respect of which a notice has been given and where a memorial is registered, each owner of the land who is a party to the transaction must give a written disclosure in respect of the land in the prescribed form (Form 6 of the *Contaminated Sites Regulations 2006*) to each person who would become an owner, mortgagee or lessee of the land as a result of the transaction. A copy of the disclosure must also be given to DEC (Section 68 of the CS Act).

For sites classified as *contaminated - restricted use*, a Certificate of Contamination Audit may be issued on request and the submission of the required documents, along with payment of the prescribed fee.

3.4.2 Memorial

For sites classified as *contaminated – restricted use*, memorials will be registered on the Certificate(s) of Title as soon as practicable with a copy of the registered memorial given to the owners, Western Australian Planning Commission, Department of Health, local government, and other responsible authorities of the land (e.g. Midland Redevelopment Authority) (refer to Section 5 of the guideline).

3.4.3 Appeal

Appeals against the classification of sites as *contaminated – restricted use*, can only be made by the owner and/or occupier of the site and person(s) responsible for remediation.

3.4.4 Information access

Where sites are classified as *contaminated - restricted use*, they will be entered on the contaminated sites database and basic information on these sites will be publicly available at no charge. More detailed information, including copies of technical reports, may be accessed via written request to DEC and payment of the prescribed fee. Section 6 of the guideline outlines the information which will be available on the contaminated sites database.

3.5 Remediated for restricted use

The classification *remediated for restricted use* applies to sites remediated to allow use under some, but not all land uses, e.g. remediated to an extent where it can be used for commercial/industrial use, but not for residential use as contaminants remain on the site at concentrations which pose a risk to human health under the increased exposure scenarios associated with residential land use.

An example of when this classification may be applied is:

- A vacant site has historically been used as an uncontrolled waste dumping area where metal contaminated soil has been dumped. The soil is contaminated from the surface to approximately 3m in depth. Groundwater investigation and laboratory results have shown that groundwater and offsite areas are not at risk of contamination.

The site may be remediated via remediation works to the extent that it is suitable for commercial/industrial use, but further remediation would be required should the site be proposed for residential use.

3.5.1 Notification

Where a site is classified as *remediated for restricted use*, written notification will be provided to the parties referred to in Section 2.3. Subsequent owners and occupiers of sites can request information from DEC via a written request for a summary of records (using Form 2 available from DEC's website) and payment of the prescribed fee. Subsequent owners and occupiers will also be able to observe whether there is a memorial on the Certificate(s) of Title and there must be mandatory disclosure from the seller before change of ownership occurs. Notification of the classification may also be provided to any public authorities.

At least 14 days before the completion of a transaction which would result in another person becoming an owner, mortgagee or lessee of land in respect of which a notice has been given and in respect of which a memorial is registered, each owner of the land who is a party to the transaction must give a written disclosure in respect of the land in the prescribed form (Form 6 of the *Contaminated Sites Regulations 2006*) to each person who would become an owner, mortgagee or lessee of the land as a result of the transaction. A copy of the disclosure must also be given to DEC (Section 68 of the CS Act).

For sites classified as *remediated for restricted use*, a Certificate of Contamination Audit may be issued on request and the submission of the required documents, along with the payment of the prescribed fee.

3.5.2 Memorial

For sites classified as *remediated for restricted use*, memorials will be registered on the Certificate(s) of Title as soon as practicable with a copy of the registered memorial given to the owners, Western Australian Planning Commission, Department of Health, local government, and other responsible authorities of the land (e.g. Midland Redevelopment Authority) (refer to Section 5 of the guideline).

3.5.3 Appeal

Appeals against the classification of sites as *remediated for restricted use*, can only be made by the owner and/or occupier of the site and person(s) responsible for remediation.

3.5.4 Information access

Where sites are classified as *remediated for restricted use*, they will be entered on the contaminated sites database and basic information on these sites will be publicly available at no charge. More detailed information, including copies of technical reports, may be accessed via written request to DEC and payment of the prescribed fee. Section 6 of the guideline outlines the information which will be available on the contaminated sites database.

3.6 Contaminated - remediation required

Where a site is confirmed as contaminated and remediation is required, the site will be classified as *contaminated - remediation required*.

Where a site is classified as *contaminated - remediation required* the site is required to be remediated to the satisfaction of DEC. Where DEC identifies that remediation has not, or is not occurring within an appropriate timeframe, or in an appropriate manner, then a clean up notice may be issued. Notices may be issued to an owner or occupier of a site and/or the person responsible for remediation (refer to Section 4 of the guideline).

