

Western Australian Auditor General's Report



Management of Crown Land Site Contamination



Report 13: June 2018

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WESTERN AUSTRALIAN AUDITOR GENERAL'S REPORT

Management of Crown Land Site Contamination

Report 13
June 2018



**THE PRESIDENT
LEGISLATIVE COUNCIL**

**THE SPEAKER
LEGISLATIVE ASSEMBLY**

MANAGEMENT OF CROWN LAND SITE CONTAMINATION

This report has been prepared for Parliament under the provisions of section 25 of the *Auditor General Act 2006*.

Performance audits are an integral part of my Office's overall program of audit and assurance for Parliament. They seek to provide Parliament and the people of WA with assessments of the effectiveness and efficiency of public sector programs and activities, and identify opportunities for improved performance.

This audit assessed whether the State's unallocated Crown land and unmanaged reserves are being effectively managed to minimise human and environmental health risks from contamination on these sites.

I wish to acknowledge the staff at the Department of Water and Environmental Regulation and the Department of Planning, Lands and Heritage for their cooperation with this report.

CAROLINE SPENCER
AUDITOR GENERAL
27 June 2018

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Auditor General's overview

This office last reported on management of land contamination in 2002. Our report provided impetus for the introduction of new legislation in 2003 to deal with this contamination. Now a decade and a half later we have revisited this important topic to examine progress.

Land contamination has been in the public eye recently. Media reports have highlighted public concern over the risks associated with living near contaminated land and the impact contamination can have on peoples' health and livelihoods. The media has also related the complexities of identifying and remediating contaminated land and the impact contamination can have on major developments.

In this most recent audit, we focused on the management of contamination on unallocated Crown land and unmanaged reserves, an area covering nearly 38% of the State, but potentially 'out-of-sight and out-of-mind'. Unfortunately, my audit found this was indeed the case.

The Department of Planning, Lands and Heritage (DPLH) has not effectively prioritised management of contamination risks on this land. Oversight and communication between DPLH and the Department for Water and Environmental Regulation has also been poor. This has seen long delays in identifying and reporting contamination and addressing potential risks.

While some progress has been made, DPLH still faces a significant task in systematically assessing, reporting and effectively managing contamination risks on Crown land. The recommendations of this report should help to refocus efforts.



Executive summary

Introduction

This audit assessed whether the State's unallocated Crown land and unmanaged reserves are being effectively managed to minimise human and environmental health risks from contamination on these sites.

The audit focused on unallocated Crown land and unmanaged reserves as these sites make up over one third of the State's total land area.

We reviewed the Department of Water and Environmental Regulation (DWER) as the agency responsible for administering the *Contaminated Sites Act 2003* on these lands. We also reviewed how the Department of Planning, Lands and Heritage (DPLH) identified, investigated, reported and where necessary remediated contamination on unallocated Crown land and unmanaged reserves.

Background

In December 2006, Western Australia's *Contaminated Sites Act 2003* (the Act) and the associated Contaminated Sites Regulations 2006 became law. The purpose of the Act is to protect human health, the environment and environmental values through identification, recording, management and remediation of contaminated sites.

Contamination can occur from a variety of past and current activities including:

- landfills
- tailings dumps from mining
- chemical storage and disposal sites
- timber milling and treatment sites
- illegal dumping.

The Act defines contaminated as '*having a substance in or on that land, water or site at above background concentrations that presents, or has the potential to present, a risk of harm to human health, the environment or any environmental value*'.

Since the Act came into effect over 4,200 known or suspected contaminated sites have been reported to DWER.

Roles and responsibilities

The Act places requirements on a number of people, including owners and occupiers of land, to report known or suspected contamination to DWER. Timely and accurate reporting of these sites is critical to addressing potential contamination and associated health and environmental risks.

Known contamination must be reported within 21 days, and suspected contamination as soon as reasonably practical. There are significant penalties for failing to report sites in a timely manner.

