



Government of Western Australia
Department of Environment and Conservation

Your ref:
Our ref: DEC14774
Enquiries: Registrar
Phono: 1300 762982
Fax:
Email:

DATE: 21/4/10
RECORD: _____
FILE: ICR10383

Chief Executive Officer
Shire of Jerramungup
PO Box 92
Jerramungup WA 6337

Dear Sir/Madam

New legislation is in place to record and manage contaminated sites in Western Australia, in order to protect people's health and the environment. Please note that contamination does not necessarily mean that an area is unsafe to live or work in – for example, it may be limited to groundwater, and only becomes an issue to be managed if a groundwater bore was being considered.

The *Contaminated Sites Act 2003*, which came into effect on 1 December 2006, requires the Department of Environment and Conservation (DEC) to classify sites reported to it and inform a number of people, including owners and occupiers, so they can make informed decisions about the site.

Set out below in this letter is the formal notice of a classification of a known or suspected contaminated site in which you have an interest. The notice explains why the site received the classification, any restrictions on the use of the site, and how you can appeal the classification if you believe it is incorrect. In some cases, this notice may include a list of lots in addition to the one in which you have an interest.

Also attached is a copy of the brochure *Contaminated sites: New laws for Western Australia*, which has more information about the new Act. If you have any queries, please contact DEC's Contaminated Sites Section on 1300 762 982.

NOTICE OF A CLASSIFICATION OF A KNOWN OR SUSPECTED CONTAMINATED SITE GIVEN UNDER SECTION 15 OF THE *CONTAMINATED SITES ACT 2003*

The site detailed below, consisting of 1 parcel(s) of land, was reported to the CEO of DEC as a known or suspected contaminated site and has been classified under the Act:

- Parcel 31866 = Unallocated Crown Land, off Needilup Road, Needilup WA 6336 (Landgate PIN 644023, centre co-ordinate Latitude -33.9482; Longitude 118.7694)

This notification is being sent to you in accordance with section 15(1) of the Act on the grounds that you, as the recipient, are one or more of the following:

- (a) owner of the site;
- (b) occupier of the site;
- (c) relevant public authority;

DIRECTOR GENERAL AND ENVIRONMENTAL SERVICES DIVISIONS: The Atrium, 168 St Georges Terrace, Perth, Western Australia 6000
Phono: (08) 6467 5000 Fax: (08) 6467 5562 TTY: 1800 555 630

PARKS AND CONSERVATION SERVICES DIVISIONS: Exoculivo: Corner of Australia II Drive and Hackett Drive, Crawley, Western Australia 6009
Phono: (08) 9442 0300 Fax: (08) 9386 1578 Operations: 17 Dick Perry Avenue, Technology Park, Kensington, Western Australia 6151
Phono: (08) 9219 8000 Fax: (08) 9334 0498 TTY: 9334 0546

POSTAL ADDRESS FOR ALL DIVISIONS: Locked Bag 104, Bentley Delivery Centre, Western Australia 6983
www.doc.wa.gov.au
wa.gov.au

- (d) person in the CEO's opinion there is particular reason to notify;
- (e) person who made the report under section 11 or 12; and
- (f) person in the CEO's opinion who may be responsible for remediation of the site classified as *contaminated – remediation required*.

Site Classification

The Site is classified as the following category:

Category of Site classification: Possibly contaminated - investigation required

Date of site classification: 16/04/2010

Reasons for classification: This Site was reported to the Department of Environment and Conservation (DEC) as per reporting obligations under section 11 of the 'Contaminated Sites Act 2003', which commenced on 1 December 2006. The Site classification is based on information submitted to DEC by March 2010.

This Site was reported after a site visit, in 2009 and 2010 where it was apparent that the Site was being used as an unauthorised landfill, a land use that has the potential to cause contamination, as specified in the guideline 'Potentially Contaminating Activities, Industries and Landuses' (Department of Environment, 2004).

Photographic evidence indicates that uncontrolled fill has been dumped in the area, including, but not limited to: drums; potentially asbestos containing material; municipal waste; and tyres. Some of the uncontrolled fill is contained within trenches, and some trenches may already have been covered by sand.

No soil or groundwater investigations have been carried out, and the quality of soil and groundwater beneath the Site are unknown.

As there are grounds to indicate possible contamination of the Site, and since a suitable investigation of soil and groundwater and a risk assessment to determine the risk to human health, the environment, or any environmental value has not been carried out, further works are required to determine the contamination status of the Site. The Site is therefore classified as 'possibly contaminated - investigation required'.

A memorial stating the Site's classification has been placed on the Certificate of Title and will trigger the need for investigation and risk assessment, should the Site be proposed for a more sensitive land use.

DEC, in consultation with the Department of Health, has classified this Site based on the information available to DEC at the time of classification. It is acknowledged that the contamination status of the Site may have changed since the information was collated and/or submitted to DEC, and as such, the usefulness of this information may be limited.

