Contaminated Sites Committee

- Summary of Decision

- Appeal Against Site Classification

Date of decision	1 August 2012
Type of decision	Determination of an appeal against site classification pursuant to section 82 of the *Contaminated Sites Act 2003*.
Matter (file no.) **Date lodged** **Appellant** **Site name/address** **Certificate of title no./ Crown reserve no.**	CSC 15/2011 14 September 2011 Brajkovich Demolition & Salvage Pty Ltd 13 Musson Road, Henderson Lot 4 on Diagram 18018 as shown on Certificate of Title 1177/833
Background	The property was historically a market garden, however is currently used one-third for stockpiling demolition waste (eastern side), and the remainder is currently vacant. The owner of the Site is RCG Pty Ltd. The eastern third of the property is leased to the Appellant for industrial use, being the storage of construction and demolition waste. The site was reported because recycled construction and demolition waste was used as fill for two-thirds of the site, including asbestos containing material (ACM) fragments. DEC classified the site as *contaminated – remediation required* on 16 August 2011. The classification was based on the report by Ace Environmental - *PT Lot 4 Musson Road, Henderson, Western Australia, Asbestos Investigation*, dated July 2011. The report confirmed the presence of ACM fragments in fill material at levels in excess of the "Guidelines for the Assessment, Remediation and Management of Asbestos-Contaminated Sites in Western Australia" (Department of Health, May 2009). Hydro-mulch had been used to cover some of the site. ACM were found by staff from DEC Pollution Response Unit and the City of Cockburn on the surface of the ground in March 2011. As part of the appeal, the *Asbestos Assessment and Audit of Practices – Brajkovich Demolition and Salvage*, Site Environmental & Remediation Services Pty Ltd (SERS) dated 2 April 2011. They also provided an email from the City of Cockburn and additional technical data.

	Summary of the appeal grounds: ***Ground 1*** *There is insufficient evidence to justify a classification of C-RR and further investigations ought to be done on the site to determine its appropriate classification.* ***Ground 2*** *The report prepared by ACE Environmental (dated July 2011) does not warrant the classification of C-RR as it is deficient in a number of respects, according to the applicant and including:* *a) Section 1.1 Background – fails to fully summarise the facts, including that DEC and the City of Cockburn have inspected the site and not found any significant quantities of asbestos on the surface.* *b) Section 2 Scope of Work – used inappropriate testing/monitoring methods for detecting asbestos fibres in the air, and there is insufficient information.* *c) Section 4.1 - The report fails to identify previous land use as residence/market garden from 1965 – 2009, and has failed to test for other potential contaminants, nor whether the previous land use could have also contributed to current asbestos contamination; there is also no mention of neighbouring land uses which are also potential contributors to the asbestos contamination such as a transport depot and waste recovery facility.* *d) Section 4.5 – no photographic evidence that the ACM found actually originated on the Site.* *e) Section 7.6 – the report does not specify that investigations into asbestos were done so in accordance with the Guidelines for the Assessment, Remediation and Management of Asbestos-Containing Materials in Western Australia (May 2009) ("Guidelines"). Further, no testing was done on materials that passed through the 7mm sieve for asbestos fines, which would have been consistent with good practice and the Guidelines.* *f) Section 8 –* *(i) there was a 3 week delay between the ACE Environmental providing samples for testing to Australian Laboratory Services (ALS) and ALS recording their receipt.* *(ii) Only 55 quadrats were sampled when the Guidelines require 60* *(iii) according to the Guidelines formula, the asbestos allegedly found was less than the 0.05% weight for weight, which is below that allowed under the Guidelines for Commercial/Industrial sites and therefore should not be*

	classified as contaminated. *g) Section 8 – Dust monitoring did not distinguish between fibre types and it was therefore incorrect to allege that the fibre found in the filter membranes was asbestos. The MFM filters analysed did not show fibres in excess of guideline limits of the Adopted National Exposure Standards for Atmospheric Contaminants in the Occupational Environment (NOHSC:1003 (1995)) and the Code of Practice for the Safe Removal of Asbestos (NOHSC:2002 (2005)). Independent monitoring of air quality by SERS did not reveal respirable fibres in the air in excess of permissible quantities.*
Committee's decision?	**Appeal Dismissed**
Reasons for decision	**Summary of Reasons:** DEC's classification was based on findings of asbestos-containing material (ACM) in the soil, probably due to fill (including construction and demolition waste) placed on the site by the Appellant. Asbestos levels in the soil exceeded DoH 2009 guidelines. Background levels in soil not impacted by fill contained 0% ACM. The Committee found a number of claims made in the appeal to be inaccurate and/or irrelevant. All grounds were dismissed. In an email from the City of Cockburn's Nick Jones dated 10 March 2011, Mr Jones and Ken Raine of the DEC Pollution Response Unit inspected the site in March 2011 and found fragments of ACM at 3 separate locations. Jones requested "comprehensive evidence to prove" that the fragments were "an isolated case and that there is not a significant amount of asbestos". The email was copied to the owner of the site, RCG Pty Ltd and the Appellant's staff. In March and April 2011 Site Environmental & Remediation Services Pty Ltd (SERS) undertook an "Asbestos Assessment & Audit of Practices" report for the Appellant. The study looked at how the Appellant handled asbestos in its construction and demolition business, and reported on respirable fibre monitoring at the site. Neither of these investigations are relevant with respect to the classification of the site. The SERS study included a transect walk on 1 April 2011 looking for fragments of ACM. No test pits were dug. Also in April 2011 ACE Environmental Pty Ltd (ACE), employed by the owner of the site, undertook an Asbestos Investigation that involved a site walkover by an environmental consultant experienced in asbestos identification using a grid search pattern as well as digging and sampling of three test pits. ACE found ACM fragments during the walkover and in test pits.

	The Committee considered the report and investigations undertaken by ACE are to be preferred to the SERS report because they are more comprehensive and appropriate to the classification of the site. The ACE report included an extensive matrix grid search and test pit sampling. The information was detailed and relevant, and the deficiencies noted by the Appellant did not significantly affect the accuracy of the investigation or conclusions. Further, a delay in sample analysis of 3 weeks is not significant for materials that are not easily degraded. Further, testing by ACE was conducted at a NATA accredited laboratory. The SERS report is deficient in a number of respects regarding relevant information for this appeal. It concentrated on airborne fibres which do not necessarily indicate soil concentrations, which is the reason for the classification. Further, air testing was done in an area that has been hydro-mulched and has active site sprinkler systems to prevent dust, which would greatly reduce the accuracy of estimating true soil concentrations. A limited visual search was conducted across a single transect, however it was noted the hydro-mulch impeded visibility. SERS failed to properly investigate the presence of ACM either on the surface or below the surface of the site. The standards utilised by DEC and the Department of Health (DoH) were appropriate. The appropriate standard for the levels of ACM on this site is the conservative criterion appropriate for fibrous asbestos materials in poor condition present on the site, thus requiring the 0.001% w/w guideline level in the *Guidelines for the Assessment, Remediation and Management of Asbestos-Contaminated Sites in Western Australia,* 2009 by the DoH. The concentration of asbestos found on the site exceeds these DoH guidelines. The calculations undertaken and standards utilised by the Appellant were incorrect, and even by its own calculations are still above the appropriate DoH guidelines. No evidence was provided to negate the considerable amount of ACM found by ACE Environmental, or observed by City of Cockburn or DEC. No supporting evidence was provided to show that the ACE report was erroneous or that the source of ACM tested was not from the site.