Under the Act, DWER is responsible for:

- receiving reports of suspected or known contamination
- classifying sites according to the level of contamination and action needed in accordance with Schedule 1 of the Act (Appendix 1)
- advising the land owners or managers of the follow-up actions required
- maintaining records in a publicly accessible contaminated sites database and register.

Land owners and managers are responsible for completing the follow-up and remediation actions prescribed by DWER. A number of State agencies own or manage land that is contaminated with substances such as cyanide, lead, diesel and asbestos.

DPLH is responsible for managing contamination on the 2.3 million km² of State Crown land (93% of the State). When Crown land is vested or leased to other departments, organisations or people, the responsibility for identifying, reporting and managing contamination is also transferred.

Unallocated Crown land (UCL) and unmanaged reserves (UMR) account for nearly 1 million km² (38%) of the State and make up the bulk of the potentially contaminated land that DPLH manages. UCL is Crown land that is not reserved for a purpose or leased but may have previously been used for a purpose such as mining or agriculture and has now returned to the State. UMR is land that has been reserved for a purpose, such as for landfill, road reserves, a railway siding or a park, but is no longer or has never been used for that purpose.

The Act also established the:

- Contaminated Sites Committee

This is an independent 3 to 5 member committee, which determines appeals against DWER's classification of sites and makes decisions on remediation responsibility. The committee's decisions can be appealed to the Supreme Court on a question of law.

- Contaminated Sites Management Account (CSMA)

On average the CSMA has about \$1.3 million available each year, and nearly \$16 million has been allocated since 2006, to investigate or remediate contaminated sites the State is responsible for. Funds can also be used to ensure compliance with investigation, clean-up and hazard abatement notices. The Minister for Environment decides the allocation of funds, and DWER manages the CSMA on behalf of the Minister.

DWER takes a staged approach to investigation and remediation of site contamination. It agrees the scope of works with each agency prior to paying the full funding amount at the beginning of each stage. No milestones or completion timeframes are set.

The bulk of funds in the CSMA are from parliamentary appropriations, with small amounts coming from fees for information searches or sales of remediated land.

DPLH program for identifying and reporting sites to DWER

In 2007, the then Department of Environment and Conservation (DEC) approved a program developed by the Department of Lands (now part of DPLH) for identification and reporting of sites.

The intent of the program was to systematically assess and report on all known and suspected contaminated sites under DPLH responsibility as soon as possible. Around 5,000 sites were included in the program. The majority of these were UCL and UMR.

The Act required that the program be submitted to the CEO for approval within 6 months of the Act commencing and had to include the:

- sites or types of sites to be identified and reported
- methods to be used to identify the sites to be reported
- timetable for the identification and reporting of sites
- time within which the program was to be completed
- reasons why it was considered necessary or desirable for the sites to be identified and reported.

DEC approved the program without a completion date as it recognised the large task facing DPLH, with preliminary estimates of over 100 years to assess all the sites. It did however require DPLH to provide annual progress reports.

DPLH committed to at least 60 desktop assessments and 6 site inspections each year. Assessment numbers were expected to increase over time as DPLH processes became more efficient. Inspection numbers were always dependent on available resources.

Audit conclusion

Contamination on UCL and UMR, and the risks posed, are not being managed effectively. Lack of effective oversight, poor communication between the agencies and unreliable data contribute to DPLH, and hence DWER, having a limited understanding of the type or size of the risks they are dealing with, and not minimising contamination risks as required under the legislation.

Action to deal with contaminated sites is not timely. DPLH has made very slow progress in inspecting sites, and does not prioritise high risk sites for inspection. At current rates it would take DPLH over 50 years to inspect all of the remaining sites to determine levels of contamination. Further, DPLH's reporting of inspection results to DWER often takes years, adding to delays in investigation and, if necessary, remediation.

DWER's oversight of CSMA funded projects could be strengthened as projects can experience significant delays, prolonging the period of time that a site presents a risk to human health and the environment.

Key findings

Inadequate oversight and poor communication between agencies means that contamination risks are not identified and reported in a timely manner.

