

4362

EPL LIBRARY



# Contaminated Sites Bill 2000

DRAFT  
for  
COMMENT

JUNE 2000

WESTERN AUSTRALIA

Western Australia

DRAFT 5

## Contaminated Sites Bill 2000

---

### CONTENTS

---

#### Part 1 — Preliminary

|    |                           |   |
|----|---------------------------|---|
| 1. | Short title               | 2 |
| 2. | Commencement              | 2 |
| 3. | Interpretation            | 2 |
| 4. | Meaning of “contaminated” | 4 |
| 5. | Meaning of “owner”        | 4 |
| 6. | Crown bound               | 5 |
| 7. | Saving of rights at law   | 5 |

#### Part 2 — Reporting, classifying and recording sites

##### Division 1 — Reporting of sites

|    |                                 |   |
|----|---------------------------------|---|
| 8. | Reporting of contaminated sites | 6 |
|----|---------------------------------|---|

##### Division 2 — Classification of sites

|     |  |   |
|-----|--|---|
| 9.  | Chief Executive Officer to classify sites  | 6 |
| 10. | Site reported is to be classified  | 7 |
| 11. | Notice of classification is to be given  | 7 |
| 12. | Site classified as <i>possibly contaminated</i> —<br><i>investigation required</i> | 8 |
| 13. | Database to be adjusted  | 9 |

##### Division 3 — Appeals against classification

|     |                                |   |
|-----|--------------------------------|---|
| 14. | Appeals against classification | 9 |
|-----|--------------------------------|---|

##### Division 4 — Contaminated sites database

|     |                             |    |
|-----|-----------------------------|----|
| 15. | Contaminated sites database | 10 |
| 16. | Access to database          | 10 |

17. Identity of persons who report under section 8 is not to be revealed 11

**Part 3 — Clean up, hazard abatement and investigation notices**

**Division 1 — General**

18. Meaning of “notice” in this Part 13  
19. Person to whom a notice may be given 13  
20. Notice to be complied with 14  
21. Cancellation of notices 14  
22. Notice may be amended, or additional notice may be given 14

**Division 2 — Person on whom notice is binding**

23. Person on whom notice is binding 14  
24. Certain notices binding on new owners 15

**Division 3 — Provisions about particular notices**

25. Investigation notice 15  
26. Details of investigation notice 15  
27. Clean up notice 16  
28. Auditor’s report in relation to investigation or clean up notice 17  
29. Hazard abatement notice 17

**Division 4 — Appeals from notices**

30. Appeals from notices 17

**Part 4 — Remediation of contaminated sites**

**Division 1 — Person responsible for remediation**

31. Reference to person responsible includes all persons responsible 19  
32. Person responsible for remediation 19  
33. Liability for remediation of person who caused the contamination — section 32(2)(a) 20  
34. Liability for remediation of land owner — section 32(2)(b) 21  
35. Directors of body corporate or related body corporate may become responsible for remediation 21  
36. Responsibility for remediation may be transferred 21  
37. Transfer may be cancelled within 45 days 23

|   |   |    |
|---|---|----|
| 38.   | Where mortgagee becomes responsible for remediation                                   | 23 |
| 39.   | Orphan sites  | 24 |
| 40.   | Disputes as to responsibility for remediation   | 24 |
| 41.   | Appeal from decision of CEO as to responsibility for remediation                      | 25 |
| <b>Division 2 — Remediation</b>   |   |    |
| 42.   | Site classified as <i>contaminated</i> — <i>remediation required</i> to be remediated | 25 |
| 43.   | State may recover cost of remediation in some circumstances                           | 25 |
| 44.   | Cost of carrying out action may be recovered  | 26 |
| <b>Division 3 — Disposal of contaminated soil</b>   |   |    |
| 45.   | Disposal of contaminated soil   | 26 |
| <b>Division 4 — Contaminated Sites Remediation Fund</b>   |   |    |
| 46.   | Contaminated Sites Remediation Fund   | 27 |
| <b>Part 5 — Provisions relating to remediation and notices</b>  |   |    |
| 47.   | Memorial is to be lodged if notice given, or land classified as contaminated          | 28 |
| 48.   | Notice of memorial to be given  | 29 |
| 49.   | Duties of occupier if entry to site refused   | 30 |
| 50.   | Liability for losses  | 30 |
| <b>Part 6 — Certificates of contamination audit, exemption certificates and disclosure statements</b> |   |    |
| <b>Division 1 — Certificate of contamination audit</b>  |   |    |
| 51.   | Request for certificate of contamination audit  | 31 |
| 52.   | Certificate of contamination audit  | 32 |
| <b>Division 2 — Disclosure regarding contamination, and exemption certificates</b>                    |   |    |
| 53.   | Disclosure statement made within 2 years of commencement of Act                       | 32 |
| 54.   | Exemption certificates  | 33 |

Contents

---

|     |  |    |
|-----|--|----|
| 55. | Disclosure required to potential owners of contaminated land before change of ownership occurs | 34 |
| 56. | New owner to inform Chief Executive Officer  | 34 |
| 57. | New owner of land may be responsible for remediation   | 35 |

**Division 3 — Offences**

|     |   |    |
|-----|---|----|
| 58. | Offences regarding false statements and incomplete disclosure | 35 |
|-----|---|----|

**Part 7 — Provisions specifically with respect to underground water**

|     |  |    |
|-----|--|----|
| 59. | Consultation with the WRC  | 36 |
| 60. | Chief Executive Officer may request information on wells                               | 36 |
| 61. | Appeal from notice   | 37 |
| 62. | Areas of underground water contamination   | 37 |
| 63. | Notice to be given to owners and occupiers in areas of underground water contamination | 37 |

**Part 8 — Contaminated sites auditors**

**Division 1 — Accreditation**

|     |  |    |
|-----|--|----|
| 64. | Accredited auditors                                  | 39 |
| 65. | Certificate of accreditation                         | 39 |
| 66. | Offences relating to accreditation                   | 39 |
| 67. | No action may be taken with respect to accreditation | 40 |

**Division 2 — Mandatory auditor's reports**

|     |  |    |
|-----|--|----|
| 68. | Certification of mandatory auditor's report      | 40 |
| 69. | Offences relating to mandatory auditor's reports | 41 |
| 70. | Self-incriminatory information not exempt        | 41 |
| 71. | Use of information                               | 41 |

**Part 9 — Appeals**

|     |  |    |
|-----|--|----|
| 72. | Appeals  | 43 |
| 73. | Minister may seek advice   | 44 |
| 74. | Implementation of decisions by Minister on appeal by the Chief Executive Officer | 44 |

**Part 10 — Enforcement**

|   |  |    |
|---|--|----|
| <b>Division 1 — Legal proceedings</b>                                   |  |    |
| 75.   | Who can take proceedings for offences            | 45 |
| 76.   | Time for bringing prosecutions                   | 45 |
| 77.   | Evidentiary provisions                           | 45 |
| <b>Division 2 — Additional powers of the court</b>                      |  |    |
| 78.   | Sections 99T, 99U and 99ZA of EP Act apply       | 46 |
| <b>Division 3 — Penalties</b>   |  |    |
| 79.   | Penalties  | 46 |
| 80.   | Daily penalties                                  | 46 |
| 81.   | Attempt and accessory after the fact             | 47 |
| <b>Part 11 — General</b>  |  |    |
| 82.   | False or misleading information                  | 48 |
| 83.   | Confidentiality                                  | 48 |
| 84.   | Other provisions of EP Act apply                 | 49 |
| 85.   | Guidelines                                       | 49 |
| 86.   | Regulations                                      | 50 |
| 87.   | Consequential amendments to other Acts           | 50 |
| <b>Schedule 1 — Classification of sites</b>                             |  |    |
| <b>Schedule 2 — Penalties</b>   |  |    |
| <b>Part 1 — Penalties — individuals</b>                                 |  |    |
| <b>Part 2 — Penalties — bodies corporate</b>                            |  |    |
| <b>Schedule 3 — Matters in respect to which regulations may be made</b> |  |    |
| <b>Part 1 — General</b>   |  |    |
| <b>Part 2 — Auditors and audits</b>                                     |  |    |
| <b>Schedule 4 — Consequential provisions</b>                            |  |    |
| 1.  | <i>Environmental Protection Act 1986</i> amended | 56 |
| 2.  | <i>Freedom of Information Act 1992</i> amended   | 57 |
| <b>Defined Terms</b>  |  |    |

**Contaminated Sites Bill 2000**

Contents

---

**CONFIDENTIAL**

Western Australia

LEGISLATIVE ASSEMBLY/COUNCIL

DRAFT 5

## **Contaminated Sites Bill 2000**

**A Bill for**

**An Act providing for the identification, recording and management  
of contaminated sites.**

The Parliament of Western Australia enacts as follows:



## Part 1 — Preliminary

### 1. Short title

This Act may be cited as the *Contaminated Sites Act 2000*.

