



Managing Contaminated Sites Under the CS Act, 2003

What's new and different?

- Systemic/administrative
- Obligations and liability
- The Audit System

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Introduction

- **CS Act took effect on 1 December 2006**
- **Six month grace period ended 31 May 2007**
- **It's new and largely untested**
 - Drawing on some experience
 - Engaging in some speculation
 - Introducing issues for discussion

Reporting Sites

- **Previous obligations were limited**
 - Legal obligations under EP Act (harm)
 - Serious or immediate risk to human health or environment (legal liability)
 - Risk management (disclosure) or advice
 - To get what you want (eg. Development approval)

Prior to CS Act, one could operate, buy, sell, lease or develop a contaminated site without DEC involvement

Reporting Sites under CS Act

- **Part 2, Div 1 – Duty to report known or suspected contaminated sites (owner, occupier, contributor, auditor)**
- **Penalty for non-compliance – up to \$250,000 and a daily penalty of up to \$50,000 (for individuals)**
- **How to comply – discuss with a consultant, the DEC (website) or lawyer (maybe all 3)**

Tips for Reporting

- **Seek qualified technical and legal advice**
- **The CS database is the same as all other databases – what comes out depends on what you put in**
- **Provide as much quality and up to date information as possible (remove uncertainty) – be aware of implications and plan for them**
- **Affected sites – engage in timely community consultation**

Responsibilities for Contamination

- Hierarchy of responsibility – Polluter pays?
- Disclosure requirements – improve due diligence – heavy penalties for non-compliance (up to \$125,000 plus daily penalty of \$25,000 for individuals)
- Hierarchy means its not so easy to pass on responsibilities through sale
- Heavier obligations under CS Act mean taking on someone else's contamination may be a greater burden than previously was
- *Contaminated Sites Committee* will determine responsibility (based on information available)

Contaminated Site Auditing

- **What is it?**
 - Independent verification of contaminated site work (just like a financial audit)
 - Outsourcing aspects of the regulator role of the DEC
 - Auditors will review, comment and confirm contaminated site work has been undertaken to an acceptable standard and verify conclusions (eg. Site suitability for use, acceptable risk, achievement of clean up objectives)
 - Gate keepers – ultimate sign off still by the DEC

When is an Auditor required?

- **When a Certificate of contamination Audit is requested**
- **Reporting to the DEC for source sites**
- **Compliance with another written law (eg. Planning approval)**
- **As requested by the DEC**
- **Compliance with regulatory Notice**

What's worse than having to engage a consultant?

- **A: Having to engage two consultants**
- **But Auditors can add value to the project by...**
 - Being part of the team – having the same objectives
 - Being proactive (available and responsive)
 - Providing high quality advice
 - Removing project uncertainty
 - Reducing client involvement
 - Link to regulator
 - Providing community confidence

Making the most of the Audit System

- **Have a clear idea of your objectives and expectation (every project is different), discuss and agree with Auditor up front**
- **Responsiveness, involvement and timing**
- **The Audit team**
- **Role of primary consultant (relationship)**
- **Respect the Auditor's independence**

The New Era...

- **Managing contaminated sites through the audit process will cost more in consultant fees (paying two consultants, auditors will require more thorough work to be undertaken)**
- **Benefits include...**
 - Better quality work
 - More efficient, better quality solutions with reduced uncertainty (less overall cost?)
 - Raising industry standards, increasing standardisation across industry, increasing certainty

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