



Site classifications and appeals

Purpose

This fact sheet is designed to provide targeted information on contaminated site classifications and appeals in Western Australia.

Introduction

The *Contaminated Sites Act 2003* (the Act) was introduced to identify, record, manage and clean up contamination. Under the Act, known or suspected contaminated sites must be reported to the Department of Environment Regulation (DER), investigated and, if necessary, cleaned up (remediated).

Investigating and cleaning up contaminated sites is, in most cases, the responsibility of the polluter or current site owner. DER administers and enforces the Act which includes classifying sites (in consultation with the Department of Health) and making information on contaminated sites available to the public.

Site classifications – what do they mean?

A site classification is a description assigned to an area of land that has been reported to the DER under the Act, as a site that is known or suspected to be contaminated.

Contaminated – in relation to land, water or a site, means having 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 any environmental value.

DER can allocate any one of seven possible classifications to sites:

1. **Contaminated – remediation required.** The site is contaminated and needs to be investigated and cleaned up to ensure it does not present a risk to human health or the environment. This classification will remain until remediation is complete.
2. **Contaminated – restricted use.** The site is contaminated but suitable for limited uses (e.g. the site may be suitable for commercial use, but not residential use; or for residential use provided groundwater bores are not used and soil is not accessed).
3. **Remediated for restricted use.** The site was contaminated but has been cleaned up to a standard where it is suitable for limited uses (e.g. the site may be suitable for an apartment block, but not for a kindergarten).
4. **Possibly contaminated – investigation required.** There are grounds to indicate soil, groundwater and/or surface water at the site may be contaminated but further inquiry is needed to confirm or dismiss the possibility of contamination.
5. **Decontaminated.** The site has been remediated and is suitable for all uses. It does not pose a risk to the environment or human health.
6. **Not contaminated – unrestricted use.** After investigation, no contamination was found at the site.
7. **Report not substantiated.** There is not enough information to indicate that the site could be contaminated.

According to the Act: ‘remediation’ in respect of a site that is contaminated includes –

- (a) the attempted restoration of the site to the state it was in before the contamination occurred;
- (b) the restriction, or prohibition, of access to, or use of, the site;
- (c) the removal, destruction, reduction, containment or dispersal of the substance causing the contamination, or the reduction or mitigation of the effect of the substance;
- (d) the protection of human health, the environment or any environmental value from the contamination.

How are sites classified?

All classification decisions are based on a thorough review and assessment of all information available to DER at the time and take into account relevant guidelines for site investigations and management.

Notification of classification

The Act requires DER to notify the following people of a site’s classification:

- site owner;
- site occupier;
- relevant public authority, for example, Water Corporation, local government authority;
- person who reported the site; and
- those responsible for remediating the site (where classified *contaminated – remediation required*).

Can I appeal?

Under the Act, you may be able to appeal against a decision. Depending on the nature of the case, your appeal will be considered by either the Contaminated Sites Committee or on a point of law only to the Supreme Court.

You can appeal:

- a site classification assigned by DER;
- an investigation or clean up notice issued by DER;
- a responsibility for remediation determination by the Contaminated Sites Committee; and
- a notice relating to the recovery of costs incurred by the State on an orphan site (given to the person who would have been responsible for remediation).

You cannot appeal against receiving a hazard abatement notice. This notice addresses an immediate and serious risk to human health, the environment or any environmental value.

Contaminated Sites Committee

The [Contaminated Sites Committee](#) is an independent statutory body appointed by the Minister for Environment to:

- determine appeals against site classifications and regulatory notices;
- determine who is responsible for remediation; and
- decide the extent to which parties are responsible for remediation (more than one person may be responsible for remediating a site).

Who can appeal?

Depending on the nature of the classification, certain people can appeal against the classification to the [Contaminated Sites Committee](#) (see table overleaf). An appeal must include the reasons why the person lodging the appeal disagrees with the site classification and include any relevant supporting information.

Appeals against site classifications

To lodge an appeal against a site classification, you must:

- submit reasons why you disagree with assigned site classification; and
- include any relevant supporting information.

An appeal must be lodged with the Committee within 21 days (or timeframe specified in the notice of classification). The Committee's decision on appeals against site classifications is final.

Appeals against an investigation or clean-up notice

To lodge an appeal against an investigation or clean-up notice, you must:

- submit the details of the case and grounds for appeal to the Committee.

An appeal must be lodged within 21 days of receiving the notice. The Committee's decision on an appeal against a notice is final.

Requests for a decision on responsibility for remediation

Where responsibility for remediation is in question, the Committee can determine who must clean up the site and to what extent.

You can appeal the Committee's decision to the Supreme Court on a point of law only. An appeal to the Supreme Court must be made in accordance with the rules of the court and be within 21 days of receiving the Committee's decision.

There is a \$45 fee to appeal against a site classification, investigation or clean-up notice. The disputed decision, classification or notice requirement applies while you are waiting for the outcome of the appeal.

Note: Appeal timeframes can be quite long as there are often multiple rounds of consultation between parties before the Committee makes its final decision.

False or misleading information (s 94)

When reporting contamination, requesting information from DER, disclosing contamination under s 68 or providing information to the CEO or Contaminated Sites Committee, a person must not provide false or misleading information or fail to disclose all relevant information.

Maximum penalty: \$125,000.

Possible maximum daily penalty: \$25,000.

More information on the appeal process

See the [Contaminated Sites Committee's website](#).

Who can appeal?

Classification	Owner/occupier	Person responsible for remediation	Person who reported a suspected contaminated site
Contaminated – remediation required	Yes	Yes	
Contaminated – restricted use	Yes	Yes	
Remediated for restricted use	Yes	Yes	
Possibly contaminated – investigation required	Yes		
Decontaminated	Yes		
Not contaminated – unrestricted use	Yes		
Report not substantiated			Yes

More information

For advice on contaminated sites or related matters, please contact DER's **contaminated sites information line 1300 762 982** or email contaminated.sites@der.wa.gov.au

This document is available in alternative formats and other languages on request.

Related documents

Other fact sheets in this series:

1. Identifying and reporting contaminated sites
2. How to access information on contaminated sites
3. Seeking help from contaminated sites experts
5. Buyer beware – buying and selling contaminated land

Guidelines relating to investigating and managing contaminated sites are available at www.der.wa.gov.au/contaminatedsites

Legislation

This document is provided for guidance only. It should not be relied upon to address every aspect of the relevant legislation. The full text of the *Contaminated Sites Act 2003* is available electronically from the State Law Publisher website at www.slp.wa.gov.au

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Legal advice

The information provided to you by DER in relation to this matter does not constitute legal advice. Due to the range of legal issues potentially involved in this matter, DER recommends that you obtain independent legal advice.