3.6.1 Notification

Where a site is classified as *contaminated - remediation required*, written notification will be provided to the parties referred to in Section 2.3. Subsequent owners and occupiers of sites can request information from DEC via a written request for a summary of records (using Form 2 available from DEC's website) and payment of the prescribed fee. Subsequent owners and occupiers will also be able to observe whether there is a memorial on the Certificate(s) of Title and there must be mandatory disclosure from the seller before change of ownership occurs. Notification of the classification may also be provided to any public authorities.

At least 14 days before the completion of a transaction which would result in another person becoming an owner, mortgagee or lessee of land in respect of which a notice has been given and in respect of which a memorial is registered, each owner of the land who is a party to the transaction must give a written disclosure in respect of the land in the prescribed form (Form 6 of the *Contaminated Sites Regulations 2006*) to each person who would become an owner, mortgagee or lessee of the land as a result of the transaction. A copy of the disclosure must also be given to DEC (Section 68 of the CS Act).

For sites classified as *contaminated – remediation required*, a Certificate of Contamination Audit may be issued on request and the submission of the required documents, along with the payment of the prescribed fee.

3.6.2 Memorial

For sites classified as *contaminated - remediation required*, memorials will be registered on the Certificate(s) of Title as soon as practicable with a copy of the registered memorial given to the owners, Western Australian Planning Commission, Department of Health, local government, and other responsible authorities of the land (e.g. Midland Redevelopment Authority) (refer to Section 5 of the guideline).

3.6.3 Appeal

Appeals against the classification of sites as *contaminated - remediation required*, can only be made by the owner and/or occupier of the site and person(s) responsible for remediation.

3.6.4 Information access

Where sites are classified as *contaminated – remediation required*, they will be entered onto the contaminated sites database and basic information on these sites will be publicly available at no charge. More detailed information, including copies of technical reports, may be accessed via written request to DEC and payment of the prescribed fee. Section 6 of this guideline outlines the information which will be available on the contaminated sites database.

3.7 Decontaminated

Where sites have been completely remediated such that they do not pose a risk to human health under any land use scenario, and do not pose a risk to the environment or any environmental value, they will be reclassified as *decontaminated* and will have no restrictions on land use.

3.7.1 Notification

Where a site is classified as *decontaminated*, written notification will be provided to the parties referred to in Section 2.3. Subsequent owners and occupiers of sites can request information from DEC via a written request for a summary of records (using Form 2 available from DEC website) and payment of a prescribed fee. Notification of the classification may also be provided to any public authorities.

For sites classified as *decontaminated*, a Certificate of Contamination Audit may be issued on request and the submission of the required documents, along with the payment of the prescribed fee.

3.7.2 Memorial

For sites classified as *decontaminated*, memorials will be withdrawn from the Certificate(s) of Title as soon as practicable with a copy of the notice to withdraw the memorial given to the owners, Western Australian Planning Commission, Department of Health, local government, and other responsible authorities of the land (e.g. Midland Redevelopment Authority) (refer to Section 5 of the guideline).

3.7.3 Appeal

The owner or occupier of the site may appeal against this classification.

3.7.4 Information access

Sites classified as *decontaminated* will not be listed on the contaminated sites database. A summary of records held by DEC on these sites will be provided to members of the public following submission of a written request to DEC and the payment of the prescribed fee (refer to Section 6 of the guideline).

4. Investigation, clean up, and hazard abatement notices

Issuing an investigation, clean up and/or hazard abatement notice, or a notice amending any previous notice requires the person(s) on whom the notice is binding to engage a contaminated sites auditor to report on the actions taken to comply with the requirements of the notice (Section 44 of the CS Act). More information on auditors is provided in the *Contaminated Sites Auditors: Guidelines for Accreditation, Conduct and Reporting* guideline (DEC, 2006).

- **A regulatory notice means:**
 - *a clean up notice, a hazard abatement notice and an investigation notice; or*
 - *a notice amending such a notice.*
- **A regulatory notice may be given to any of the following people:**
 - *a person responsible for remediation of a site classified as contaminated – remediation required*
 - *a person who, in the opinion of DEC, would be responsible for remediation of the land to which the notice relates if the land comprised all, or part of a site classified as contaminated – remediation required*
 - *an owner or occupier of land that comprises all, or part, of the site to which the notice relates.*

At least 14 days before the completion of a transaction which would result in another person becoming an owner, mortgagee or lessee of land in respect of which a notice has been given and in respect of which a memorial is registered, each owner of the land who is a party to the transaction must give a written disclosure in respect of the land in the prescribed form (Form 6 of the *Contaminated Sites Regulations 2006*) to each person who would become an owner, mortgagee or lessee of the land as a result of the transaction. A copy of the disclosure must also be given to DEC (Section 68 of the CS Act).