### 2. Commencement

5 This Act comes into operation on such day as is fixed by proclamation.

### 3. Interpretation

(1) In this Act, unless the contrary intention appears —

10 “**auditor**” means a person accredited under section 64 as a contaminated sites auditor;

“**binding**”, in relation to a notice, has the meaning given under Part 3 Division 2;

“**certificate of contamination audit**” means a certificate referred to in section 52;

15 “**classify**”, in respect of a site, means to classify the site under Part 2 Division 2;

“**clean up notice**” means a notice referred to in section 27;

“**contaminated**” has the meaning given by section 4;

20 “**database**” means the contaminated sites database kept under section 15;

“**EP Act**” means the *Environmental Protection Act 1986*;

“**exemption certificate**” means a certificate referred to in section 54;

“**guidelines**” means the guidelines published under section 85;

25 “**hazard abatement notice**” means a notice referred to in section 29;

**“insolvent”** means —

- (a) in the case of a natural person — a person who is an insolvent under administration within the meaning of the Corporations Law; and
- (b) in the case of a body corporate — a body corporate that is an externally-administered body corporate within the meaning of the Corporations Law;

**“investigation notice”** means a notice referred to in section 25;

**“land”** includes underground water under the land referred to;

**“management plan”** means a plan for the remediation of a contaminated site;

**“mandatory auditor’s report”** means a report by an auditor that is required for the purposes of this Act or the EP Act;

**“notice”** means a notice given under this Act;

**“occupier”**, in relation to land, means a person in occupation or control of the land, whether or not the person also owns the land;

**“owner”** has the meaning given by section 5;

**“person responsible”**, in respect of the remediation of a site, means a person responsible for that remediation in accordance with Part 4 Division 1;

**“remediation”**, in relation to a contaminated site, includes —

- (a) the attempted restoration of the site to the state it was in before the contamination occurred;
- (b) restricting or prohibiting access to the site;
- (c) removing, destroying, reducing, containing or dispersing the substance causing the contamination, or reducing or mitigating the effect of the substance;
- (d) protecting the environment from any detrimental effects of the substance causing the contamination;

**“site”** means an area of land, or underground water;

**s. 4**

---

**“underground water”** has the same meaning as in the  
*Metropolitan Water Authority Act 1982*;

**“well”** means an opening in the ground made or used to obtain  
access to underground water.

5 (2) A word or expression used in this Act has the same meaning as  
it has in the EP Act unless —

- (a) this Act gives it another meaning; or
- (b) the contrary intention appears in some other way.

**4. Meaning of “contaminated”**

10 (1) In this Act —

**“contaminated”**, in relation to land or underground water,  
means that a substance is present in, on or under that land,  
or in the underground water, at a concentration that  
presents, or has the potential to present, a risk of harm to  
15 human health or any environmental value.

(2) However a site is not contaminated —

- (a) merely because in any surface water standing or  
running on the land a substance is present at a  
concentration that presents, or has the potential to  
20 present, a risk of harm to human health or any  
environmental value; or
- (b) where the regulations so provide.

**5. Meaning of “owner”**

(1) In this Act —

25 **“owner”** means —

- (a) in relation to freehold land —
  - (i) the holder, or holders, of the freehold; and

- (ii) any mortgagee in possession who is, or has appointed a person to be, in possession of the land and has the exclusive management and control of the land;

5

and

- (b) in relation to Crown land, the State.

- (2) In this section —

“**Crown land**” has the same meaning as in the *Land Administration Act 1997*.

10

**6. Crown bound**

This Act binds the Crown —

- (a) in right of Western Australia; and
- (b) so far as the legislative power of the Parliament permits, in all its other capacities.

15

**7. Saving of rights at law**

Nothing in this Act affects any right any person has at law to prevent, control or abate contamination or to obtain damages.

## **Part 2 — Reporting, classifying and recording sites**

### **Division 1 — Reporting of sites**

#### **8. Reporting of contaminated sites**

- 5 (1) A person may report to the Chief Executive Officer any site that the person knows, or suspects, is contaminated.
- (2) A report is to —
- (a) be in writing;
  - (b) contain a description of the location and extent of the site sufficient to identify it; and
  - 10 (c) summarise the information on which the person bases the belief or suspicion that the site is contaminated.
- (3) If any of the following persons fails to report to the Chief Executive Officer any site the person knows or suspects is contaminated, the person commits an offence —
- 15 (a) an owner or occupier of land that is part of the site;
  - (b) a person who has caused, or suspects that he or she has caused, or contributed to, the contamination;
  - (c) an officer of a public authority;
  - (d) an auditor.
- 20 (4) A person does not commit an offence under subsection (3) if the person knew or believed on reasonable grounds that the site had already been reported.

### **Division 2 — Classification of sites**

#### **9. Chief Executive Officer to classify sites**

- 25 (1) The Chief Executive Officer is to classify a site when required to do so under this Act, and may classify a site at any other time.

- (2) The Chief Executive Officer is to classify sites —
- (a) in accordance with columns one and two of Schedule 1;  
and
  - (b) taking into account any relevant guidelines and any  
5 other information the Chief Executive Officer considers  
relevant.

**10. Site reported is to be classified**

- (1) The Chief Executive Officer is to classify a site within 45 days  
of receiving a report under section 8.
- 10 (2) The Chief Executive Officer is to inquire into the report and, if  
the site reported is not already classified, classify the site as —
- (a) *report not substantiated*;
  - (b) *possibly contaminated — investigation required*;
  - (c) *contaminated — remediation required*; or
  - 15 (d) *contaminated — restricted use*.
- (3) For the purposes of this section —
- (a) a request for a certificate of contamination audit under  
section 51; or
  - (b) a disclosure statement made under section 53,
- 20 is not a report under section 8.

**11. Notice of classification is to be given**

- (1) Not later than 7 days after a site is classified, the Chief  
Executive Officer is to cause written notice of the classification  
of the site to be given.
- 25 (2) Written notice of a classification may be given by way of —
- (a) a notice under Part 3;
  - (b) a certificate of contamination audit, in respect of a  
classification referred to in subsection (3); or

**Contaminated Sites Bill 2000**

**Part 2** Reporting, classifying and recording sites

**Division 2** Classification of sites

**s. 12**

---

- (c) any other written notice.
- (3) Written notice of a classification may be given by way of a certificate of contamination audit only where a certificate has been requested under section 51 and in respect of the following classifications:
- (a) *not contaminated — unrestricted use*;
- (b) *contaminated — restricted use*;
- (c) *contaminated — remediation required*; or
- (d) *decontaminated*.
- (4) Written notice of the classification of a site as *contaminated — restricted use* is to specify the restrictions on the use of the site.
- (5) Notice of the classification of a site is to be given to —
- (a) each owner of land that is part of the site;
- (b) at the discretion of the Chief Executive Officer, an occupier of land that is part of the site;
- (c) where a site is classified as *report not substantiated*, to the person who made the relevant report under section 8; and
- (d) in respect of a site classified as *contaminated — remediation required*, the person responsible for remediation of the site.
- (6) Notice of the classification of a site is to state —
- (a) that the site has been classified under this Act;
- (b) the category of classification of the site; and
- (c) a description of the location and extent of the site sufficient to identify it.

**12. Site classified as *possibly contaminated — investigation required***

A site classified as *possibly contaminated — investigation required* is to remain so classified until classified as —

- (a) *contaminated — remediation required;*
- (b) *contaminated — restricted use; or*
- (c) *not contaminated — unrestricted use.*

**13. Database to be adjusted**

5      As soon as practicable after classifying a site, and in any event not later than 7 days after doing so, the Chief Executive Officer is to adjust the database to reflect the classification.

**Division 3 — Appeals against classification**

**14. Appeals against classification**

- 10      (1) A person who makes a report under section 8 may appeal against a classification of that site as *report not substantiated*.
- (2) An owner, or occupier who has received notice of the classification, of land that is part of a site classified as —
- (a) *possibly contaminated — investigation required;*
- 15      (b) *decontaminated; or*
- (c) *not contaminated — unrestricted use,*
- may appeal against the classification or the inclusion of the land in the site.
- 20      (3) A person responsible for remediation of a site, or an owner of land that is part of a site, classified as —
- (a) *contaminated — remediation required; or*
- (b) *contaminated — restricted use,*
- may appeal against the classification or the inclusion of the land in the site.
- 25      (4) An appeal is to be made in accordance with Part 9.



