



Contaminated sites fact sheet 5

Buying and selling contaminated land

October 2024

Purpose

This fact sheet is designed to provide targeted information on buying and selling contaminated land in WA.

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 Water and Environmental Regulation (the department), 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. The department administers and enforces the Act which includes classifying sites (in consultation with the Department of Health) and making information on reported and/or classified sites available to the public.

It is not unusual for residential subdivisions to be built on land that was previously used for potentially contaminating activities, such as service stations, heavy industry, market gardens and landfills.

People buying, selling or leasing land need to know if contamination or possible contamination has been identified for the land being purchased. It is also important to know if the land is suitable for the proposed land use and what restrictions are in place (e.g. restriction on groundwater use) and be aware of their obligations under the Act.

Failing to recognise that land is contaminated can have long-term consequences for both the buyer and seller including potential prosecution and obligation to pay for remediation of the land in the future.

Thorough due diligence

Investigating and cleaning up contaminated sites can be expensive. Prospective purchasers should be aware of the risk of potential contamination and carry out careful, thorough pre-purchase enquiries (due diligence).

When buying, selling or leasing property, you and/or your real estate professional should check memorials on the certificate of title and search published contaminated sites information as part of any routine, pre-purchase due diligence enquiry.

Recommended steps to take before you buy

1. Search the department records – check the contaminated sites database and submit a Form 2 to the department to find out if the property you are purchasing has been reported and/or classified as a known or suspected contaminated site. Both searches are required as not all sites are listed on the contaminated sites database. Check the certificate of title as some site classifications require a memorial to be placed on the certificate of title. Fact sheet 2 describes how to access information on classified sites.
2. Find out as much as you can about the property's history. How was the land used in the past?
 - Ask the real estate agent/owner if the site has a history of contamination or if contaminated sites investigations have been carried out.
 - Check local government records, historic certificates of title and aerial photographs via [Landgate](#).
 - Talk to neighbours – they may know the history of the property.



3. Search for information on properties nearby. Contamination on adjacent or surrounding sites may affect your property – for example, is there a service station or landfill nearby?
4. If you need a formal, thorough investigation for potential contamination, consider engaging an environmental consultant to carry out a preliminary site investigation (PSI). Fact sheet 3 provides information about seeking help from environmental consultants.

Potentially contaminating activities

The department's [guideline](#) includes a quick reference list of activities, industries and land uses which could cause contamination. This list is not exhaustive and you should also consider surrounding and historical uses of the land which may have resulted in contamination at the property.

Who is responsible for remediation or cleaning up contamination?

If you are buying, selling or leasing contaminated land in WA, you need to be aware of your obligations under the Act. It provides a hierarchy of responsibility for remediation and associated costs for investigating and cleaning up contamination. Under section 24 of the Act, a person may be responsible for remediation of a site:

- a) if they have caused or contributed to the contamination of the site
- b) if they are an owner or occupier of the site who has changed, or proposes to change, the use to which land that comprises all or part of the site is put
- c) if they are an owner of the site, or of a source site.

The term 'owner' in the Act is defined to include a mortgagee in possession.

Under the Act, the person responsible for the remediation costs is responsible for cleaning up the land and water to make it safe and suitable for its current or zoned use.

However, if you intend to change the land use, for example, develop a market garden into a residential housing estate (which is a land use that requires the land to be cleaned up to a higher

standard), it is the owner/occupier changing the land use who is responsible for any additional clean-up costs to ensure the site is fit for the new purpose.

Pre-sale disclosure requirements

Some site classifications require disclosure to potential new owners/occupiers when selling or leasing property. Disclosure is required for sites classified:

- *contaminated – remediation required*
- *contaminated – restricted use*
- *remediated for restricted use.*

Site owners are required to complete and sign a [Form 6 - Land owner's disclosure before completion of land transaction](#) and provide copies to a potential new owner, mortgagees or lessees and the department at least 14 days before transactions are completed – for example, 14 days before the settlement date for a sale or date the mortgage is registered or lease is signed/commences. We suggest you also include a copy of the Basic Summary of Records which can be downloaded from the [contaminated sites database](#). You must also disclose if a regulatory notice such as an investigation or clean-up notice has been served on your property (the Basic Summary of Records will provide this information). There is not a mandatory requirement for the potential new owner, mortgagee or lessee to sign the Form 6.

If you fail to disclose this information, you are committing an offence and a penalty may apply.

Maximum Penalty: \$125,000

Possible maximum daily penalty: \$25,000

Although it is not mandatory to disclose information on sites classified *possibly contaminated – investigation required*, the memorial on the certificate of title will alert potential purchasers of the site's classification during the land transaction process. The department recommends that sellers voluntarily provide any information relevant to a property's contamination status such as the Basic Summary of Records or copies of any environmental investigation reports.

False or misleading information (section 94 of the Act)

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

Maximum penalty: \$125,000

Possible maximum daily penalty: \$25,000

More information

For advice on contaminated sites, please contact the department's contaminated sites information line on 1300 762 982 or email info@dwer.wa.gov.au.

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

Related documents

[Find additional publications](#) about contaminated sites and related fact sheets, or contact the department on 1300 762 982.

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 from the [Department of Justice](#).

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Legal advice

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