Investigation notice

An investigation notice may be issued to an owner or occupier of a site or a person who, in the opinion of DEC, would be responsible for remediation of the site (if remediation was required) if there are grounds to indicate possible contamination and the appropriate action to investigate, monitor, or assess the site is not being undertaken (Section 49 of the CS Act). An investigation notice sets out the requirements for the investigation, monitoring and assessment of a site.

An investigation notice will comprise:

- the name and address of the person to whom the notice is issued
- the reasons for issuing of the notice
- a description of the location of the site to which the notice relates
- the form of investigation, monitoring and assessment to be undertaken
- the content and form of information that is to be reported to DEC.

An investigation notice may require the person(s) on whom the notice is binding to take actions such as the following:

- take such measures DEC deems necessary to investigate the nature and extent of contamination and its consequences
- prepare and submit a site management plan to DEC
- monitor the effectiveness of actions taken on site
- prepare a sampling and analysis program for investigating the nature and extent of contamination and forwarding this to DEC
- implement a plan in accordance with any relevant guidelines for informing and consulting with the community regarding investigation of the site
- report on any action taken under the notice and its outcome.

4.1 Clean up notice

Where DEC identifies that a site classified as *contaminated – remediation required* has not, or is not being remediated within an appropriate timeframe, or in an appropriate manner, then a clean up notice may be issued (Section 50 of the CS Act). Notices may be issued to an owner or occupier of a site and/or the person responsible for remediation (i.e. polluter).

A clean up notice may require the person(s) on whom the notice is binding to take actions such as the following:

- prepare and submit a site management plan for the site to DEC
- comply with any management plan set out or referred to in the notice, approved policies, guidelines, and standards prescribed by or under the *Environmental Protection Act 1986*
- implement a plan in accordance with any relevant guidelines for informing and consulting with the community regarding remediation of the site
- monitor the compliance with, and remediation resulting from the requirements of the notice and/or management plan
- report to DEC on any action taken under the notice and its outcome.

4.2 Hazard abatement notice

A hazard abatement notice may be issued if DEC determines that the contamination at the site poses an immediate and serious risk of harm to human health, the environment or any environmental value (Section 51 of the CS Act). A hazard abatement notice sets out the immediate actions required to control or reduce the hazard, and for informing and consulting with the community regarding the hazard and the abatement of the hazard, in accordance with any relevant guidelines. It may also require a report to be made available to DEC on any action taken under the notice and its outcome, as well as specifying the time in which actions will be taken. Hazard abatement may, for example, involve restricting access to the contamination to remove the immediate threat of risk.

5. Registration of memorials

Under Section 58 of the CS Act, a memorial is to be lodged by DEC and registered on the Certificate(s) of Title by the Department of Land Information (DLI) as soon as practicable if all or part of the land is subject to any one of the following:

- classified as *possibly contaminated – investigation required*
- classified as *contaminated – remediation required*
- classified as *contaminated – restricted use*
- classified as *remediated for restricted use*
- a regulatory notice is issued under Part 4 of the CS Act, other than a notice amending a previous notice
- a charge in favour of the State, or a public authority nominated by the Minister has been placed.

Written notification of memorial registration and a copy of the memorial will be given as soon as practicable to the owners, Western Australian Planning Commission, Department of Health, local government, and other responsible authorities of the land (e.g. Midland Redevelopment Authority) (Section 59 of the CS Act).

At least 14 days before the completion of a transaction which would result in another person becoming an owner, mortgagee or lessee of land classified as *contaminated – restricted use, remediated for restricted use, or contaminated – remediation required* and in respect of which a memorial is registered, each owner of the land who is a party to the transaction must give a written disclosure in respect of the land in the prescribed form (Form 6 of the *Contaminated Sites Regulations 2006*) to each person who would become an owner, mortgagee or lessee of the land as a result of the transaction. A copy of the disclosure must also be given to DEC (Section 68 of the CS Act).

If a memorial is registered under the CS Act, the Western Australian Planning Commission is not to approve the subdivision or the amalgamation of the site, and a responsible authority is not to grant approval under a scheme for any proposed development of land without seeking, and taking into account, the advice of DEC as to the suitability of the land for the subdivision, amalgamation or development.

