

Western Australia

Contaminated Sites Amendment Act 2005

As at 12 Dec 2005

No. 40 of 2005

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Contaminated Sites Amendment Act 2005

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Western Australia

Contaminated Sites Amendment Act 2005

No. 40 of 2005

An Act to amend the *Contaminated Sites Act 2003*.

[Assented to 12 December 2005]

The Parliament of Western Australia enacts as follows:

1. Short title

This is the *Contaminated Sites Amendment Act 2005*.

2. Commencement

This Act comes into operation on the day on which the *Contaminated Sites Act 2003* comes into operation.

3. The Act amended

The amendments in this Act are to the *Contaminated Sites Act 2003**.

[* *Act No. 60 of 2003.*

For subsequent amendments see Western Australian Legislation Information Tables for 2004, Table 1, p. 92.]

4. Section 3 amended

- (1) Section 3(1) is amended by inserting in the appropriate alphabetical positions the following definitions —

“

“**affected site**” means a site on which contamination is caused, or contributed to —

(a) by contamination; or

(b) by a substance,

which has migrated to that site from another site (the “**source site**”);

“**source site**” means a site —

(a) on which contamination; or

(b) on which a substance,

has originated and from which it has migrated to another site (the “**affected site**”) causing, or contributing to, contamination on that other site.

”.

- (2) Section 3(1) is amended by deleting the full stop after the definition of “site” and inserting instead a semicolon.

5. Section 24 amended

Section 24(1)(c) is amended by inserting after “site” —
“ , or of a source site ”.

6. Section 27 amended

(1) Section 27(2) is amended by inserting before “the person is an owner of the site” —

“ to the extent that ”.

(2) After section 27(2) the following subsections are inserted —

“

(2a) A person who, under subsection (1) or (2), is responsible for remediation of a site that is a source site is also responsible for remediation of a site that is an affected site to the extent that —

(a) the contamination of the affected site is caused, or contributed to —

(i) by contamination; or

(ii) by a substance,

which has migrated to the affected site from the source site; and

(b) the person is an owner of the source site,

but only to the extent that —

(c) a person is not responsible for remediation of the affected site under section 25 or 26; or

(d) a person who is responsible for remediation of the affected site under section 25 or 26 —

(i) cannot, after reasonable attempts have been made, be identified or found or be made to assume responsibility for the remediation; or

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(ii) is insolvent and a person has not been made responsible in accordance with section 28.

(2b) A person who is an owner of a site that is an affected site is not responsible for remediation of the site under subsection (1) or (2) to the extent that the contamination of the site is caused, or contributed to —

- (a) by contamination; or
- (b) by a substance,

which has migrated to the affected site from a source site.

”.

(3) Section 27(3) is amended by deleting “subsection (1) or (2)” and inserting instead —

“ this section ”.

(4) Section 27(5) is repealed and the following subsection is inserted instead —

“

(5) A person is not responsible for remediation under subsection (2) or (2a) to the extent provided by an exemption certificate held by that person.

”.

7. Section 28 amended

Section 28(7) is amended in the definition of “relevant time” as follows:

- (a) after paragraph (b) by deleting “and”;
- (b) in paragraph (c) by inserting after “27” —
“ (1) or (2) ”;

(c) by inserting after paragraph (c) —

“

and

(d) section 27(2a), when the person became an owner of the source site of the relevant affected site;

”.

8. Section 35 amended

Section 35 is amended by deleting “36(2)(a)” and inserting instead —

“ 36(2) ”.

9. Section 64 amended

After section 64(4) the following subsection is inserted —

“

(5) Where land in respect of which an owner has made a disclosure statement under subsection (1) comprises all, or part, of a source site then the disclosure statement may also be made in respect of the contamination of any land that comprises all, or part, of an affected site on which contamination is caused, or contributed to —

(a) by contamination; or

(b) by a substance,

which has migrated to the affected site from the source site.

”.

10. Section 65 amended

(1) Section 65(1) is amended by deleting “and any further information requested under that section from an owner of land,

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the committee is to give an exemption certificate in respect of the land to the person if” and inserting instead —

“

from a person with respect to the contamination of land, and any further information requested under that section, the committee is to give an exemption certificate in respect of all, or part, of the land in respect of which the disclosure statement was made to the person if, and to the extent that

”.

- (2) Section 65(1)(d) is amended by inserting after “the land” in the first place where it occurs —

“

in respect of which the statement was made which was owned by the person

”.

- (3) Section 65(2) and (3) are repealed and the following subsections are inserted instead —

“

- (2) An exemption certificate is to specify the extent to which a person who made a disclosure statement is not responsible for remediation under section 27(2) or (2a) of the land in respect of which the statement was made.
- (3) A person who would otherwise be responsible for remediation of a site under section 27(2) or (2a), is not responsible under those provisions for remediation of the site to the extent provided by an exemption certificate held by that person.
- (4) Other than as set out in subsection (3), a person’s responsibility for remediation of a site under this Act is not affected by an exemption certificate.

- (5) An exemption certificate in respect of land may be transferred by the holder of the certificate to another person who, at any time after the certificate has been given, has become an owner of the land, or part of the land, if so decided by the committee, and to the extent as is decided by the committee after taking into account —
- (a) the relevant circumstances; and
 - (b) any matters prescribed for the purposes of this section.

”.

11. Section 77 amended

After section 77(4) the following subsection is inserted —

“

- (4a) No appeal lies against a decision of the committee under section 65(5).

”.

12. Section 94 amended

- (1) After section 94(b) the following paragraph is inserted —

“

- (ba) in making a written submission to the committee under section 37(e);

”.

- (2) Section 94(d) is amended by inserting after “CEO” —

“ or to the committee ”.

13. Schedule 3 amended

- (1) The amendments in this section are to Schedule 3.

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- (2) Clause 1(3) is deleted and the following subclause is inserted instead —

“

- (3) After section 40(2)(a) the following paragraph is inserted —

“

- (aa) require the proponent to provide to the Authority a contaminated sites auditor’s report on the proposal, which complies with any relevant regulations made under the *Contaminated Sites Act 2003*;

”

”

- (3) After clause 1(4) the following subclause is inserted —

“

- (4a) Section 40(9) is amended by inserting after “(2)(a)” —

“ , (aa) ”

”

- (4) After clause 1(6) the following subclause is inserted —

“

- (6a) After section 89(1)(a) the following paragraph is inserted —

“

- (aa) at any time, any site classified as *contaminated — remediation required* under the *Contaminated Sites Act 2003*;

”

”

- (5) Clause 1(7) is deleted and the following subclause is inserted instead —

“

- (7) After section 89(2)(a) the following paragraph is inserted —

“

- (aa) reasonably believes that the house or land is contaminated;

”
”

- (6) Clause 1(9) is deleted and the following subclause is inserted instead —

“

- (9) Section 90(1)(a) is amended by inserting after “emission” in the first place where it occurs —

“

, or onto which any waste has been or is being discharged,

”
”

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