



Lodging an application to determine responsibility for remediation

This information sheet provides a guide to persons who are, or who may be considering, lodging an application with the Contaminated Sites Committee, seeking a decision as to responsibility for remediation of a contaminated site, 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 the Department of Environment and Conservation (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. Schedule 1 of the Act provides for seven categories of site classification.

Section 23 of the Act specifies that the only sites that are required to be remediated under the Act are sites classified as contaminated – remediation required. Section 24 of the Act stipulates a hierarchy of responsibility for the remediation of contaminated sites. Section 36 empowers the Committee to make decisions as to responsibility for remediation.

Who may lodge an application to determine responsibility for remediation?

Section 36(2) of the Act provides that the Committee is to make a decision as to responsibility for remediation if it is requested to do so by “an interested person”, or on its own initiative.

Regulation 23 of the Contaminated Sites Regulations 2006 prescribes an “interested person” as follows:

“For the purposes of the Act section 36(3) the following are prescribed as interested persons in relation to a site –

- (a) a person who is an owner or occupier of the land that comprises all, or part, of the site;
- (b) a person who was an owner or occupier of land that comprises all, or part, of the site and in respect of whom there are reasonable grounds to suspect may have caused, or contributed to, the contamination of the site;
- (c) a person who is, or was, an owner or occupier of land adjoining land that comprises all, or part, of the site and in respect of whom there are grounds to suspect may have caused, or contributed to, the contamination of the site;
- (d) a person who is a mortgagee of land that comprises all, or part, of the site;
- (e) a person given notice under the Act section 42(1) in relation to the site;
- (f) the CEO;
- (g) a person who, in the opinion of the CEO, has a particular interest in the site and has been approved in writing by the CEO for the purposes of this paragraph.”

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



Format of the Application

Section 24 of the Act prescribes that an application to the Committee to make a decision as to responsibility for remediation of a site under section 36(2)(a) is to be made in writing in a form approved by the Committee

For applications to determine responsibility for remediation to be accepted by the Committee, they must:

- be in writing;
- stipulate the name and address of the applicant;
- clearly describe the location and the extent of the site sufficient to identify it;
- describe the applicant's interest in the site (to be eligible to make an application to determine responsibility for remediation under the Act, a person must be an interested person in relation to the site, as prescribed in regulation 23 of the Contaminated Sites Regulations 2006);
- clearly set out the grounds and facts on which the applicant relies to establish that he or she is or is not responsible for remediation of the site;
- provide any other information or documents that the person believes may be relevant to responsibility for remediation of the site, or any part of the site, in the possession of, or available to, the applicant;
- include a certified copy of, the certificate, or certificates, of title for all of the land that comprises all, or part of the site;
- be signed by the appellant; and
- be lodged at the Office of the Contaminated Sites Committee.

The Committee's decision

Prior to making a decision about a person's responsibility for remediation of a site, the Committee will provide that person with written notice of its proposed decision. The person will be given an opportunity to make a submission to the Committee if he or she disagrees with the proposed decision. The Committee will specify the timeframe within which a submission is required to be lodged.

The Committee will give written notice and reasons for its decision to each person the Committee has decided is responsible for remediation, any other affected persons and the Chief Executive Officer of DEC.

A person who has been given notice of a decision in respect of responsibility for remediation may appeal against a decision of the Committee to the Supreme Court, but only on a question of law and within 21 days after the notice was given, or such later time as may be specified by the Supreme Court.

Other information sheets

1. Role of the Contaminated Sites Committee
2. Lodging an appeal against a site classification
3. Lodging an appeal against an investigation or clean up notice
5. Lodging an application for an exemption certificate (disclosure statement)



Contaminated Sites Committee

Contact details

The Office of the Contaminated Sites Committee
Level 22 Forrest Centre
221 St Georges Terrace
PERTH WA 6000

E-mail: consitescommittee@dec.wa.gov.au
Website: www.consitescommittee.wa.gov.au

Phone: (08) 6467 5201
Fax: (08) 6467 5209