**Division 4 — Contaminated sites database**

**15. Contaminated sites database**

- (1) The Chief Executive Officer is to keep an accurate and up to date contaminated sites database containing —
- 5 (a) details of all classifications made;
- (b) details of contaminated underground water plumes; and
- (c) copies of all of the following documents —
- (i) reports made under section 8;
- (ii) certificates and notices given under this Act;
- 10 (iii) management plans given to the Chief Executive Officer;
- (iv) memorials lodged under section 47;
- (v) disclosure statements made under section 53;
- (vi) exemption certificates given under section 54;
- 15 (vii) written disclosures made under section 55.
- (2) The database may be kept wholly or partly in the form of a computer database, in documentary form, or in another form the Chief Executive Officer considers appropriate.
- (3) The Chief Executive Officer is to maintain indexes to the
- 20 database so that the information and documents on the database are readily accessible.

**16. Access to database**

- (1) This section is subject to section 17.
- (2) Access to, and copies of, information and records on the
- 25 database relating to sites classified as —
- (a) *contaminated — remediation required*; or
- (b) *contaminated — restricted use*,
- are to be made available, on request, to the public.

- 5 (3) Access to, and copies of, the following information and records on the database are to be made available only to, and at the request of, a person specified in subsection (4) —
- (a) a report made under section 8, if the site the report is made in respect of is not classified, or is classified as *report not substantiated*;
  - (b) information regarding the existence of a report referred to in paragraph (a);
  - (c) disclosure statements made under section 53;
  - 10 (d) exemption certificates given under section 54;
  - (e) information and records relating to sites classified as *possibly contaminated — investigation required, not contaminated — unrestricted use or decontaminated*.
- 15 (4) The people referred to in subsection (3) are —
- (a) an owner of land that is part of the site;
  - (b) an occupier of land that is part of the site;
  - (c) a public authority; and
  - (d) other than in relation to information or records referred to in subsection (3)(a) or (b), a person prescribed as an interested person for the purpose of this paragraph.
- 20 (5) Access to the database and copies of any information or records on the database may be made available under this section only on payment of such fees, if any, as are prescribed.
- 25 (6) A person who makes a statement as to the person's entitlement to obtain access to, or a copy of, any information or a record under this section that the person knows is false in a material particular commits an offence.
- 17. Identity of persons who report under section 8 is not to be revealed**
- 30 Nothing in this Act authorises access to, or the disclosure of, any information or record which would, or is likely to, reveal or

**Contaminated Sites Bill 2000**

**Part 2** Reporting, classifying and recording sites

**Division 4** Contaminated sites database

**s. 17**

---

lead to the revelation of, the identity of any person who made a report under section 8 other than as is necessary for the administration of this Act.

## Part 3 — Clean up, hazard abatement and investigation notices

### Division 1 — General

#### 18. Meaning of “notice” in this Part

5 In this Part, unless the contrary intention appears —  
“notice” means a clean up notice, a hazard abatement notice or  
an investigation notice.

#### 19. Person to whom a notice may be given

- 10 (1) Unless otherwise specified in this Act, a notice is to be given in  
writing by the Chief Executive Officer, at the discretion of the  
Chief Executive Officer, to one or more of the following  
persons —
- 15 (a) if given in relation to a site classified as *contaminated —  
remediation required*, a person responsible for  
remediation of the site;
  - (b) a person who, in the opinion of the Chief Executive  
Officer, would be a person responsible for remediation  
of the site if the land to which the notice relates was part  
20 of a site classified as *contaminated — remediation  
required*;
  - (c) an owner of land which is part of the site to which the  
notice relates.
- 25 (2) Each owner and occupier of land that is part of a site in relation  
to which a notice is given who has not been given the notice is  
to be provided with a copy of the notice by the Chief Executive  
Officer within 5 days of the notice being given.

**Contaminated Sites Bill 2000**

**Part 3** Clean up, hazard abatement and investigation notices

**Division 2** Person on whom notice is binding

**s. 20**

---

**20. Notice to be complied with**

- (1) A person on whom a notice is binding is to ensure that the notice is complied with within such time, if any, as is specified in the notice.
- 5 (2) A person who contravenes subsection (1) commits an offence.
- (3) If a notice is not complied with within such time, if any, as is specified in the notice, the Chief Executive Officer may take such action as is necessary to have the notice complied with and may recover the cost of doing so from a person on whom the notice is binding, as a debt due from that person.
- 10

**21. Cancellation of notices**

- (1) A notice may be cancelled —
- 15 (a) absolutely, by the Chief Executive Officer giving notice in writing of the cancellation to each of the persons on whom the notice is binding; or
- (b) in relation to a person on whom the notice is binding, by the Chief Executive Officer giving notice in writing of the cancellation to that person.
- (2) A notice that is cancelled absolutely is of no effect.
- 20 (3) A notice that is cancelled in relation to a person is no longer binding on that person.

**22. Notice may be amended, or additional notice may be given**

25 Where there is a requirement, or discretion, to give a notice under this Act, a notice amending the notice, or an additional notice of the same type may be given.

**Division 2 — Person on whom notice is binding**

**23. Person on whom notice is binding**

Subject to section 21, a notice is binding on each person —

- (a) to whom it is given; and
- (b) on whom it is binding in accordance with section 24 or 49.

**24. Certain notices binding on new owners**

- 5 (1) Subject to subsections (2) and (3), while a memorial under section 47 regarding a notice in respect of a site given to an owner of land that is part of that site, remains recorded in respect of land, the notice is binding on each person who becomes an owner of the land.
- 10 (2) Subject to subsection (3), if a person becomes an owner of land because the person is a mortgagee in possession, the only notice binding on that owner under subsection (1) is a hazard abatement notice, until 45 days after the person became so responsible.
- 15 (3) No notice is binding on a person referred to in subsection (2), if the responsibility for remediation, or part of it, is transferred to the State under section 38.

**Division 3 — Provisions about particular notices**

**25. Investigation notice**

- 20 (1) An investigation notice is to set out the action to be taken to ensure that a site is investigated, monitored and assessed.
- (2) An investigation notice is to be given only if the Chief Executive Officer has a reasonable belief that —
  - (a) a site is contaminated; and
  - 25 (b) appropriate action to investigate, monitor or assess the site is not being, or has not been, taken.

**26. Details of investigation notice**

- (1) An investigation notice is to specify —
  - (a) the name and address of the person to whom it is given;

**Contaminated Sites Bill 2000**

**Part 3** Clean up, hazard abatement and investigation notices

**Division 3** Provisions about particular notices

**s. 27**

---

- 5
- (b) the reason for which it is given;
  - (c) a description of the location and extent of the site sufficient to identify it;
  - (d) the action to be taken to investigate, monitor and assess the site; and
  - (e) the content, form and frequency of information to be reported to the Chief Executive Officer regarding the site.
- 10
- (2) An investigation notice may require —
- (a) a person on whom it is binding to prepare a management plan and give it to the Chief Executive Officer; and
  - (b) if, in order to comply with the notice, that person will need to enter land of which the person is not an occupier, that the person gain the permission of that occupier to enter the land to carry out action to comply with the notice, or notify the Chief Executive Officer of the failure to do so, within the time specified in the notice.
- 15

**27. Clean up notice**

- 20
- (1) A clean up notice is to set out the action to be taken to remediate a site.
  - (2) A clean up notice may be given only in respect of a site classified as *contaminated — remediation required*.
  - (3) A clean up notice may require any of the following —
- 25
- (a) preparation of a management plan and its submission to the Chief Executive Officer;
  - (b) compliance with any management plan set out or referred to in the notice;
  - (c) compliance with any standard required by or under an approved policy or a prescribed standard;
- 30

(d) monitoring of compliance with, and remediation resulting from, a management plan.

(4) If, in order to comply with a clean up notice, a person will need to enter land of which the person is not an occupier, the notice is to require that the person gain the permission of that occupier to enter the land to carry out action to comply with the notice, or notify the Chief Executive Officer of the failure to do so, within the time specified in the notice.

**28. Auditor's report in relation to investigation or clean up notice**

(1) A person on whom an investigation notice or a clean up notice is binding is to engage an auditor to report on the actions taken to comply with the notice.

(2) A person who contravenes subsection (1) commits an offence.

(3) Subject to the requirements of the notice, the auditor's report is to be in compliance with the regulations.

**29. Hazard abatement notice**

(1) A hazard abatement notice is to be given if in the opinion of the Chief Executive Officer a site is contaminated and there is an immediate and serious risk to human health or any environmental value.

(2) A hazard abatement notice is to set out the action to be taken to immediately control or reduce the risk of harm to human health or any environmental value.

**Division 4 — Appeals from notices**

**30. Appeals from notices**

(1) A person to whom an investigation notice, a clean up notice or an amendment to such a notice is given, may appeal against a requirement of the notice.



**Contaminated Sites Bill 2000**

**Part 3** Clean up, hazard abatement and investigation notices

**Division 4** Appeals from notices

**s. 30**

---

- (2) Subject to section 41, a person to whom a notice is given may not appeal against the fact that the notice was given to him or her.
- (3) An appeal is to be made in accordance with Part 9.