DEC can specify to the Registrar that land classified as *contaminated – remediation required* is not to have any instrument affecting the land registered or accepted for registration unless DEC consents in writing to the registration (Section 58(5) of the CS Act). This ensures that future owners of the site have the capacity to undertake the required remediation.

A memorial registered in respect of a regulatory notice under Part 4 of the CS Act retains its priority in relation to all other mortgages, charges, and encumbrances on that land despite amendments of regulatory notices issued with respect to the land.

DEC will inform the Registrar when land has been classified as *decontaminated* or *not contaminated – restricted use*, when a regulatory notice is cancelled, when the charge on the land

is recovered or no longer required, or a decision is made on appeal with respect to excluding land from a classification or notice applied under the CS Act. The Registrar will then register the withdrawal of the memorial on the Certificate(s) of Title. Once the memorial is withdrawn, written notification and a copy of the notice to withdraw the memorial will be given as soon as practicable to the relevant parties mentioned above.

6. Access to information

DEC's fact sheet, "*Availability of Information on Contaminated Sites*" (available at www.dec.wa.gov.au/contaminatedsites) provides guidance on how information on contaminated sites in WA is available.

Access to information on sites classified by DEC can be obtained via:

- the contaminated sites database
- a basic or detailed summary of records request made to the DEC Contaminated Sites Section under the CS Act
- an application for information under the *Freedom of Information Act 1992*.

The following describes how information can be obtained through these methods.

6.1 Contaminated sites database

DEC will maintain an electronic-based listing of all sites confirmed to be 'contaminated' based on the results of on-site investigations provided to DEC. Sites classified as *contaminated – restricted use*, *remediated for restricted use*, and *contaminated – remediation required* will appear on the contaminated sites database. Site summary information will be available free of charge via the DEC website (Section 19 of the CS Act).

Information on sites classified as *report not substantiated, possibly contaminated – investigation required*, *not contaminated – unrestricted use* and *decontaminated* are not listed on the public database to protect the commercial interests of site owners. However, if the contamination status of these sites alters and the site is later classified as contaminated, the information will be updated on the contaminated sites database.

The information on the freely-accessible contaminated sites database will include:

- a description of the location and extent of each of those sites sufficient to identify them
- a description of the nature and extent of the known contamination of each of site.

The identity of the person who reported a site or the person responsible for investigation/remediating the site is not made available.

6.2 Records of known or suspected contaminated sites

In addition to the information stored on the contaminated sites database, DEC will keep accurate and up-to-date records containing the following (Section 20 of the CS Act):

- information on contaminated underground water
- reports or programs that identify known or suspected contaminated sites
- copies of written notification sent to stakeholders regarding the classification of sites

- investigation, clean up, and hazard abatement notices, or notices amending any previous notices
- management plans submitted to DEC
- sampling and analysis programs submitted to DEC
- memorials lodged on Certificate(s) of Titles
- disclosure statements made to acquire exemption certificates
- Certificates of Contamination Audit
- exemption certificates
- notices of the Contaminated Sites Committee's decision on responsibility for remediation
- details of published decisions on appeals made by the Contaminated Sites Committee
- ministerial and DEC approvals given to the transfer of responsibility for remediation
- agreements to a transfer of responsibility for remediation by a mortgagee
- written disclosures made to potential owners of certain categories of classified land before change of ownership occurs
- other information and documents DEC considers appropriate.

Access to this additional information can be made by written request. A basic and/or detailed summary of records can be provided (Form 2 of the *Contaminated Sites Regulations 2006*) once the prescribed fee is paid (Section 21 of the CS Act).

Access to a basic summary of records in respect of the land specified is a summary of the following information and documents:

- the category of classification of any site that comprises all, or part, of the land at the date the summary is compiled
- any notice given under the CS Act Part 4 that applies in respect of the land
- the nature and extent of known contamination, and any restrictions on the use, of any site classified as *contaminated – restricted use, remediated for restricted use, or contaminated – remediation required*, that comprises all, or part, of the land at the date the summary is given in respect of
- reasons for the classification of any site that comprises all, or part, of the land that the summary is given in respect of, with reference to any guidelines, standards and other information DEC takes into account when classifying sites.

Access to a detailed summary of records in respect of the land specified is a summary or copies of the following information and documents:

- the basic summary of records
- any notice given under the CS Act Part 4 that applies in respect of the land
- any Certificate of Contamination Audit given in respect of the land
- the author, date and title of any records about the land, including management plans, sampling and analysis programs, and other technical/consultant reports in the possession of DEC at the time
- any other information or documents from the records that DEC considers appropriate.