In accordance with Department of Health advice, if groundwater is being or is proposed to be abstracted, DEC recommends that analytical testing should be carried out to determine whether the groundwater is suitable for its intended use.

The nature and extent of contamination and any restrictions on the use of the land, if applicable, are listed in Attachment A.

Information in relation to the classification of the Site will be available to the public through a request for a summary of records on written application and payment of a prescribed fee from the Reported Sites Register.

In some instances DEC has had to classify sites based on historical information. It should be noted that a site may be re-classified at any stage to better reflect the current status when additional information becomes available, for example where a new investigation or remediation report completed in accordance with DEC's *Contaminated Sites Management Series* of guidelines, is submitted to DEC. The current site classification is the classification most recently conferred on the Site.

Memorials

In accordance with section 58(1) of the Act, DEC will lodge a memorial against the Certificate(s) of Title relating to the Site, with Landgate, which will record the site classification. The parcel(s) that do not have a registration number or certificate of title will not have a memorial lodged against them until a certificate of title has been created. Confirmation of the lodgement of the memorial(s) will be forwarded to the following people once completed:

- (a) each owner,
- (b) the Western Australian Planning Commission;
- (c) the CEO of the Department of Health;
- (d) the Local Government Authority;
- (e) the relevant scheme authority.

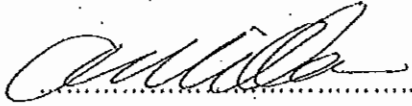
Given that memorial(s) will be lodged against the Site, the Western Australian Planning Commission (WAPC) may not approve the subdivision of the land under Section 135 of the *Planning and Development Act 2005*, or the amalgamation of that land with any other land without seeking, and taking into account, the advice of DEC as to the suitability of the land for subdivision or amalgamation. Furthermore, a responsible authority (e.g. Local Government Authorities) may not grant approval under a scheme for any proposed development of the land without seeking, and taking into account, advice from DEC as to the suitability of the proposed development.

Appealing the Site classification

All site classifications given by DEC are appealable. However, only certain people can lodge a valid appeal depending on the classification category as detailed in the attached Fact Sheet. Appeals need to be lodged in writing with the Contaminated Sites Committee at Level 22, The Forrest Centre, 221 St Georges Terrace, Perth WA 6000, within 45 days of being given this notification. The appeal should set out the appellant's relationship to the Site, and must include the grounds and facts upon which it is based.

For further information on all aspects of site classification, please refer to the *Site Classifications – What do they Mean?* Fact Sheet and *Site Classification Scheme 2006* (guideline) which are available from DEC's website www.dec.wa.gov.au/contaminatedsites or by contacting the Registrar on 1300 762 982.

Yours sincerely



Andrew Miller
SECTION MANAGER
CONTAMINATED SITES BRANCH
Delegated Officer under section 91
of the *Contaminated Sites Act 2003*

19/04/2010

Enc. Attachment A – Nature and Extent and Restrictions on Use.

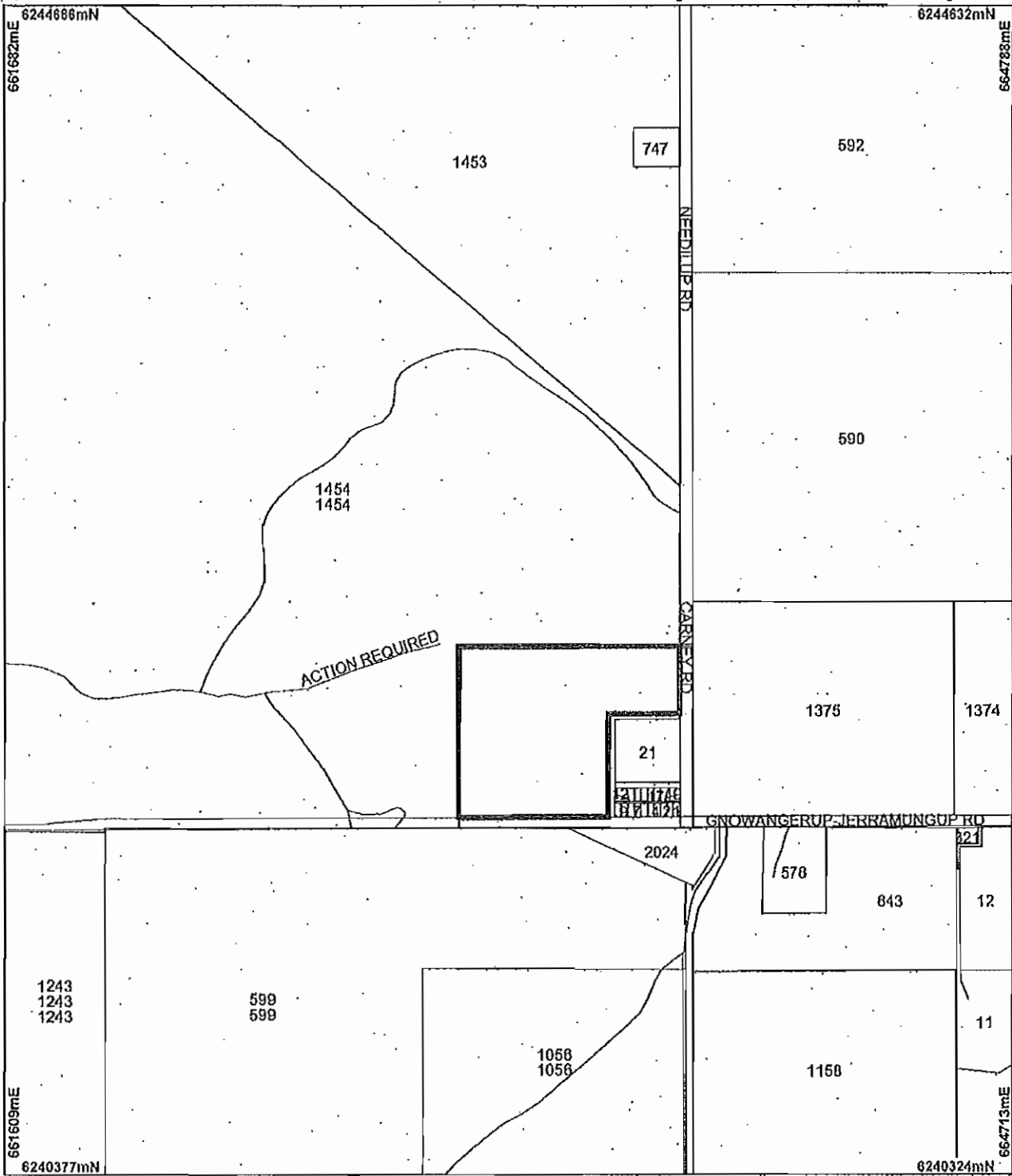
ATTACHMENT A – Nature and Extent and Restrictions on Use