---

## Part 4 — Remediation of contaminated sites

### Division 1 — Person responsible for remediation

#### 31. Reference to person responsible includes all persons responsible

5 A reference in this Act to a person responsible for the remediation of a site is to be construed as including each person responsible for the remediation to the extent that the person is responsible in accordance with this Division.

#### 32. Person responsible for remediation

- 10 (1) This section has effect subject to —
- (a) this Division; and
  - (b) sections 54(2) and 57.
- (2) A person is responsible for remediation of a site classified as *contaminated — remediation required* —
- 15 (a) subject to section 33, if the person caused the contamination; or
- (b) subject to section 34, if the person is the owner of land that is part of the site,
- unless subsection (3) applies.
- 20 (3) The State is the person responsible for remediation of a site to the extent that —
- (a) the contamination was a direct and unavoidable result of a direction given, or an action carried out, by a public authority;
  - 25 (b) the contamination was present, or was caused or contributed to by contamination that was present, on land in respect of which a certificate of contamination audit was given which failed to identify the contamination;

**Contaminated Sites Bill 2000**

**Part 4** Remediation of contaminated sites

**Division 1** Person responsible for remediation

**s. 33**

---

- 5
- (c) a person who would otherwise be responsible for remediation under this Division cannot be identified or found, or is insolvent;
  - (d) the State is responsible for remediation under this Division; or
  - (e) no one else is responsible for remediation under this Division.
- (4) In this section —
- 10 **“public authority”** does not include a local government or other person, whether corporate or not, who or which under the authority of a written law administers or carries on for the benefit of the State, or any district or part thereof, a social service or public utility.
- 15 **33. Liability for remediation of person who caused the contamination — section 32(2)(a)**
- (1) A person is responsible for contamination under section 32(2)(a) only to the extent that the person caused, or contributed to, the contamination —
    - 20 (a) after the commencement of this Act; or
    - (b) before the commencement of this Act by an unlawful act.
  - (2) In this section —

25 **“unlawful act”** means an act or omission that constituted an offence under a written law of the State when it occurred, whether or not that act or omission is, or was, the subject of a conviction.
  - (3) A person who caused, or contributed to, contamination before the commencement of this Act is presumed to have done so by an unlawful act in the absence of proof to the contrary.

**34. Liability for remediation of land owner — section 32(2)(b)**

A person is responsible for contamination under section 32(2)(b) to the extent that —

- (a) a person is not responsible under section 32(2)(a);
  - 5 (b) the person who would otherwise be responsible under section 32(2)(a) cannot be identified or found, or is insolvent,
- and to the extent that the person is —
- (c) an owner of land that is part of the site; or
  - 10 (d) in the case of the contamination of underground water, an owner of land that is part of the site which is, or was, the source of the contamination.

**35. Directors of body corporate or related body corporate may become responsible for remediation**

15 If a person responsible for remediation is an insolvent body corporate, then each of the following persons may be a person responsible for that remediation to the extent in each case as is decided by the Chief Executive Officer —

- 20 (a) each person who was a director of the body corporate, within the meaning of the Corporations Law, immediately before the body corporate became insolvent; and
- (b) each body corporate which was a related body corporate, within the meaning of the Corporations Law, to the  
25 insolvent body corporate immediately before it became insolvent.

**36. Responsibility for remediation may be transferred**

- (1) A person responsible for remediation of a site may transfer that responsibility, or part of that responsibility —  
30 (a) to another person, with that person's written agreement;  
or

**Contaminated Sites Bill 2000**

**Part 4** Remediation of contaminated sites

**Division 1** Person responsible for remediation

**s. 36**

---

- (b) in prescribed circumstances, and with the written approval of the Minister, to the State.
- (2) An agreement under subsection (1)(a) —
- 5 (a) is of no effect until approved by the Chief Executive Officer; and
- (b) is not to be entered into unless the person responsible for remediation believes, on reasonable grounds, that the other person has sufficient financial assets to carry out the remediation.
- 10 (3) A person who contravenes subsection (2)(b) commits an offence.
- (4) A transfer under subsection (1) is to be on such terms and conditions as the parties agree which may include —
- 15 (a) the transfer of all or part of the relevant land to the other party; or
- (b) a charge on the land in favour of the other party, or a person nominated by the other party.
- (5) When seeking approval from the Chief Executive Officer under subsection (2)(a), the person responsible for remediation is to give to the Chief Executive Officer a statement —
- 20 (a) to the effect that the person believes that the person to whom responsibility is to be transferred has sufficient assets to carry out the remediation; and
- (b) setting out the grounds on which the person bases that belief.
- 25 (6) A person who makes a statement under subsection (5) that the person knows is false in a material particular commits an offence.
- 30 (7) Where responsibility is transferred to a person or the State under this section, that person or the State becomes the person

responsible for remediation under this Act to the extent set out in the agreement or approval.

- (8) This section does not affect any other responsibility for remediation that the person may have under this Act.

5 **37. Transfer may be cancelled within 45 days**

(1) If, within 45 days of a transfer under section 36 taking place, the Chief Executive Officer is of the opinion that the person who has become responsible for remediation as a result of the transfer has insufficient assets to carry out the remediation, then  
10 the chief Executive Officer may declare, by notice in writing given to the person who sought to transfer the responsibility, that the responsibility is not transferred and the responsibility for remediation of the site reverts to that person as was the case immediately before the transfer.

15 (2) A notice under subsection (1) has effect according to its tenor.

**38. Where mortgagee becomes responsible for remediation**

- (1) If a person responsible for remediation because the person is a mortgagee in possession so requests, in writing given to the Chief Executive Officer, within 45 days of becoming so  
20 responsible, the responsibility, or part of it, is to be transferred to the State.
- (2) A transfer under this section is to be on the terms and conditions prescribed, which may include —
- (a) the transfer of all or part of the relevant land to the State;  
25 or
- (b) a charge on the land in favour of the State, or a person nominated by the State, ranking equally with any other charge on that land created by an Act and before any other kind of charge on the land.

**Contaminated Sites Bill 2000**

**Part 4** Remediation of contaminated sites

**Division 1** Person responsible for remediation

**s. 39**

---

**39. Orphan sites**

(1) In this section —

“orphan site” means all or part of —

- 5 (a) a site classified as *contaminated — remediation required*; and
- (b) which the State is responsible for the remediation of under —
- 10 (i) section 32(3)(c) because the person otherwise responsible cannot be identified or found;
- (ii) section 32(3)(c) because the person otherwise responsible is insolvent and, within 45 days of becoming insolvent, has not transferred responsibility under section 36, or satisfied the Chief Executive Officer that such a
- 15 (iii) section 32(3)(e) because, in the opinion of the Chief Executive Officer, the land has been abandoned.
- 20 (2) Subject to subsection (3), the Minister may take an orphan site under and subject to the provisions of Part 9 of the *Land Administration Act 1997*.
- (3) No claim to compensation may be made, and no compensation is payable, in respect of the acquisition of an orphan site under this section.

25 **40. Disputes as to responsibility for remediation**

- (1) If there is a dispute as to who is responsible for the remediation of a site, or the extent to which a person is responsible for such remediation, an interested party may, in accordance with the regulations, request that the Chief Executive Officer make a
- 30 decision.

(2) A decision of the Chief Executive Officer as to responsibility for remediation is to —

(a) be given by written notice to —

(i) the person, or persons, responsible for the remediation; and

(ii) any other person involved in the dispute, and

(b) contain such details as are prescribed.

**41. Appeal from decision of CEO as to responsibility for remediation**

(1) A person found by the Chief Executive Officer to be a person responsible for remediation may lodge an appeal against that decision.

(2) An appeal is to be made in accordance with Part 9.

**Division 2 — Remediation**

**42. Site classified as *contaminated* — remediation required to be remediated**

(1) A person responsible for the remediation of a site classified as *contaminated* — remediation required is to remediate the site to the extent that the person is responsible for that remediation in accordance with Division 1.

(2) A person who contravenes subsection (1) commits an offence.

**43. State may recover cost of remediation in some circumstances**

(1) If the State carries out any action to remediate an orphan site, as defined in section 39(1), the Minister may, if it becomes possible to recover all or some of the cost of carrying out the action from the person who would otherwise have been responsible for the remediation, recover the cost of carrying out



**Contaminated Sites Bill 2000**

**Part 4** Remediation of contaminated sites

**Division 3** Disposal of contaminated soil

**s. 44**

---

that action from that person in a court of competent jurisdiction as a debt due.

- (2) The debt due under subsection (1) is to be set off against the value, when remediated, of the land taken under section 39.

5 **44. Cost of carrying out action may be recovered**

A person who carries out any remediation in respect of a site classified as *contaminated — remediation required* may, to the extent that that person is not the person responsible for the remediation, recover the cost —

- 10 (a) of carrying out that action; and  
(b) any previous action under an investigation notice binding on that person in respect of the site,

from the person who is responsible for that remediation in a court of competent jurisdiction as a debt due.

