

The *Contaminated Sites Act 2003* is the most progressive contaminated sites legislation in Australia. It builds on experience gained in managing contaminated sites in other States and further develops some of their concepts.

Until now, there has been a lack of information on the location of contaminated sites in WA. In cases where contamination was suspected, the State's powers were inadequate to enforce investigation and clean up. In general, if a site was found to be contaminated the current owner bore the cost and liability for clean up. The CS Act aims to remedy these issues.

The *Contaminated Sites Act 2003* passed through State Parliament in November 2003 and is one of a number of major reforms to environmental law in Western Australia. The CS Act is intended to complement, rather than duplicate, other legislation. The need for specific legislation to address the management and transfer of information on contaminated sites in Western Australia was first identified in the early 1990s.

A public discussion paper was released in 1995, describing the limitations of the current legal framework, and proposing a new system for managing contaminated sites. In 1997 a public position paper was drafted, setting out the proposed regulatory and administrative arrangements for managing contaminated sites.

The position paper and comments received were used to develop the legislation and administrative procedures. A draft of the *Contaminated Sites Bill* was released for public comment in 2000.

This brochure summarises the key aspects of the new laws.

Definition of 'contaminated' and 'site'

A site is considered *contaminated* if it has 'a substance present ... 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'.

Site means an area of land, including underground water under the land and surface water on or around the land.

Reporting of contaminated sites

In order to gather information on the location of contaminated sites, the CS Act introduces mandatory reporting of known or suspected contaminated sites by the following people:

- ❖ An owner or occupier;
- ❖ A person who caused, or contributed to, the contamination; and
- ❖ A contaminated sites auditor engaged to report on the site in accordance with the CS Act.

If these people fail to report sites they know or suspect to be contaminated, they will risk a fine of up to \$250 000. For companies the maximum penalty is \$1.25 million.

Other people may also voluntarily report sites which they know or suspect to be contaminated, but will **not** face penalties if they do not do so.

Anyone who reports a site maliciously, or without reasonable grounds to suspect that it is contaminated, risks a fine of up to \$250 000.

Classification of sites

The Department of Environment will classify sites reported to it, based on the risk the sites pose to human health and the environment. The CS Act introduces seven classifications:

- ❖ Report not substantiated
- ❖ Possibly contaminated – investigation required
- ❖ Not contaminated – unrestricted use
- ❖ Contaminated – restricted use*
- ❖ Contaminated – remediation required*
- ❖ Remediated for restricted use*
- ❖ Decontaminated

Information on contaminated sites

The CS Act introduces a number of mechanisms for providing and transferring information on contaminated sites:

- ❖ Information on sites classified as 'contaminated' or 'restricted use' (marked * in the list above) will be available to the public free of charge, probably through the Internet.
- ❖ Information (in the form of a 'summary of records') on other sites reported to the Department of Environment will be available on written application and payment of a fee.
- ❖ Memorials will be registered on the titles of sites classified 'contaminated', 'restricted use' (marked *) or 'possibly contaminated – investigation required'.
- ❖ The owners of sites classified as 'contaminated' or 'restricted use' (marked *) will be obliged to disclose information on the contamination to anyone intending to purchase, lease or take a mortgage on the site, before the transaction is finalised.

Responsibility for remediation

Only sites classified as 'contaminated – remediation required' have to be cleaned up. The CS Act establishes a hierarchy for assigning responsibility of remediation, and allows for the transfer of that responsibility.

The Contaminated Sites Committee will determine who is responsible for the clean up of a site in cases where there is a dispute.

Certificates of Contamination Audit

Unlike other States, the Western Australian State Government will provide final 'sign-off' or certification of the contamination status of sites and the types of land use that they are suitable for.

Certificates of Contamination Audit will provide certainty when land is sold or transferred, and can also be used to confirm that clean up has been successful.

If the Department of Environment overlooks contamination when issuing a Certificate of Contamination Audit, the State Government will be liable for any clean up that is necessary as a result of that error.

Protection for 'innocent' land owners

The CS Act provides some protection for 'innocent' landowners – people who purchased contaminated land before the legislation became effective and who did not know, or suspect, that it was contaminated when they bought it.

When the legislation commences, land owners who believe they are 'innocent' will have 2 years to submit

a Disclosure Statement, providing details of the contamination.

If, after considering this information, the Contaminated Sites Committee agrees that the land owner is 'innocent', he or she will be issued with an Exemption Certificate, and will not be responsible for any clean up that may be required.

Appeals

The Contaminated Sites Committee will determine appeals against decisions made by the CEO of the Department of Environment (on classifications and regulatory notices) and their decision is final.

Decisions on responsibility for remediation and Exemption Certificates made by the Contaminated Sites Committee are appealable to the Supreme Court on points of law only.

Other provisions include:

- ❖ The power to issue Regulatory Notices requiring investigation or clean up of a site, where appropriate action is not being taken voluntarily.
- ❖ Accreditation of Contaminated Sites Auditors (similar to the system used in Victoria and New South Wales).
- ❖ Protection for whistleblowers and penalties for providing false or misleading information.

Further information:

Contact the Contaminated Sites Section in the Department of Environment on (08) 9222 7000 or visit <www.environment.wa.gov.au>.



Department of Environment
Government of Western Australia

Contaminated sites

New laws for Western Australia

Contaminated Sites Act 2003



The information contained in this brochure is general information only and not legal advice. Anyone with legal issues related to the Contaminated Sites Act 2003 should seek professional legal advice.