- Parcel 31866 = Unallocated Crown Land, off Needilup Road, Needilup WA 6336 (Landgate PIN 644023, centre co-ordinate Latitude -33.9482; Longitude 118.7694)

Nature and Extent: The north-east portion of the Site has been used for uncontrolled landfill. No investigations have been conducted.

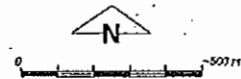
Restriction on Use: Please refer to Reasons for Classification for further information on the contamination present at the Site.

Unallocated Crown Land, off Needilup Road, Needilup



LEGEND

-  Road Centrelines
-  Cadastral



Scale 1:19743
(Approximate when reproduced at A4)

Geocentric Datum Australia 1994

Note: the data in this map have not been projected. This may result in geometric distortion or measurement inaccuracies.

Prepared by:
Prepared for:
Date: 16/04/2010 11:30:54 AM

Information derived from this map should be confirmed with the data custodian acknowledged by the agency acronym in the legend.



Department of
Environment and Conservation

Our environment, our future
WA Govt Copyright 2002

The Contaminated Sites Act 2003 (CS Act) passed through State Parliament in November 2003 and is the most progressive contaminated sites legislation in Australia. The CS Act is intended to complement, rather than duplicate, other legislation.

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 deficiencies and provide transparency for current and future landowners.

This brochure summarises the key aspects of the new laws.

CONTAMINATED SITES NEW LAWS FOR WESTERN AUSTRALIA

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 (groundwater) and surface water on 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. The maximum penalty for companies 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, and without reasonable grounds to suspect that it is contaminated, risks a fine of up to \$250 000.

Classification of sites

The Department of Environment and Conservation (DEC) 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

The Contaminated Sites Database, located at www.dec.wa.gov.au/contaminatedsites, will include information on sites classified as 'contaminated - remediation required', 'contaminated - restricted use' and 'remediated for restricted use'. Access to this database is available free of charge.

DEC will keep records of sites in the four remaining classifications, 'report not substantiated', 'possibly contaminated - investigation required', 'decontaminated' and 'not contaminated - unrestricted use'. Information (in the form of a 'summary of records') associated with these classifications can only be accessed by submitting a written request to DEC and paying the prescribed 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 can 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 DEC 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 two 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 is a statutory committee comprised of environmental and legal experts, tasked with determining who is responsible for remediating sites and deciding appeal outcomes.

When the Committee determines appeals against decisions made by the CEO of DEC (on classifications and regulatory notices), their decision is final.

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

Other provisions include:

New powers for DEC 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 DEC Contaminated Sites Section on 1300 762 982 or by mail:
Department of Environment and Conservation
Locked Bag 104
Bentley Delivery Centre WA 6983

DEC has also published a series of administrative and technical guidelines to assist with the assessment, management and remediation of contaminated sites in Western Australia. These guidelines and associated fact sheets are available on the DEC website, www.dec.wa.gov.au/contaminatedsites. Hard copies of the fact sheets are also available from the DEC Information Centre and from all regional DEC offices.



Department of Environment and Conservation

Contaminated sites New laws for Western Australia



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.