15 **Division 3 — Disposal of contaminated soil**

**45. Disposal of contaminated soil**

A person who —

- 20 (a) transports contaminated soil or soil from a site classified as *contaminated — restricted use* or *contaminated — remediation required* other than in accordance with a permit given under the regulations; or  
(b) disposes of such soil other than in accordance with the regulations,

commits an offence.

**Division 4 — Contaminated Sites Remediation Fund**

**46. Contaminated Sites Remediation Fund**

- 5 (1) Moneys for the purposes of the investigation or remediation of any site by the State under this Act are payable out of moneys appropriated from time to time by Parliament for that purpose.
- 10 (2) The funds referred to in subsection (1) are to be credited to an account at the Treasury to be called the “Contaminated Sites Remediation Fund”, which is to form part of the Trust Fund referred to in section 9 of the *Financial Administration and Audit Act 1985*.
- (3) The Contaminated Sites Remediation Fund is to be administered by the Minister.
- 15 (4) The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of departments applies to and in relation to the fund.
- (5) For the purposes of section 52 of the *Financial Administration and Audit Act 1985*, the administration of the Fund is to be regarded as a service of the Department.

**Part 5 — Provisions relating to remediation  
and notices**

**47. Memorial is to be lodged if notice given, or land classified as contaminated**

- 5 (1) The Chief Executive Officer is to lodge a memorial with the Registrar in respect of land —
- (a) that is part of a site classified as —
- (i) *contaminated — remediation required*; or
- (ii) *contaminated — restricted use*;
- 10 or
- (b) in respect of which a notice under Part 3 has been given.
- (2) The Registrar, on payment of any prescribed fee, is to register the memorial against the relevant land.
- (3) The Chief Executive Officer is to give notice to the Registrar that a memorial is to be withdrawn when —
- 15 (a) land is classified as *decontaminated*; or
- (b) a notice is cancelled under section 21,
- and the Registrar, on payment of any prescribed fee, is to register the withdrawal of the memorial in the appropriate manner.
- 20 (4) A memorial, and a notice to withdraw a memorial, is to —
- (a) be in a form approved by the Registrar; and
- (b) contain details of the classification or notice.
- (5) The Chief Executive Officer may specify in a memorial given under subsection (1)(a)(i) that land that is part of a site is not to be transferred unless the Chief Executive Officer consents in writing to that transfer and the Registrar is to give effect to such a specification.
- 25

- (6) If a memorial is registered under subsection (2) in respect of land then —
- (a) the Western Australian Planning Commission is not to approve under section 20 of the *Town Planning and Development Act 1928* the subdivision of that land, or the amalgamation of that land with any other land; and
  - (b) a responsible authority is not to grant approval under a scheme for any proposed development on that land, without the written consent of the Chief Executive Officer.
- (7) A memorial under this section has effect until it is withdrawn.
- (8) In this section —
- “Registrar”** means the Registrar of Titles under the *Transfer of Land Act 1893* or the Registrar of Deeds and Transfers under the *Registration of Deeds Act 1856*, as the case requires.

#### 48. Notice of memorial to be given

As soon as is practicable after a memorial is lodged or withdrawn under section 47 written notice, containing such details as are prescribed or in the form prescribed, is to be given by the Chief Executive Officer to —

- (a) the Western Australian Planning Commission;
- (b) the Water and Rivers Commission established by section 4(1) of the *Water and Rivers Commission Act 1995*;
- (c) the Executive Director, Public Health, within the meaning of the *Health Act 1911*;
- (d) each local government which has located within its district any part of the relevant site; and
- (e) each responsible authority the scheme of which applies to any part of the relevant site.

**49. Duties of occupier if entry to site refused**

- (1) If a person who is responsible for remediation of a site, or on whom a notice is binding —
- (a) needs to enter any land to carry out any action necessary to remediate, or to comply with the provisions of the notice; and
  - (b) the occupier of the land refuses permission for the person to enter, or remain on the land, or to do anything authorised under this Act on the land,
- then, the Chief Executive Officer, by written notice to that effect given to the occupier, may declare that —
- (c) the notice is binding on the occupier; or
  - (d) the occupier is to be taken to be the person responsible for remediation for the purposes of this Act, other than under section 44.
- (2) A notice under subsection (1) has effect according to its tenor.

**50. Liability for losses**

Except as otherwise prescribed, a person responsible for remediation of any site or a person on whom a notice under Part 3 is binding who, with the permission of the occupier of land, enters that land to carry out any action necessary to enable the person to carry out the remediation or to comply with the provisions of a notice is liable —

- (a) to the occupier for any loss suffered by the occupier as a result of that entry, including any loss suffered by the occupier due to interruption to the occupier's business on that land; and
- (b) to the owner of the land for any loss suffered by the owner as a result of that entry, including any injury to the land caused by that person.

---

**Part 6 — Certificates of contamination audit,  
exemption certificates and disclosure statements**

**Division 1 — Certificate of contamination audit**

**51. Request for certificate of contamination audit**

- 5 (1) The following persons may request in writing a certificate of  
contamination audit from the Chief Executive Officer in respect  
of land —
- 10 (a) the owner or occupier of the land;
- (b) a person responsible for remediation of a site of which  
the land forms part;
- (c) a person to whom an investigation notice has been given  
in respect of the land.
- (2) The prescribed fee is to be paid for a certificate of  
contamination audit.
- 15 (3) If a request for a certificate of contamination audit is made in  
respect of land by a person who is not the owner of the land a  
copy of the request is to be given by that person to the owner.
- (4) A person who contravenes subsection (3) commits an offence.
- (5) A request for a certificate of contamination audit is to contain or  
20 be accompanied by the following —
- (a) an assessment of whether the land is contaminated and,  
if contaminated, the extent and type of the  
contamination;
- 25 (b) a recommendation as to classification and where  
relevant, any recommended restrictions on land use;
- (c) any other information prescribed;
- (d) any other information requested by the Chief Executive  
Officer;

**Contaminated Sites Bill 2000**

**Part 6** Certificates of contamination audit, exemption certificates and disclosure statements

**Division 2** Disclosure regarding contamination, and exemption certificates  
**s. 52**

---

- (e) where a mandatory auditor's report is required in accordance with the regulations, that report.
- (6) The Chief Executive Officer may decline to deal with a request and advise the person who made the request accordingly if the request or accompanying report does not comply with this section.

**52. Certificate of contamination audit**

- (1) After considering a request for a certificate of contamination audit, the Chief Executive Officer may —
  - (a) classify the site; or
  - (b) give a notice under Part 3 in respect of land that is part of the site.
- (2) A copy of a certificate of contamination audit is to be given to each owner and occupier of the land that the certificate is given in respect of.

**Division 2 — Disclosure regarding contamination, and exemption certificates**

**53. Disclosure statement made within 2 years of commencement of Act**

- (1) An owner of land may make a disclosure statement under this section to the Chief Executive Officer —
  - (a) in the prescribed form; and
  - (b) within 2 years of the commencement of this Act.
- (2) If a disclosure statement under subsection (1) does not contain enough information for the Chief Executive Officer to make a decision under subsection (3), the Chief Executive Officer is to request, by notice in writing to the person who made the statement, further information with respect to the land.

- (3) Within 45 days of receiving a disclosure statement the Chief Executive Officer must —
- (a) if section 54 applies, give an exemption certificate;
  - (b) refuse to give an exemption certificate; or
  - (c) decline to deal with the statement if it is not in compliance with this section and advise the applicant accordingly.

**54. Exemption certificates**

- (1) On receiving a disclosure statement under section 53 and any further information requested under that section from a person, the Chief Executive Officer must give an exemption certificate in respect of the land to the person if, in the opinion of the Chief Executive Officer —
- (a) the land is contaminated;
  - (b) the contamination was not caused, or contributed to, by an action of the person;
  - (c) the person did not fail to prevent the contamination of the land; and
  - (d) the land was contaminated at the time the person became an owner of the land and, at that time, the person did not know, or suspect, and could not reasonably have known or suspected, that the land was contaminated.
- (2) An owner of land that is part of a site classified as *contaminated — remediation required* is not the person responsible for the remediation of that site to the extent provided by an exemption certificate given to that person.



**Contaminated Sites Bill 2000**

**Part 6** Certificates of contamination audit, exemption certificates and disclosure statements

**Division 2** Disclosure regarding contamination, and exemption certificates  
**s. 55**

---

**55. Disclosure required to potential owners of contaminated land before change of ownership occurs**

5 (1) Before entering into a transaction which would result in another person becoming an owner of, or holding a security interest in, land that is part of a site classified as —

- (a) *contaminated — remediation required*; or
- (b) *contaminated — restricted use*,

each owner of the land is to —

- 10 (c) disclose in writing the information prescribed in respect of the land for the purposes of this section; and
- (d) give a copy of any certificate of contamination audit that has been given in respect of the land,

to each person who would become an owner of, or hold a security interest in, the land as a result of the transaction.

