

The Warden was satisfied that the test outlined in *BRGM*⁴ is the appropriate test. The Warden was of the view that Tantalum was extremely casual in complying with the requirements of the Mining Act and showed a gross lack of care. In the circumstances the case put forward by Tantalum did not constitute special circumstances. The application for restoration was dismissed.⁵

CONTAMINATED SITES ACT TO COMMENCE ON 1 DECEMBER 2006*

On 1 December 2006 the much-anticipated *Contaminated Sites Act 2003* (WA) will finally come into effect. The Act will apply to all land in Western Australia and will have an impact on the mining industry in this State.

In short, the Act establishes:

- a comprehensive regime for the reporting of “known” or “suspected” contaminated sites, including imposing a statutory duty to report on certain people;
- a searchable Contaminated Sites Database maintained by the Department of Environment and Conservation (DEC); and

a system for the allocation of responsibility for remediation of contamination, based on the polluter pays principle.

The duty to report a known or suspected contaminated site (which includes the soil and underlying groundwater) on the owner of the site, the occupier of the site and the person who knows or suspects they have caused or contributed to the contamination of the site. A site is ‘contaminated’ under the Act where there is a ‘substance present 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 an environmental value’.

There are time limits for reporting a known contaminated site (within 21 days of becoming aware of the contamination) and a suspected contaminated site (as soon as it is reasonably practicable to do so). However, these time limits will not apply for the first six months of the Act’s operation (ie until 1 June 2007) to allow people to report all relevant sites.

Failure to report a site when under a duty to do so attracts a fine of up to \$1.25 million for corporations, plus daily penalties.

The use of a risk-based approach to determining contamination has led to some uncertainty about when a site should be reported under the Act. The DEC has released a number of guidelines (all available on the DEC website – www.dec.wa.gov.au) that are designed to assist in determining what is “known” or “suspected” contamination that should be reported and has also released a short fact sheet that addresses contamination issues that are peculiar to the mining industry. For example, a well managed tailings facility that is not discharging to the environment (or where small discharges have occurred but have been cleaned up with no residual impact on the

⁴ Ibid.

⁵ See above n 1, in relation to the Warden’s form of order.

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environment) will not be required to be reported under the Act whereas a tailings facility that has uncontrolled seepage will require reporting.

Once a site is reported, it will be classified by the DEC and the Western Australian Department of Health. Information on sites that are classified as *contaminated - remediation required*, *contaminated – restricted use* and *remediated for restricted use* will be included on the Contaminated Sites Database that will be accessible free of charge via the DEC website. Future dealings in such sites (such as a leasing or mortgaging the site) will also need to comply with new disclosure obligations contained in the Act.

Further, these sites, together with sites classified as *possibly contaminated – investigation required*, will have a memorial lodged against the relevant certificate(s) of title for the site. The memorials will act as a notification to prospective owners, occupiers, and mortgagees of the status of the site. For those reported sites that are not the subject of a certificate of title (eg the reported site may be a leaking tailings dam on a mining lease which is located on unallocated Crown land), a certificate of title will be created to enable registration of the memorial.

The Act is supported by the *Contaminated Sites Regulations 2006* which set out the various forms required by the Act and the requirements for accreditation of contaminated sites auditors who are required to provide certain reports under the Act.