



Lodging an appeal against an investigation or clean up notice

This information sheet provides a guide to persons who are, or who may be considering, lodging an appeal to the Contaminated Sites Committee, against the issue or a requirement of an investigation or clean up notice issued by the Department of Environment and Conservation (DEC), under the Contaminated Sites Act 2003 (the Act).

Background

The Act provides a regulatory framework for the identification, recording, classification, management and remediation of contaminated sites.

A site that is known or suspected of being contaminated is required to be reported to DEC by the owner or occupier of the site, the person that caused the contamination, or an auditor engaged to report on the site under the Act. When a site is reported, the Chief Executive Officer of DEC is required to review the report and classify the site based on the risk the site poses to human health, the environment or any environmental value. The Chief Executive Officer is empowered to issue statutory notices requiring investigation, hazard abatement or clean up of contaminated sites.

Under section 52 of the Act, eligible persons may appeal against the issue or a requirement of an investigation or clean up notice.

Who may lodge an appeal against an investigation or clean up notice?

Section 52 of the Act provides that:

- (1) Subject to subsection (5), a person on whom an investigation notice or a clean up notice is binding may appeal against a requirement of the notice.
- (2) Subject to subsection (3), a person may appeal against a decision of the CEO-
 - a. under section 42(1) to give the person a notice; or
 - b. under section 54(1)(d) that a notice is binding on the person.
- (3) A person –
 - a. who is an owner or occupier of a site to which a notice relates, other than an owner or occupier on whom a notice is binding as a result of a decision made under section 54(1)(d); or
 - b. who is responsible for remediation of a site to which a notice relates, may not appeal against a decision referred to in subsection (2).
- (4) Subsection (3)(b) does not affect the right of a person to appeal under section 40.
- (5) An appeal is to be brought, dealt with and determined in accordance with Part 8.

If you are unsure about your eligibility to appeal under the Act, you may wish to seek legal advice before proceeding with an action.



Format of the Appeal

Section 79 of the Act prescribes that an appeal under section 52 of the Act is instituted by lodging written notice of the appeal to the Committee setting out the grounds and facts on which the appellant relies.

For appeals under the Act to be accepted by the Committee, they must:

- be in writing;
- clearly identify the matter or decision being appealed;
- clearly set out the grounds and facts on which the appellant relies;
- be accompanied by the correct appeal fee as specified in section 65 of the Contaminated Sites Regulations 2006;
- be signed by the appellant; and
- be lodged at the Office of the Contaminated Sites Committee within the time prescribed under section 79 of the Act.

Fee payable

If you appeal to the Contaminated Sites Committee against an investigation or clean up notice, you are required to pay a fee at the time of lodging your appeal with the Office of the Contaminated Sites Committee. The fee is a prescribed fee under section 65 of the Contaminated Sites Regulations. Currently the prescribed fee is \$45.

The Committee may decide to waive or reduce a fee if paying that fee would cause you financial hardship. If you wish to apply for a fee to be waived or reduced, you will need to provide a written statement to the Committee, along with your appeal, setting out the reasons why the fee should be waived or reduced.

Time limit for lodging an appeal

Written notice of an appeal under section 52 is to be lodged within 21 days after the day on which the appellant is given the notice or certificate by the Department of Environment and Conservation, or such later time as may be specified in that notice or certificate, or 21 days after the day on which a notice becomes binding on the person, in accordance with sections 48 or 54 of the Act.

The Committee's decision

The Committee will give written notice of its decision, and reasons for its decision, to the appellant, any other affected persons and the Chief Executive Officer of DEC. The Chief Executive Officer is required under the Act to give effect to the outcome of an appeal.

Under the Act, the decision of the Committee in relation to appeals against investigation and clean up notices is final and without appeal.



Other information sheets

1. Role of the Contaminated Sites Committee
2. Lodging an appeal against a site classification
4. Lodging an application to determine responsibility for remediation
5. Lodging an application for an exemption certificate (disclosure statement)

Contact details

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