15 (2) A person who contravenes subsection (1) commits an offence.

- (3) A disclosure made under this section is of no effect unless —
- (a) a copy has been supplied to the Chief Executive Officer; and
  - (b) it is approved in writing by the Chief Executive Officer.

20 **56. New owner to inform Chief Executive Officer**

(1) A person who becomes an owner of land which is part of a site classified as —

- (a) *contaminated — remediation required*; or
- (b) *contaminated — restricted use*,

25 is to inform the Chief Executive Officer of that fact in the prescribed manner within the time prescribed.

(2) A person who contravenes subsection (1) commits an offence.

**57. New owner of land may be responsible for remediation**

- 5 (1) A person who becomes an owner of land which is part of a site classified as *contaminated — remediation required* is the person responsible for the remediation of that site to the extent that the contamination was disclosed to that person under section 55 by a person responsible for remediation of that site.
- (2) Subsection (1) does not affect any other responsibility for remediation of the site that the person may have under this Act.
- 10 (3) A person referred to in subsection (1) who becomes an owner, may not, as a result of the operation of this section, be more responsible for remediation of the site than the person who made the relevant disclosure under section 55.

**Division 3 — Offences****58. Offences regarding false statements and incomplete disclosure**

- 15 (1) A person must not, in making a disclosure statement under this Part or in connection with a request for a certificate of contamination audit or a disclosure under section 55 —
- 20 (a) make a statement which the person knows is false in a material particular;
- (b) recklessly make a statement which is false in a material particular; or
- (c) fail to disclose information that the person knows is material.
- 25 (2) A person who contravenes subsection (1) commits an offence.

**Part 7 — Provisions specifically with respect to  
underground water**

**59. Consultation with the WRC**

- 5 (1) The Chief Executive Officer is to consult generally with the  
Water and Rivers Commission established by section 4(1) of the  
*Water and Rivers Commission Act 1995* with respect to such  
aspect of the contamination of underground water as the Chief  
Executive Officer considers appropriate.
- 10 (2) Before giving —  
(a) a notice under Part 3; or  
(b) a certificate of contamination audit,  
with respect to a site located in, or adjoining, a designated area  
the Chief Executive Officer is to seek comments from the WRC,  
and take into account any comments made.
- 15 (3) In this section —  
“**designated area**” has the same meaning as it has in  
section 57(5) of the EP Act.

**60. Chief Executive Officer may request information on wells**

- 20 (1) If of the opinion that underground water may be contaminated,  
the Chief Executive Officer may, by written notice given to an  
owner or occupier of land situated within one kilometre of a site  
classified as *contaminated — restricted use* or *contaminated —  
remediation required*, require the provision of information as to  
25 the existence of a well on that land or the taking of underground  
water from that land.
- (2) A person from whom information is required under  
subsection (1) commits an offence if he or she does not supply  
that information in writing to the Chief Executive Officer within  
the time specified in the notice.

**61. Appeal from notice**

- (1) A person to whom notice under section 60(1) is given may appeal against a requirement of the notice.
- (2) An appeal is to be made in accordance with Part 9.

**62. Areas of underground water contamination**

- (1) If a site where the underground water is contaminated is classified as —
  - (a) *contaminated — remediation required*; or
  - (b) *contaminated — restricted use*,

10 the Chief Executive Officer may by notice published in the *Gazette*, declare an area to be an area of underground water contamination.

- (2) A notice is to accurately describe the area declared to be the area of underground water contamination.

15 (3) The Chief Executive Officer may by notice published in the *Gazette* repeal or amend a notice made under this section.

**63. Notice to be given to owners and occupiers in areas of underground water contamination**

- (1) The Chief Executive Officer is to give written notice to each owner and occupier of land in an area of underground water contamination informing them that the land is in such an area.

- (2) A notice under this section may do all or any of the following —

- (a) prohibit or restrict the taking of underground water from that land;
- (b) prohibit the sinking of a well on that land;
- (c) impose conditions on the taking of underground water from the land;

**Contaminated Sites Bill 2000**

**Part 7** Provisions specifically with respect to underground water

**s. 63**

---

(d) impose conditions on the use of underground water taken from the land.

(3) In this section —

**“area of underground water contamination”** means an area declared under section 62 to be such an area.

5

(4) A person who contravenes a notice given under this section commits an offence.

## **Part 8 — Contaminated sites auditors**

### **Division 1 — Accreditation**

**64. Accredited auditors**

- 5           (1) The Chief Executive Officer may, in accordance with the regulations, accredit a person as a contaminated sites auditor.
- (2) Unless cancelled or suspended under the regulations, an accreditation remains in force for 2 years and may, at the discretion of the Chief Executive Officer, be renewed for further periods of 2 years.

10 **65. Certificate of accreditation**

- (1) The Chief Executive Officer is to give to each auditor a certificate of accreditation stating that the person is an accredited contaminated sites auditor and the person is to produce the certificate whenever required to do so by a person who has been or is about to be affected by the exercise of any of the auditor's powers under this Act or the EP Act.
- 15           (2) The Chief Executive Officer may limit, or impose conditions on, the powers that would otherwise be conferred on an auditor under this Act or the EP Act by specifying in the person's certificate of accreditation any limitation of, or condition imposed on, those powers.
- 20           (3) Subsection (2) does not limit the generality of section 52 of the *Interpretation Act 1984*.
- (4) An auditor who exercises any power under this Act or the EP Act that the auditor is not authorised to exercise under the certificate of accreditation commits an offence.
- 25

**66. Offences relating to accreditation**

A person who —

**Contaminated Sites Bill 2000**

**Part 8** Contaminated sites auditors

**Division 2** Mandatory auditor's reports

**s. 67**

---

- 5
- (a) obtains or attempts to obtain accreditation as an auditor by knowingly providing information that is false or misleading in a material particular;
- (b) is not accredited as an auditor and who advertises or otherwise holds out or implies, that he or she is accredited as an auditor;
- (c) forges, or fraudulently alters or uses, a certificate of accreditation; or
- 10 (d) allows a certificate of accreditation as an auditor to be used by another person,
- commits an offence.

**67. No action may be taken with respect to accreditation**

15 No action or other proceeding for damages lies against the Crown, the Minister or the Chief Executive Officer or any other person acting under this Act for any loss or injury directly or indirectly suffered as a result of the accreditation, or the suspension, cancellation or refusal to renew, the accreditation, of a person under this Part.

**Division 2 — Mandatory auditor's reports**

20 **68. Certification of mandatory auditor's report**

A mandatory auditor's report is not to be accepted under this Act or the EP Act unless it is accompanied by —

- 25 (a) a statement signed by the person who commissioned the report to the effect that that person has not knowingly provided any false or misleading information to the auditor and has provided all relevant information to the auditor; and
- 30 (b) a statement signed by the auditor to the effect that the report is accurate, and that the auditor has not knowingly included any false or misleading information in it or failed to include any relevant information in it.

**69. Offences relating to mandatory auditor's reports**

(1) A person who —

(a) provides information to an auditor in connection with a mandatory auditor's report, knowing the information to be false or misleading in a material respect; or

(b) commissions from an auditor a mandatory auditor's report and who fails to provide information to the auditor in connection with the report knowing the information to be materially relevant to the report,

commits an offence.

(2) An auditor who —

(a) includes information in a mandatory auditor's report knowing the information to be false or misleading in a material respect; or

(b) fails to provide information in such a report knowing the information to be materially relevant to the report,

commits an offence.

**70. Self-incriminatory information not exempt**

A person is not excused from providing information when required to do so under this Part on the ground that to do so might tend to incriminate the person or make the person liable to a penalty and this Part applies to any such information that is supplied, whether or not the information might incriminate the person.

**71. Use of information**

(1) Any information in a mandatory auditor's report, or in documentation supplied to the Chief Executive Officer in connection with the report, may be taken into consideration and used for the purposes of this Act.



**Contaminated Sites Bill 2000**

**Part 8** Contaminated sites auditors

**Division 2** Mandatory auditor's reports

**s. 71**

---

- (2) Without limiting subsection (1), any such information is admissible in evidence in any prosecution for an offence under this Act or any other law.

---

## Part 9 — Appeals

### 72. Appeals

- 5 (1) An appeal under section 14, 30, 41 or 61 is instituted by giving written notice of the appeal to the Minister setting out the grounds and facts on which the appellant relies.
- (2) Notice of appeal is to be given within 14 days of the person receiving the relevant notice, or such later time as is specified in the relevant notice.
- 10 (3) On an appeal the Minister must consider the notice of appeal and —
- (a) affirm the classification, decision or requirement appealed against;
  - (b) vary the classification, decision or requirement appealed against; or
  - 15 (c) set aside the classification, decision or requirement and make a decision or substitute a notice or classification that the Minister thinks just.
- (4) The Minister must notify an appellant in writing of the decision within 30 days after the date of the decision.
- 20 (5) The decision of the Minister under this Part is final.
- (6) Before making a decision on an appeal, the Minister may request such further information as the Minister considers desirable to consider and determine the appeal from —
- (a) the person; or
  - 25 (b) any other person who has an interest in the site or land.
- (7) Pending the determination of an appeal, a classification, decision or notice in respect of which an appeal is made continues to have effect, subject to any written decision of the Minister to the contrary.

