



Contaminated sites fact sheet 4

Site classifications and appeals

October 2024

Purpose

This fact sheet is designed to provide targeted information on contaminated site classifications and appeals 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 contamination must be reported to the Department of Water and Environment 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 contaminated sites available to the public.

What do site classifications mean?

A site classification is a description assigned to an area of land that has been reported to the department 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.

Fact sheet 1 provides further information on what 'contaminated' means, including where the above definition does not apply.

The department can allocate 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 (which may mean that the site is considered suitable for all land uses or specific uses). This classification requires a memorial to be placed on the certificate of title.
- 2. Contaminated – restricted use.** The site is contaminated but suitable for specific uses (e.g. the site may be suitable for commercial use, but not residential use; for residential use provided groundwater bores are not used and/or soil is not accessed; or the site may be suitable for an apartment block, but not for a kindergarten). This classification requires a memorial to be placed on the certificate of title.
- 3. Remediated for restricted use.** The site was contaminated but has been cleaned up to a standard where it is suitable for specific uses (e.g. the site may be suitable for commercial use, but not residential use; for residential use provided groundwater bores are not used and/or soil is not accessed; or the site may be suitable for an apartment block, but not for a kindergarten). This classification requires a memorial to be placed on the certificate of title.
- 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. Alternatively, some contamination may have been found but further inquiry is needed to confirm its full extent. This classification requires a memorial to be placed on the certificate of title.



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 (e.g. there is no secondary evidence of possible contamination; a spill has occurred which was immediately cleaned up so that no contamination remains; or minor quantities of asbestos-containing materials were encountered but have been removed from the site).

Fact sheet 2 explains how to obtain information on sites with the above classifications including for which classifications information is available on the [publicly available database](#).

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.

Remediation can involve active clean-up measures such as treating, removing or containing contamination, or management strategies such as restriction of access and/or administrative controls to protect site workers.

How are sites classified?

All classification decisions are based on a thorough review and assessment of all information available to the department at the time and consider

relevant guidelines for site investigations and management.

Classifications are allocated based on the status of a site at a point in time. This means that even where a site has been classified as *not contaminated – restricted use* or *decontaminated*, if land continues to be subject to potentially contaminating activity or if an incident causing contamination occurs, further investigation may be required.

Notice of classification

The Act requires the department 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
- those responsible for remediating the site (where classified *contaminated – remediation required*).

This notification takes the form of a notice of classification.

Notices under the Act

Where appropriate action is not being taken, the department has the option to give a notice under Part 4 of the Act. There are three types of notices:

- Investigation notice – where appropriate action to investigate, monitor or assess the site is not being taken
- Clean-up notice – for a site classified *contaminated – remediation required* where appropriate action to remediate the site is not being taken
- Hazard abatement notice – where there is an immediate and serious risk of harm to human health, the environment or any environmental value.

A notice of classification is not a notice under Part 4 of the Act.

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 the Supreme Court. An appeal can only be considered by the Supreme Court on a point of law.

You can appeal:

- a site classification assigned by the department
- an investigation notice or clean-up notice issued by the department
- a responsibility for remediation determination by the Contaminated Sites Committee
- a notice relating to the recovery of costs incurred by the state on an orphan site (given to a 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
- 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 below). An appeal must include the reasons the person lodging the appeal disagrees with the site classification and include any relevant supporting information.

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

Appeals against site classifications

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

- submit the reasons you disagree with the assigned site classification
- include any relevant supporting information.

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

There is a \$66 fee to appeal against a site classification. The disputed classification applies while you are waiting for the outcome of the appeal.

Appeals against an investigation or clean-up notice

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

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

There is a \$66 fee to appeal against an investigation or clean-up notice. The requirements of an investigation notice or clean-up notice are suspended while an appeal is being considered.

Requests for a decision on responsibility for remediation

Where a site is classified as *contaminated* – *remediation required* and responsibility for remediation is in question, the Contaminated Sites 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.

The disputed decision 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 Contaminated Sites Committee makes its final decision.

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

Disclaimer

This document has been published by the Department of Water and Environmental Regulation. Any representation, statement, opinion or advice expressed or implied in this publication is made in good faith and on the basis that the Department of Water and Environmental Regulation and its employees are not liable for any damage or loss whatsoever which may occur as a result of action taken or not taken, as the case may be in respect of any representation, statement, opinion or advice referred to herein. Professional advice should be obtained before applying the information contained in this document to particular circumstances. You can also request it in alternative formats such as audio, large print, or Braille.

Limitation

The Western Australian Government is committed to providing quality information to the community and makes every attempt to ensure accuracy, currency and reliability of the data contained in this document. However, changes in circumstances after the time of publication may impact on the quality of information. Confirmation of the information may be sought from the relevant originating bodies or the department providing the information. The department and the State of Western Australia reserve the right to amend the content of this document at any time without notice.

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.

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](#).

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](#).