It should be noted that the information DEC will provide to the public is based on the DEC records held at the time.

6.3 Freedom of information

Access to information held by DEC which is not available via the database or a summary of records can be requested under the *Freedom of Information Act 1992*. For more information about Freedom of Information (FOI) applications please contact DEC's FOI Officer on 08 6364 6500.

7. Glossary

Accredited auditor	An auditor accredited under Section 69 of the CS Act. For more information, refer to <i>Contaminated Sites Auditors: Guidelines for Accreditation, Conduct and Reporting</i> . (DEC, 2006).
Affected site	A site on which contamination is caused, or contributed to, by contamination or a substance which has migrated to that site from another site (the ‘source’ site).
Assessment	Study of a site to determine possible and actual contaminants. May involve a desktop review of the site and may also include the collection and analysis of air, soil, groundwater, water or sediment samples.
Background concentration	Naturally occurring, ambient concentrations of substances in the local area of a site. The soil and water quality in the immediate area of a site may be affected by man-made factors, in which case, the background soil and/or water quality should be determined from a comparable geological/hydrogeological setting, which is minimally affected by anthropogenic activities.
Clean-up notice	A notice issued by DEC where a site is classified as <i>contaminated – remediation required</i> and the required remediation is not being, or has not been undertaken.
Competent person or professional	A person possessing the skills, knowledge, experience, and judgement to perform the assigned tasks or activities satisfactorily.
Contaminant	A substance that presents, or has the potential to present, a risk of harm to human health, the environment or any environmental value.
Contaminated	In relation to land, water or a site, means having a substance present in or on land, water or site, at above background concentrations that presents, or has the potential to present, a risk of harm to human health, environment or any environmental value.
CS Act	<i>Contaminated Sites Act 2003</i>
DEC (also DoE and DEP)	Department of Environment and Conservation, previously Department of Environment (DoE) and before that Department

of Environmental Protection (DEP).

Detailed site investigation (DSI)

An investigation which confirms and delineates potential or actual contamination through a comprehensive sampling and analysis program and risk assessment.

DLI

Department of Land Information.

Environmental harm

Direct or indirect –
(a) harm to the environment involving removal or destruction of, or damage to –
native vegetation; or
the habitat of native vegetation or indigenous aquatic or terrestrial animals;
(b) alteration of the environment to its detriment or degradation or potential detriment or degradation;
alteration of the environment to the detriment or potential detriment of an environmental value; or
alteration of the environment of a prescribed kind as specified in the *EP Act*.

Environmental value

(a) beneficial use; or
(b) an ecosystem health condition.

**EP Act
Exposure**

Environmental Protection Act 1986
Contact of a chemical, physical or biological agent with the outer boundary of an organism e.g. inhalation, ingestion or dermal contact.

**Groundwater (also
underground water)**

All waters occurring below the land surface.

Hazard

The capacity of an agent to produce a particular type of adverse health or environmental effect, e.g. one hazard associated with benzene is that it can cause leukaemia.

Hazard abatement notice

Notice that may be issued by DEC where contamination at a site poses an immediate and serious risk to human health, environment or any environmental value.

Investigation notice

A notice that may be issued by DEC where there are grounds to indicate possible contamination of a site and appropriate action to investigate, monitor or assess the site has not been taken.

Preliminary site investigation (PSI)

An investigation consisting of a desktop study, a detailed site inspection and, where appropriate, limited sampling. The

scope of a preliminary site investigation should be as necessary to determine whether contamination is present or likely to be present and to determine whether a detailed site investigation is required.

Prescribed fee

As prescribed under the *Contaminated Site Regulations 2006*.

Public authority

Means a Minister of the Crown acting in his official capacity, department of the Government, State agency or instrumentality, local government or other person, whether corporate or not, who or which under the authority of a written law administers or carries on for the benefit of the State, or any district or other part thereof, a social service or public utility.

Remediation

In general, means action taken to eliminate, limit, correct, counteract, mitigate or remove any contaminant or the negative effects of the contaminant on the environment or human health.

With respect to the CS Act and a site that is contaminated remediation includes:

- (a) the attempted restoration of the site to the state it was in before the contamination occurred;
- (b) the restriction, or prohibition, of access to, or use of, the site;
- (c) the removal, destruction, reduction, containment or dispersal of the substance causing the contamination, or the reduction or mitigation of the effect of the substance;
- (d) the protection of human health, the environmental or any environmental value from the contamination.