- DPLH has not reported its progress on identifying contaminated sites to DWER since 2012. At that time, DPLH considered its program complete and stopped reporting progress to DWER as required. This was despite nearly 500 sites still needing inspection to determine if they were contaminated.
- DWER was unaware that DPLH considered the program finished or had stopped reporting. DWER also had not followed up to determine why reports were not being received. As a result, DWER does not know if DPLH is making effective progress on its program to identify and report potential contamination.

DPLH is not effectively minimising the risks of human and environmental exposure to contamination.

- Risks posed by potentially contaminated sites are considered as a low priority within the agency's broader priorities and inspections regime. At the current inspection rate, DPLH will take over 50 years to fully assess around 380 sites to determine if they need to be reported to DWER. Even when DPLH identified sites as potentially contaminated we found delays of several years and, in some cases, failure to report the sites to DWER.
- DPLH senior management do not oversee the agency's progress towards identifying and reporting potential contamination, or site status or risks. Such oversight is necessary to ensure that management decisions on resourcing and prioritisation of site inspections are made with full knowledge of potential risks. Management reporting could also highlight delays and improve the timeliness of reporting sites to DWER.

DPLH does not have reliable information on which to base its investigation and remediation efforts.

- DPLH's database does not provide reliable figures on the number of potentially contaminated UCL and UMR sites it is responsible for. The number of sites reported to us varied from around 2,602 to 2,668 depending on how the database was queried.
- There were also errors in the number of contaminated sites DPLH is responsible for remediating.

DPLH managed its initial planning, inspections and reporting of sites effectively.

- In 2007, DPLH appropriately planned a program to identify, assess and report to DWER on over 5,000 sites. DPLH exceeded the program's targets for desktop assessment and site inspections and reported annually to DWER up until 2012. Twenty-two of the 38 sites inspected were reported to DWER as potentially contaminated.

DWER's oversight of CSMA projects does little to ensure timely completion of works. Three unfinished CSMA projects have experienced significant delays of between 8 and 11 years. One DPLH project has not been completed 11 years on from the original funding.

Recommendations

1. DPLH and DWER should agree on a methodology and timeframe for a revised identification and reporting program.

DPLH response: *Agreed*

DWER response: *Agreed*

Implementation timeframe: by 31 December 2018

2. DPLH should review and upgrade its systems and processes to enable:

- timely reporting to DWER
- complete and accurate information in its database
- inclusion of risk assessments and ratings as part of desktop assessments
- senior management oversight of DPLH's progress towards identifying and reporting potential contamination to DWER, site status and risks.

DPLH response: *Agreed*

Implementation timeframe: *by 30 June 2019*

3. DWER should adopt processes to follow up delayed CSMA projects quickly and consider options to achieve timely completion of funded projects.

DWER response: *Agreed*

Implementation timeframe: *by 31 December 2018*

Agency responses

Department of Planning, Lands and Heritage

DPLH agrees with the findings of this audit and can advise that progress is already being made to address the concerns raised. DPLH also agrees with the proposed timeframes.

DPLH is responsible for the management of all unallocated Crown land and unmanaged reserves, this equates to over 35% of the State's land area. DPLH is responsible for management of all contaminated sites which occur on this land. While this is important, due to limited resources it has to be balanced against other land management responsibilities such as fire management, dangerous trees, dumped rubbish and pest and weed infestations. These hazard management actions often take priority due to the immediate risk they pose.

Presently, a functional review of how DPLH delivers its land management obligations is underway. A key component of this review will be whether the resourcing, funding and systems support for this function is adequate. We look forward to working with the Department of Water and Environmental Regulation on this matter.

Department of Water and Environmental Regulation

DWER accepts the finding that communication between the agencies could be improved. DWER acknowledges it had not followed up with the Department of Planning, Lands and Heritage (DPLH) to determine why annual reports on progress with implementation of DPLH's section 12 programme for reporting sites were not being received. DWER is committed to working with DPLH to improve communication between the agencies regarding DPLH's section 12 programme and progress on DPLH's sites funded from the Contaminated Sites Management Account (CSMA), including regular meetings.