**73. Minister may seek advice**

The Minister may seek advice from the Appeals Convenor and any other person or body before making a decision on an appeal but need not take that advice into account in making a decision.

5 **74. Implementation of decisions by Minister on appeal by the Chief Executive Officer**

The Chief Executive Officer is to give effect to a decision of the Minister under this Part as soon as is practicable.

## **Part 10 — Enforcement**

### **Division 1 — Legal proceedings**

**75. Who can take proceedings for offences**

- 5 (1) Proceedings for an offence against this Act are to be taken by the Chief Executive Officer or a person authorised to do so by the Chief Executive Officer.
- (2) An authorisation under subsection (1) may be given generally or in relation to a specified offence or specified offences.
- 10 (3) If a complaint alleging an offence under this Act purports to be made or sworn by a person authorised to take proceedings for offences of that kind, it is to be presumed, in the absence of proof to the contrary, that the complaint was made or sworn by such a person.

**76. Time for bringing prosecutions**

- 15 Despite section 51 of the *Justices Act 1952*, a complaint for an offence under this Act may be made within 2 years from the time when the matter of complaint arose.

**77. Evidentiary provisions**

- 20 (1) In proceedings for an offence under this Act, an averment that —
- (a) a notice under this Act was given, or was given to a specified person or at a specified time;
  - (b) land is, or at a specified time land was, part of a site classified as of a particular class;
  - 25 (c) a specified person is, or at a specified time was, the owner of specified land;
  - (d) a specified person is, or at a specified time was, the person responsible for the remediation of a specified

site, or the person responsible for the remediation of that site to a specified extent;

(e) a certificate is a certificate of contamination audit under section 52;

5 (f) notice was given to a specified person under section 63; and

(g) specified land is, or at a specified time was, in an area of underwater contamination under section 62,

10 is to be taken to have been proved in the absence of proof to the contrary.

### **Division 2 — Additional powers of the court**

#### **78. Sections 99T, 99U and 99ZA of EP Act apply**

Sections 99T, 99U and 99ZA of the EP Act apply to and in relation to this Act as if a reference in those sections to —

15 (a) “this Division” is to be taken to be a reference to this Division; and

(b) “this Act” is to be taken to be a reference to this Act.

### **Division 3 — Penalties**

#### **79. Penalties**

20 An individual convicted of an offence under a provision specified in column 2 of Part 1 of Schedule 2 and a body corporate convicted of an offence under a provision specified in column 2 of Part 2 of that Schedule is liable to a penalty not exceeding the penalty specified opposite that provision in  
25 column 3 of the relevant Part.

#### **80. Daily penalties**

(1) Without limiting section 71 of the *Interpretation Act 1984*, where an offence is committed by a person by reason of the

5           contravention of a provision of this Act under which the person  
is required or directed to do any act or thing, or to refrain from  
doing any act or thing, that offence is taken to continue so long  
as the act or thing so required or directed remains undone, or  
continues to be done, as the case may be.

- 10           (2) In addition to a penalty specified in column 3 of Schedule 2, a  
person, being either an individual or a body corporate, convicted  
of an offence under a provision specified in column 2 of that  
Schedule is liable to a daily penalty not exceeding the daily  
penalty specified opposite to that provision in column 4 of the  
Part for each day or part of a day during which the offence  
continues after the offender is convicted.

**81.       Attempt and accessory after the fact**

15           A person who attempts to commit, or becomes an accessory  
after the fact to, an offence under this Act (the “**principal  
offence**”) commits an offence and is liable on conviction to the  
penalty to which a person convicted of the principal offence is  
liable.

## **Part 11 — General**

### **82. False or misleading information**

A person who, in purporting to comply with a requirement made by or under this Act, to provide information to the Chief Executive Officer —

5

(a) gives or causes to be given information that to his or her knowledge is false or misleading in any material particular; or

10

(b) omits or authorises the omission of any matter or thing without which the information is to the person's knowledge misleading in any material respect,

commits an offence.

### **83. Confidentiality**

(1) This section is subject to section 17.

15

(2) These persons are subject to a duty of confidentiality —

(a) a person who is or was the Chief Executive Officer;

(b) people who are or were engaged or employed in the administration or enforcement of this Act; and

(c) other people —

20

(i) to whom information or records are disclosed under this Act; or

(ii) who gain access (properly or improperly) to information obtained under this Act.

25

(3) A person subject to a duty of confidentiality must not record, disclose, or make use of information obtained under this Act except —

(a) for a purpose related to the administration or enforcement of this Act;

- 5
- 10
- 15
- (b) as required or allowed by this Act or another written law that specifically or by necessary implication overrides this duty of confidentiality;
  - (c) as authorised by the person, or persons, to whose affairs the information or records relate;
  - (d) for the purposes of the investigation of any suspected offence or any legal proceedings, or a report of legal proceedings, arising out of this Act;
  - (e) in a statistical or other form that could not reasonably be expected to lead to the identification of any person to whose affairs it relates; or
  - (f) in other circumstances in which its disclosure is permitted by the regulations.
- (4) A person subject to a duty of confidentiality in this section who contravenes it commits an offence.

**84. Other provisions of EP Act apply**

Sections 115, 116, 117, 118, 120 and 121 of the EP Act apply to and in relation to this Act as if a reference in those sections to “this Act” were a reference to this Act.

20 **85. Guidelines**

- 25
- (1) The Chief Executive Officer may from time to time make, amend or revoke guidelines with respect to —
    - (a) the assessment, management and reporting of contaminated sites; and
    - (b) the identification and classification of contaminated sites.
  - (2) The Chief Executive Officer is to ensure that the guidelines, in an up to date form, are made available to the public.



**s. 86**

---

(3) If there is an inconsistency between a guideline and a regulation, the regulation prevails to the extent of that inconsistency.

5 (4) The Chief Executive Officer is to cause to be published in the *Gazette* notice of the making, amendment or revocation of the guidelines, but notices under this subsection need not include the text of the guidelines or the amendments.

**86. Regulations**

10 (1) The Governor may, on the recommendation of the Minister, make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for giving effect to the purposes of this Act.

15 (2) Without limiting the generality of subsection (1), regulations may be made under that subsection in respect of the matters set out in Schedule 3.

(3) Section 123(3) of the EP Act applies with respect to regulations made under this Act.

**87. Consequential amendments to other Acts**

20 Schedule 4 has effect.

## Schedule 1 — Classification of sites

[s. 9(2)(a)]

| <b>Classification</b>                                 | <b>Criteria</b>  | <b>Consequences</b>  |
|---|--|--|
| <i>report not substantiated</i>                       | A report under section 8 provides no ground to indicate possible contamination of the land | notice to be given, see section 11(5)  |
| <i>possibly contaminated — investigation required</i> | There are grounds to indicate possible contamination of the land                           | investigation notice may be given, see section 25  |
| <i>not contaminated — unrestricted use</i>            | After investigation, the land is found not to be contaminated                              | certificate may be given, see section 52   |
| <i>Contaminated — restricted use</i>                  | The land is contaminated but suitable for restricted use                                   | memorial lodged, notice or certificate may be given, see sections 25(2), 47 and 52             |
| <i>Contaminated — remediation required</i>            | The land is contaminated to the extent that it requires remediation                        | memorial lodged, notice, or certificate may be given, see sections 25(2), 27(2), 29, 47 and 52 |
| <i>Decontaminated</i>                                 | The land has been remediated and is suitable for all uses                                  | Certificate may be given, see section 52   |

Defined Terms

---

**Schedule 2 — Penalties**

[s. 79]