Risk assessment

Process of estimating the potential impact of a chemical, biological or physical agent on a specified human population or ecological system under specified conditions and timeframe.

Site

An area of land and includes underground water under that land, and surface water on that land.

Source site

A site on which contamination or on which a substance has originated and from which it has migrated to another site (the 'affected site') causing, or contributing to, contamination on that other site.

8. References

8.1 Cited references

Contaminated Sites Act 2003

Contaminated Sites Regulations 2006

Department of Environment and Conservation (DEC) (2006) *Contaminated Sites Auditors: Guidelines for Accreditation, Conduct and Reporting.*

Department of Environment and Conservation (DEC) (2006) *Reporting of Known or Suspected Contaminated Sites.*

Department of Environment and Conservation (DEC) (2006) *Certificate of Contamination Audit Scheme.*

Department of Environment and Conservation (DEC) (2006) *Disclosure Statements.*

Department of Environment (DoE) (2005) Draft: *The Use of Risk Assessment in Contaminated Site Assessment.*

Department of Environment (DoE) (2004) *Potentially Contaminating Activities, Industries and Landuses.*

Department of Environmental Protection (DEP) (2001) *Reporting on Site Assessments.*

Department of Environmental Protection (DEP) (2001) *Development of Sampling and Analysis Programs.*

Department of Environmental Protection (DEP) (2003) *Assessment Levels for Soil, Sediment and Water.*

Environmental Protection Act 1986

Freedom of Information Act 1992

APPENDIX A
SUMMARY OF SITE CLASSIFICATION SCHEME

APPENDIX A. SUMMARY OF SITE CLASSIFICATION SCHEME

Classification	Criteria	Notification	Memorial on Title	Certificate of Contamination Audit	Appeals	Information Access
<i>Report not substantiated</i>	Report provides no grounds to indicate possible contamination of the site	Owner, occupier, relevant public authority, reporter, other persons of relevance in the opinion of DEC	Not applicable	Cannot be issued	Person who made the report	Not listed on Public Database. Public access to those who have, in the prescribed manner, requested access to a summary of records
<i>Possibly contaminated – investigation required</i>	There are grounds to indicate possible contamination of the site and further investigation is required	Owner, occupier, relevant public authority, reporter, other persons of relevance in the opinion of DEC	Required to be lodged	Cannot be issued	Owner, occupier	Not listed on Public Database. Public access to those who have, in the prescribed manner, requested access to a summary of records
<i>Not contaminated - unrestricted use</i>	After investigation, the soil and/or groundwater is found not to be contaminated	Owner, occupier, relevant public authority, reporter, other persons of relevance in the opinion of DEC	Not applicable	May be issued on request	Owner, occupier	Not listed on Public Database. Public access to those who have, in the prescribed manner, requested access to a summary of records
<i>Contaminated - restricted use</i>	The site is contaminated but is suitable for restricted use (as there is no risk to the environment or human health based on the current landuse and/or management of the contamination)	Owner, occupier, relevant public authority, reporter, other persons of relevance in the opinion of DEC	Required to be lodged	May be issued on request	Owner, occupier, person(s) responsible for remediation	Basic Summary of Records is publicly available - no charge ¹
<i>Remediated for restricted use</i>	The site is contaminated but has been remediated so that it is suitable for restricted use (as there is no risk to the environment or human health based on the new landuse and/or management of the contamination)	Owner, occupier, relevant public authority, reporter, other persons of relevance in the opinion of DEC	Required to be lodged	May be issued on request	Owner, occupier, person(s) responsible for remediation	Basic Summary of Records is publicly available - no charge ¹
<i>Contaminated - remediation required</i>	The site is contaminated and remediation is required as	Owner, occupier, relevant public	Required to be lodged	May be issued on request	Owner, occupier, person responsible	Basic Summary of Records is publicly

¹ The site will be listed on the Contaminated Sites Database.

	there is a risk to the environment and/or human health	authority, reporter, other persons of relevance in the opinion of DEC, persons responsible for remediation in the opinion of DEC			for remediation	available - no charge ¹
<i>Decontaminated</i>	The site has been remediated and is suitable for all uses	Owner, occupier, relevant public authority, reporter, other persons of relevance in the opinion of DEC	Memorial withdrawn	May be issued on request	Owner, occupier	Not listed on Public Database. Public access to those who have, in the prescribed manner, requested access to a summary of record