DWER notes the finding that its oversight does not encourage timely completion of investigation or remediation projects. For the nine incomplete projects, DWER will agree schedules and milestones for the remaining approved works with the relevant agencies and continue to monitor progress through quarterly acquittals. For future investigation and/or remediation projects funded from the CSMA, a project schedule, including milestones, will be agreed before funds are transferred to the relevant agency. Quarterly reporting requirements will include progress against the agreed schedule.

Audit focus and scope

The audit objective was to assess how effectively the State monitors and manages unallocated Crown land and unmanaged reserves for contamination.

The specific lines of inquiry were:

1. Are agencies proactively monitoring to minimise levels of contamination?
2. Are agencies managing contaminated sites in compliance with the *Contaminated Sites Act 2003*?
3. Do agencies know if remediation efforts are effective?

We focused on the Department of Water and Environmental Regulation as the agency with primary responsibility under the Act and the Department of Planning, Lands and Heritage as the agency that has responsibility for unallocated Crown land and unmanaged reserves.

We considered information from commencement of the Act in December 2006 to present.

During the audit we:

- reviewed relevant policies and procedures
- interviewed staff and ‘walked through’ processes and databases
- reviewed paper and electronic records for a sample of sites to assess compliance with legislation, policies and procedures
- sample tested DPLH’s database records
- accompanied DPLH field officers on a contaminated site inspection.

The audit did not consider management of contaminated sites on land other than unallocated Crown land and unmanaged reserves.

This was a narrow scope performance audit, conducted under section 18 of the *Auditor General Act 2006* and in accordance with Australian Auditing and Assurance Standards. Performance audits primarily focus on the effective management and operation of agency programs and activities. The approximate cost of undertaking and tabling this audit is \$113,000.

Audit findings

Inadequate oversight and poor communication between agencies delays identification and reporting of risks

DPLH has not reported contamination risks to DWER since 2012

DPLH last reported to DWER on its progress against the approved program, for identifying and reporting potentially contaminated sites, in 2012, and DWER has not followed up. Since then DWER has not had the information it needs to assess if DPLH is meeting the intent of the program and the Act for timely identification and reporting of contamination risks on UCL and UMR.

We were advised by DPLH that reporting to DWER ceased when the program was completed in 2012. However, figures from 2012 showed nearly 500 sites still required a DPLH site inspection to determine if they should be reported to DWER. Figures for March 2018 show 377 sites remain to be inspected. The program was meant to be ongoing until all potentially contaminated sites had been identified and reported to DWER.

There is no documented management decision or formal sign-off for the program by either agency, and DWER were previously unaware that DPLH considered the program complete.

DPLH carried out its initial inspections and reporting of sites under an approved program

Due to the substantial effort and time required to cover its Crown land responsibilities, DPLH started planning its program to identify and assess contaminated sites several years before the Act became law.

Around 19,000 Crown land sites were initially identified by DPLH as having a potentially contaminating land use. However, DPLH was able to reduce this number to around 5,000 by excluding sites that did not meet:

- proximity to geographic zones or 'buffers' likely to warrant a higher priority for further investigation. For example, water sources and waterways, towns and recreational areas and important flora and fauna
- agreed revised standards for likelihood of contamination.

The program submission clearly acknowledged data limitations in identifying sites for inclusion in the program. Sites that could not be spatially related at the time and did not have associated electronic records were not included.

From 2007 to 2012, DPLH well exceeded its target of 60 desktop assessments a year with 2,497 sites assessed. Thirty-eight sites were subsequently inspected by DPLH which also slightly exceeded the 6 site inspections a year planned under the program. Twenty-two of the 38 sites inspected were reported to DWER (then DEC) as potentially contaminated (Figure 1).

