

Contaminated sites New laws for Western Australia

Certificates of Contamination Audit

Unlike other States, the Western Australian State Government will provide final 'sign-off' or certification of the contamination status of sites and the types of land use that they are suitable for.

Certificates of Contamination Audit will provide certainty when land is sold or transferred, and can also be used to confirm that clean up has been successful.

If DEC overlooks contamination when issuing a Certificate of Contamination Audit, the State Government will be liable for any clean up that is necessary as a result of that error.

Protection for 'innocent' land owners

The CS Act provides some protection for 'innocent' landowners – people who purchased contaminated land before the legislation became effective and who did not know, or suspect, that it was contaminated when they bought it.

When the legislation commences, land owners who believe they are 'innocent' will have two years to submit a Disclosure Statement, providing details of the contamination.

If, after considering this information, the Contaminated Sites Committee agrees that the land owner is 'innocent', he or she will be issued with an Exemption Certificate, and will not be responsible for any clean up that may be required.



Appeals

The Contaminated Sites Committee is a statutory committee comprised of environmental and legal experts, tasked with determining who is responsible for remediating sites and deciding appeal outcomes.

When the Committee determines appeals against decisions made by the CEO of DEC (on classifications and regulatory notices), their decision is final.

Decisions on responsibility for remediation and Exemption Certificates made by the Committee are appealable to the Supreme Court on points of law only.

Other provisions include:

- New powers for DEC to issue Regulatory Notices requiring investigation or clean up of a site, where appropriate action is not being taken voluntarily.
- Accreditation of Contaminated Sites Auditors (similar to the system used in Victoria and New South Wales).
- Protection for whistleblowers and penalties for providing false or misleading information.

Further information:

Contact the DEC Contaminated Sites Section on 1300 762 982 or by mail:

Department of Environment
and Conservation
Locked Bag 104
Bentley Delivery Centre WA 6983

DEC has also published a series of administrative and technical guidelines to assist with the assessment, management and remediation of contaminated sites in Western Australia. These guidelines and associated fact sheets are available on the DEC website, www.dec.wa.gov.au/contaminatedsites. Hard copies of the fact sheets are also available from the DEC Information Centre and from all regional DEC offices.



Department of
Environment and Conservation

The information contained in this brochure is general information only and not legal advice. Anyone with legal issues related to the *Contaminated Sites Act 2003* should seek professional legal advice.



The *Contaminated Sites Act 2003* (CS Act) passed through State Parliament in November 2003 and is the most progressive contaminated sites legislation in Australia. The CS Act is intended to complement, rather than duplicate, other legislation.

Until now, there has been a lack of information on the location of contaminated sites in WA. In cases where contamination was suspected, the State's powers were inadequate to enforce investigation and clean up. In general, if a site was found to be contaminated the current owner bore the cost and liability for clean up. The CS Act aims to remedy these deficiencies and provide transparency for current and future landowners.

This brochure summarises the key aspects of the new laws.

Definition of 'contaminated' and 'site'

A site is considered contaminated if it has 'a substance present ... 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'.

Site means an area of land, including underground water (groundwater) and surface water on the land.

Reporting of contaminated sites

In order to gather information on the location of contaminated sites, the CS Act introduces mandatory reporting of known or suspected contaminated sites by the following people:

- An owner or occupier;
- A person who caused, or contributed to, the contamination; and
- A contaminated sites auditor engaged to report on the site in accordance with the CS Act.

If these people fail to report sites they know or suspect to be contaminated, they will risk a fine of up to \$250 000. The maximum penalty for companies is \$1.25 million.

Other people may also voluntarily report sites which they know or suspect to be contaminated, but will not face penalties if they do not do so.

Anyone who reports a site maliciously, and without reasonable grounds to suspect that it is contaminated, risks a fine of up to \$250 000.

Classification of sites

The Department of Environment and Conservation (DEC) will classify sites reported to it, based on the risk the sites pose to human health and the environment. The CS Act introduces seven classifications:

- Report not substantiated
- Possibly contaminated – investigation required
- Not contaminated – unrestricted use
- Contaminated – restricted use*
- Contaminated – remediation required*
- Remediated for restricted use*
- Decontaminated

The Contaminated Sites Database, located at www.dec.wa.gov.au/contaminatedsites, will include information on sites classified as 'contaminated – remediation required', 'contaminated – restricted use' and 'remediated for restricted use'. Access to this database is available free of charge.

DEC will keep records of sites in the four remaining classifications, 'report not substantiated', 'possibly contaminated – investigation required', 'decontaminated' and 'not contaminated – unrestricted use'. Information (in the form of a 'summary of records') associated with these classifications can only be accessed by submitting a written request to DEC and paying the prescribed fee.



Memorials will be registered on the titles of sites classified 'contaminated', 'restricted use' (marked *) or 'possibly contaminated – investigation required'.

The owners of sites classified as 'contaminated' or 'restricted use' (marked*) will be obliged to disclose information on the contamination to anyone intending to purchase, lease or take a mortgage on the site, before the transaction is finalised.

Responsibility for remediation

Only sites classified as 'contaminated – remediation required' have to be cleaned up. The CS Act establishes a hierarchy for assigning responsibility of remediation, and allows for the transfer of that responsibility.

The Contaminated Sites Committee can determine who is responsible for the clean up of a site in cases where there is a dispute.