**Part 1 — Penalties — individuals**

| <b>Column 1</b><br><i>Item</i> | <b>Column 2</b><br><i>Section</i> | <b>Column 3</b><br><i>Penalty</i> | <b>Column 4</b><br><i>Daily Penalty</i> |
|--------------------------------|-----------------------------------|-----------------------------------|---|
| 1.                             | 8(3)                              | \$125 000                         | \$25 000                                |
| 2.                             | 16(6)                             | \$125 000                         | \$25 000                                |
| 3.                             | 20(2)                             | \$250 000                         | \$50 000                                |
| 4.                             | 28(2)                             | \$250 000                         | \$50 000                                |
| 5.                             | 36(3) and (6)                     | \$250 000                         | \$50 000                                |
| 6.                             | 42(2)                             | \$500 000                         | \$100 000                               |
| 7.                             | 45                                | \$125 000                         | \$25 000                                |
| 8.                             | 51(4)                             | \$50 000                          | \$10 000                                |
| 9.                             | 55(2)                             | \$125 000                         | \$25 000                                |
| 10.                            | 56(2)                             | \$125 000                         | \$25 000                                |
| 11.                            | 58(2)                             | \$125 000                         | \$25 000                                |
| 12.                            | 60(2)                             | \$50 000                          | \$10 000                                |
| 13.                            | 63(4)                             | \$50 000                          | \$10 000                                |
| 14.                            | 65(4)                             | \$125 000                         | \$25 000                                |
| 15.                            | 66                                | \$125 000                         | \$25 000                                |
| 16.                            | 69(1) and (2)                     | \$250 000                         | \$25 000                                |
| 17.                            | 82                                | \$125 000                         | \$25 000                                |
| 18.                            | 83(4)                             | \$125 000                         | \$25 000                                |

**Part 2 — Penalties — bodies corporate**

| <b>Column 1</b><br><i>Item</i> | <b>Column 2</b><br><i>Section</i> | <b>Column 3</b><br><i>Penalty</i> | <b>Column 4</b><br><i>Daily penalty</i> |
|--------------------------------|-----------------------------------|-----------------------------------|---|
| 1.                             | 8(3)                              | \$150 000                         | \$50 000                                |
| 2.                             | 16(6)                             | \$150 000                         | \$50 000                                |
| 3.                             | 20(2)                             | \$500 000                         | \$100 000                               |
| 4.                             | 28(2)                             | \$500 000                         | \$100 000                               |
| 5.                             | 36(3) and (6)                     | \$500 000                         | \$100 000                               |
| 6.                             | 42(2)                             | \$500 000                         | \$100 000                               |
| 7.                             | 45                                | \$250 000                         | \$50 000                                |
| 8.                             | 51(4)                             | \$150 000                         | \$50 000                                |
| 9.                             | 55(2)                             | \$250 000                         | \$50 000                                |
| 10.                            | 56(2)                             | \$250 000                         | \$50 000                                |
| 11.                            | 58(2)                             | \$250 000                         | \$50 000                                |
| 12.                            | 60(2)                             | \$150 000                         | \$50 000                                |
| 13.                            | 63(4)                             | \$150 000                         | \$50 000                                |
| 14.                            | 65(4)                             | \$250 000                         | \$50 000                                |
| 15.                            | 66                                | \$250 000                         | \$50 000                                |
| 16.                            | 69(1) and (2)                     | \$500 000                         | \$100 000                               |
| 17.                            | 82                                | \$250 000                         | \$50 000                                |
| 18.                            | 83(4)                             | \$250 000                         | \$50 000                                |

Defined Terms

---

**Schedule 3 — Matters in respect to which regulations may be made**

[s. 86(2)]

**Part 1 — General**

1. Disclosure statements, including —
  - (a) the form of statements;
  - (b) information to be included in the statements; and
  - (c) reports to be annexed to the statements.
2. The fees to apply under this Act including, without limiting sections 43, 45 and 45A of the *Interpretation Act 1984*, the following —
  - (a) the time at which, or the periods for or during which, fees are to be paid;
  - (b) the structure of fees;
  - (c) the basis on which a fee is to be calculated;
  - (d) interest on unpaid fees;
  - (e) penalties for late payment or underpayment of fees;
  - (f) recovery of fees.
3. The facts and circumstances to be taken into account by the Chief Executive Officer in making a decision under Part 4 Division 1 as to responsibility for remediation.
4. The procedure for applying to the Chief Executive Officer to make a decision under Part 4 Division 1 as to responsibility for remediation, including the information that may be required by the Chief Executive Officer, responsibility for the cost of supplying any information and the carrying out of any investigation.
5. The transportation, and disposal, of contaminated soil and soil from a contaminated site.

**Part 2 — Auditors and audits**

6. Conferring functions, in addition to those conferred by this Act or the EP Act, on auditors and guidelines to be followed by auditors in carrying out their functions.
7. A scheme for the accreditation of auditors and, without limiting the generality of that power —
  - (a) applications for accreditation and the assessment of applications;
  - (b) the provision of advice to the Chief Executive Officer as to accreditation and the renewal of accreditation, including the establishment of a selection panel;
  - (c) the qualifications, criteria and practical experience required for accreditation as an auditor;
  - (d) monitoring the continuing competence of auditors;
  - (e) the circumstances in which accreditation as an auditor is to be cancelled or suspended;
  - (f) the imposition and variation of conditions to which an accreditation is subject; and
  - (g) fees payable in relation to application and accreditation.
8. Additional circumstances where it is mandatory for an auditor to be engaged or for a mandatory auditor's report to be provided, and the person to whom the report is to be provided.
9. The carrying out of any function conferred on an auditor under this Act or the EP Act by an auditor.
10. The scope and content of mandatory auditor's reports, including in respect of particular reports or reports made under particular provisions of this Act or the EP Act.
11. The powers and responsibilities of auditors in prescribed circumstances.
12. A scale of maximum fees applicable for services provided by auditors.

Defined Terms

---

**Schedule 4 — Consequential provisions**

[s. 87]

**1. Environmental Protection Act 1986 amended**

(1) The amendments in this section are to the *Environmental Protection Act 1986\**.

(2) Section 3(1) is amended by inserting in the appropriate alphabetical position —

“

“**auditor**” has the same meaning as it has in the  
*Contaminated Sites Act 2000*;

”.

(3) Section 38(4) is amended by deleting “shall comply with that requirement.” and inserting instead —

“

shall —

- (a) comply with that requirement; and
- (b) if the Authority so requests in writing, ensure that a report by an auditor on the proposal is forwarded to the Authority with the proposal.

”.

(4) Section 88(1), (2) and (4) is amended by inserting after “Act” in each place where it occurs the following —

“ or the *Contaminated Sites Act 2000* ”.

(5) Section 89(1)(f) is amended as follows:

- (a) after subparagraph (i) by deleting “or”;
- (b) after subparagraph (ii) by deleting the full stop and inserting —

“

; or

- (iii) any notice given under the  
*Contaminated Sites Act 2000*.

”.

[\* Reprinted as at 16 April 1999.

*For subsequent amendments see 1999 Index to Legislation of  
Western Australia, Table 1, p. 81.]*

**2. Freedom of Information Act 1992 amended**

The *Freedom of Information Act 1992*\* is amended in clause 14 of  
Schedule 1 by inserting after subclause (4), the following —

“

(5) Matter is exempt matter if its disclosure would reveal —

- (a) that land the subject of a report made under  
section 8 of the *Contaminated Sites Act 2000* is not  
classified under that Act or is classified as *report  
not substantiated*; or
- (b) information about that report or the classification of  
the land.

”.

[\* Reprinted as at 3 March 2000.]

=====



Defined Terms

---

**Defined Terms**

*[This is a list of terms defined and the provisions where they are defined.  
The list is not part of the law.]*

| Defined Term                                  | Provision(s)                 |
|---|------------------------------|
| area of underground water contamination ..... | 63(3)                        |
| auditor.....                                  | 3(1), Schedule 4 clause 1(2) |
| binding.....                                  | 3(1)                         |
| certificate of contamination audit .....      | 3(1)                         |
| classify.....                                 | 3(1)                         |
| clean up notice .....                         | 3(1)                         |
| contaminated.....                             | 3(1), 4(1)                   |
| Crown land .....                              | 5(2)                         |
| database .....                                | 3(1)                         |
| designated area .....                         | 59(3)                        |
| EP Act.....                                   | 3(1)                         |
| exemption certificate .....                   | 3(1)                         |
| guidelines.....                               | 3(1)                         |
| hazard abatement notice .....                 | 3(1)                         |
| insolvent .....                               | 3(1)                         |
| investigation notice.....                     | 3(1)                         |
| land .....                                    | 3(1)                         |
| management body.....                          | 5(2)                         |
| management plan.....                          | 3(1)                         |
| mandatory auditor's report .....              | 3(1)                         |
| mining or petroleum right .....               | 5(2)                         |
| notice .....                                  | 3(1), 18                     |
| occupier .....                                | 3(1)                         |
| orphan site .....                             | 39(1)                        |
| owner.....                                    | 3(1), 5(1), 32(4)            |
| pastoral lease .....                          | 5(2)                         |
| person responsible .....                      | 3(1)                         |
| principal offence.....                        | 81                           |
| public authority.....                         | 32(4)                        |
| Registrar .....                               | 47(8)                        |
| remediation.....                              | 3(1)                         |
| reserve .....                                 | 5(2)                         |
| site .....                                    | 3(1)                         |
| underground water.....                        | 3(1)                         |
| unlawful act .....                            | 33(2)                        |
| well.....                                     | 3(1)                         |