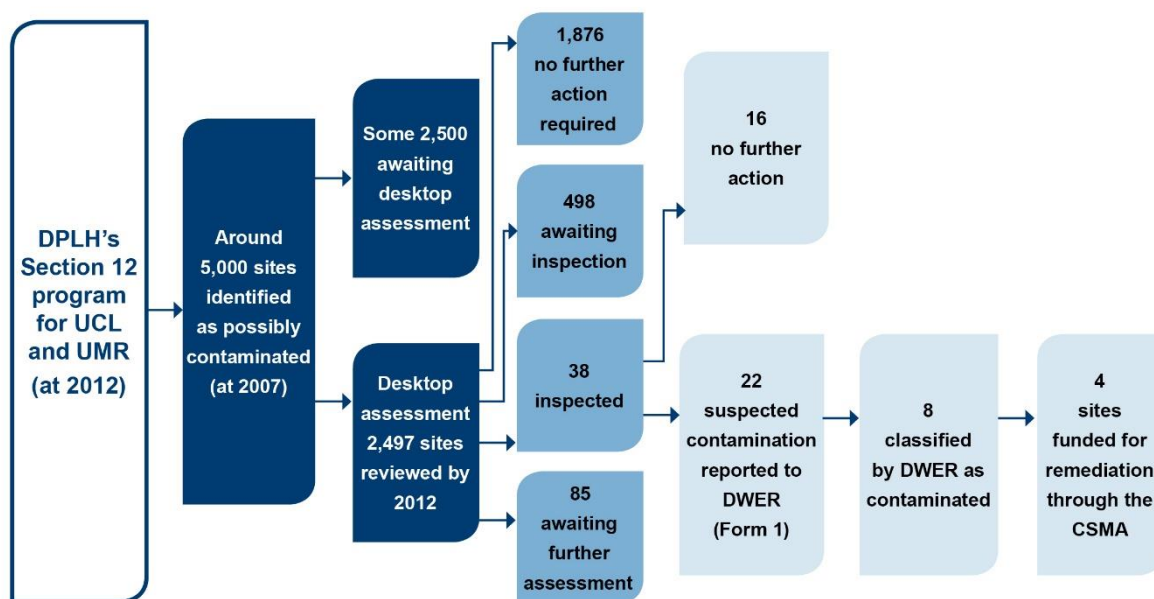


Figure 1: DPLH's program – status at last report to DWER in 2012

DPLH is not effectively minimising the risks of human and environmental exposure to contamination

Progress on inspecting sites is very slow, and inspections are not prioritised according to risk

DPLH is not minimising the risk from contamination as they are required to under the Act. At the current inspection rate, it will take DPLH over 50 years to assess the remaining 377 sites before it can determine if they need to be reported to DWER as potentially contaminated. DPLH inspects on average 7 sites a year, an increase of about 1 inspection a year since the program was approved in 2007. DPLH have inspected around 80 sites since the program began.

The timing and location of site inspections is not based on assessed risk. Inspections are driven by DPLH's broader priorities, such as hazards, lease and land-use inspections. Sites are only inspected for potential contamination if they are located in the same area as other work being done by DPLH. DPLH advised that they conduct several hundred other inspections each year but prioritise hazard management, such as dumped rubbish and fires, instead.

We reviewed records for 15 sites that DPLH had identified more than 5 years ago as needing inspection. In 2017, contaminated sites staff requested that 5 be included on DPLH's broader land inspection program. None of the 15 sites had been inspected at the time of our audit.

DPLH senior management does not oversee the agency's progress towards identifying and reporting potential contamination, or site status or risks. Decisions on resourcing and prioritisation of site inspections need to be made with full knowledge of potential risks to human health and the environment.

DPLH's reporting of potential contamination to DWER is not timely

Reporting potential contamination to DWER has been delayed by the small number of inspections each year and lack of DPLH oversight. Since the program began, DPLH have

inspected around 80 sites and reported 47 (59%) of these to DWER. However, the low inspection rate, an average of 7 sites a year, means reporting of potential contamination to DWER has been slow. Even when sites were inspected, there were long delays in reporting the sites. These delays have gone unnoticed in the absence of oversight by DPLH management. Remediation will not occur if the site has not been reported to DWER and formally classified as contaminated.

We reviewed records for 6 sites and found that 4 had experienced significant delays in reporting the potential contamination to DWER:

Site 1: Four years after a 2014 site inspection of a State Battery* DPLH had still not reported the site to DWER. The inspection confirmed illegal dumping and rubbish. An (undated) DPLH inspection report stated *'There are signs of current habitation within the reserve. The site is untidy, with widespread junk, including abandoned vehicles, and metal drums from cyanide treatment of tailings. Historical records indicate that 31 809 t were crushed on the reserve between 1901-1920. A past survey suggests that 13 371 t of tailings were present on the reserve'*.

Site 2: Two-year delay in reporting potential asbestos contamination to DWER.

Site 3: Eight-year delay in reporting potential diesel contamination on an old mining tenement to DWER.

Site 4: Four-year delay in notifying DWER of a site inspection done in 2012.

*State Batteries were government owned and run ore crushing facilities for the gold mining industry. Cyanide was commonly used at the facilities.

DPLH does not know how many sites require investigation and remediation

DPLH does not have reliable information on which to base its investigation and remediation efforts. This means that some sites may not receive the attention they need to validate or remediate contamination risks.

The database that DPLH uses to manage its contaminated sites work does not provide consistent and reliable figures. Examples of weaknesses identified in the database include:

- The total number of potentially contaminated UCL and UMR sites DPLH is responsible for ranged from 2,602 to 2,668 depending on the report being run from the database. DPLH cannot effectively prioritise resources without accurate data on the total number and classifications of sites they are responsible for.
- DPLH's database showed they were responsible for remediation of 31 sites. However, we found that while DPLH was the landowner, they were not directly responsible for remediation of 11 of these sites. For a further 4 sites, DWER's records showed that the sites had not actually been classified as Contaminated – remediation required.
- DPLH does not use the same site classifications as DWER and as outlined in the Act, and the classifications used do not indicate potential contamination risks. The absence of a common identifier that can be used to reconcile sites between the agencies makes it very difficult for DPLH to accurately assess the status of all sites it is responsible for and to effectively manage them.

DPLH knows that data fields are incomplete or inaccurate and has not developed an approach to addressing these issues.

DWER's oversight of funded projects does little to ensure timely remediation

DWER relies on agencies progressing CSMA funded works in a timely manner. We found that State agencies can take a long time to remediate sites and spend CSMA funds. This is justified where the site is complex and investigation and monitoring are required over a number of years to understand contamination sources and impacts. There are 9 ongoing projects. DWER acknowledges that 3 of these have taken too long with funds unspent between 8 and 11 years later. One still has 97% of funds unspent. DWER was not effectively following up with these agencies on project delays.

Since December 2006, around \$16 million from the CSMA has been allocated to 17 agencies for contaminated site investigation and remediation works. This includes 28 projects that received over \$8 million. The remaining funding was spent primarily on remediation and monitoring of contamination resulting from the Bellevue hazardous waste fire in 2001.

Agencies that receive CSMA funding manage their own projects. Quarterly acquittal reports are provided to DWER outlining progress of works and expenditure of funds. While DWER does agree the scope of work prior to providing the full funding at the beginning of each project, funding agreements do not set timeframes for completion. Funding application guidelines simply state that projects are to commence within 6 months and be completed in a timely manner.

DPLH has had 4 remediation projects funded by the CSMA, 1 of which has been completed.

	Agency/Project	Year	Amount (\$)	Spent (\$)	Unspent (\$)	Status
1	DPLH Esperance Tank 2 – petrochemical contamination	2007 2014	300,000 160,000	329,347	130,653	In progress (refer to case study)
2	DPLH Wittenoom – asbestos contamination	2009 2012 2014	250,000 150,000 350,000	732,622	17,378	In progress
3	DPLH Deanmill – old timber mill arsenic contamination	2010	430,000	403,753	26,247	In progress
4	DPLH Kalbarri – asbestos contamination from illegal dumping	2011	120,000	109,899	10,101	Completed
	Total		1,760,000	1,575,621	184,379	

Table 1: DPLH projects funded through the CSMA – status at June 2018

The following case study example of the Esperance Tank 2 illustrates the long timeframes that can be involved in managing CSMA projects.

Esperance Tank 2 case study

Since 2007, a total of \$460,000 from the CSMA has been paid to DPLH to investigate and remediate the site. The site has not been remediated despite a number of investigations, ground water monitoring and reports. DPLH and DWER are yet to agree on an appropriate resolution.

Esperance Tank 2 is a site located near the Esperance foreshore and old Tanker Jetty. It was the location of a privately operated diesel storage tank and a sludge pond used for dumping sludge cleaned from the tank. The site ceased operation in 1994.

In 2004, groundwater monitoring started at the site and established there was a petrochemical contamination plume originally thought to be coming from the sludge pond.

In 2007 CSMA funds of \$300,000 were granted for more detailed investigation and remediation. The scope of works included:

- a detailed site investigation to delineate the extent of the soil and groundwater contamination associated with the sludge pond
- removal of the impacted soil
- bioremediation of the impacted soils if required
- a comprehensive Human and Ecological Risk Assessment for the site
- an assessment of remedial options for the management of residual contaminated groundwater and recommendation of a remedial strategy
- preparation of a Site Management Plan (SMP)
- groundwater monitoring as detailed in the SMP for an initial period of two years
- involvement of an accredited contaminated sites auditor throughout the project.

This funding resulted in several reports indicating potentially more extensive and complex contamination. This included possible contamination impacting the nearby old Esperance Tanker Jetty and foreshore. After 7 years of investigation and monitoring, the source of the contamination was still not conclusive and no remediation work was done.

In March 2014 a further \$160,000 of CSMA funds were approved for:

- preliminary site investigation for the end of the Tanker Jetty
- groundwater monitoring
- ecological and human health risk assessment
- preparation of a remediation action plan
- involvement of an accredited contaminated sites auditor.

Since then, Royalties for Regions funding has been used to develop the foreshore and numerous groundwater monitoring bores have been destroyed. DPLH and DWER have been unable to reach agreement on how best to resolve issues at the site. At the time of our audit, \$130,653 of the CSMA funding remained unspent.



Appendix 1: Classification of sites – *Contaminated Sites Act 2003*, Schedule 1

Classification	Criterion and action required
Report not substantiated	Report provides no ground to indicate possible contamination of the site – No further action required
Possibly contaminated – investigation required	There are grounds to indicate possible contamination on the site – Site assessment in accordance with Contaminated Sites Guidelines (CSG) and the National Environment Protection (Assessment of Site Contamination) Measure (NEPM)
Not contaminated – unrestricted use	After investigation, the site is found not to be contaminated – No further action required
Contaminated – restricted use	The site is contaminated but suitable for restricted use – Comply with restrictions on use specified in the classification and Site Management Plan if applicable
Remediated for restricted use	The site is contaminated but has been remediated so that it is suitable for restricted use – Comply with restrictions on use specified in the classification and Site Management Plan if applicable
Contaminated – remediation required	The site is contaminated and remediation is required – Remediation, monitoring and validation in accordance with CSG and the NEPM
Decontaminated	The site has been remediated and is suitable for all uses – No further action required

Auditor General's reports

Report number	2018 reports	Date tabled
12	Timely Payment of Suppliers	13 June 2018
11	WA Schools Public Private Partnership Project	13 June 2018
10	Opinions on Ministerial Notifications	24 May 2018
9	Management of the State Art Collection	17 May 2018
8	Management of Salinity	16 May 2018
7	Controls Over Corporate Credit Cards	8 May 2018
6	Audit Results Report – Annual 2017 Financial Audits and Management of Contract Extensions and Variations	8 May 2018
5	Confiscation of the Proceeds of Crime	3 May 2018
4	Opinions on Ministerial Notifications	11 April 2018
3	Opinion on Ministerial Notification	21 March 2018
2	Agency Gift Registers	15 March 2018
1	Opinions on Ministerial Notifications	22 February 2018

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