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Department of Biodiversity,
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Rights of appeal under the *Contaminated Sites Act 2003*

Under the *Contaminated Sites Act 2003* (Act), all decisions regarding the assessment, management and remediation of contaminated sites are made by qualified and experienced environmental officers at the Department of Environment and Conservation (DEC) and the chief executive officer of DEC.

All decisions are based on a thorough review and assessment of all available information. Under the Act, you may be able to appeal a decision if you are unhappy about it, and depending on the nature of the case, you may be able to appeal to either the Contaminated Sites Committee¹ or the Supreme Court.

The person lodging an appeal is responsible for any costs they may incur in relation to it.

What decisions can I appeal?

There are four types of decisions against which appeals can be made:

1. Responsibility for remediation determined by the Committee
2. The issuing of investigation or clean up notices by DEC
3. The issuing of an exemption certificate by the Committee
4. Site classifications assigned by DEC

There is no avenue for appeal against receiving a hazard abatement notice. The purpose of this notice is to counteract an immediate and serious risk to human health or the environment.

The effects of the disputed decision, classification, notice or certificate must be adhered to while you are waiting for the outcome of the appeal.

Appeals against responsibility for remediation

If requested, or if the responsibility for remediation of a site is in question, the Committee will determine who is responsible for the remediation of a contaminated site and the extent to which a party is responsible.

The decision of the Committee is final. There is no avenue for appeal against a decision regarding responsibility for remediation, except on a point of law to the Supreme Court. An appeal is to be made in accordance with the rules of court of the Supreme Court and must be made within 21 days of receipt of the Committee's decision.

Appeals against the requirements of an investigation or clean up notice issued by DEC

The person on whom an investigation or clean up notice is binding may appeal to the Committee against the requirements of the notice if they have good reason to dispute them.

In order to lodge an appeal, the details of the case, including the grounds for appeal, must be submitted in writing to the Committee. Notice of an appeal must be lodged with the Committee within 21 days after the day on which the notice was received.

The Committee's decision in relation to the appeal is final, with no further appeal allowed to either the Committee or a court of law.

Appeals against issuing exemption certificates

The Committee decides if an exemption certificate should be issued in response to a disclosure statement submitted to the Committee. The submitter of a disclosure statement is entitled to appeal to the Supreme Court if the Committee refuses to issue an exemption certificate; or appeal the extent to which it provides an exemption; or to appeal the cancellation or amendment of an exemption certificate - but only on a point of law.

Appeals must be lodged with the Supreme Court within 21 days after the notice or certificate was given. An appeal is to be made in accordance with the rules of court of the Supreme Court.

¹ The Contaminated Sites Committee (Committee) is a statutory committee appointed by the Minister for the Environment. It comprises 3 – 5 people with suitable expertise to make decisions for the purposes of the Contaminated Sites Act 2003. At least one of its members is an accredited contaminated sites Auditor, and at least one is a lawyer. The Committee sits in the Appeals Convener's Office of the Minister for the Environment. The Committee is not made up of representatives from the Department of Environment and Conservation, and is fully independent of the Department of Environment and Conservation. The Committee sits part-time, but has a full-time Executive Officer. The Committee's decisions are final except on a point of law where appeals can be made to the Supreme Court.

In making a decision under the Contaminated Sites Act 2003, the Committee is to consult the chief executive officer of DEC and may consult any other person it considers necessary is to act according to equity, good conscience and the substantial merits of the case, without regard to technicalities or legal forms; is not bound by the rules of evidence; and is to conduct its inquiries in any manner it considers appropriate.



Appeals against site classifications

Site classification decisions are made by the chief executive officer of DEC. Dependent upon the nature of the classification, certain people can appeal against the classification to the Contaminated Sites Committee. An appeal can only be made if there is a valid reason for disagreeing with the site classification assigned.

Classifications	Eligible Appellants		
	Owner/ occupier	Person responsible for remediation	Third party who reported a suspected contaminated site
Possibly contaminated, investigation required	✓		
Not contaminated – unrestricted use	✓		
Contaminated – restricted use	✓	✓	
Remediated for restricted use	✓	✓	
Contaminated – remediation required	✓	✓	
Decontaminated	✓		
Report not substantiated			✓

In order to lodge an appeal the details of the case, including the grounds for the appeal, must be submitted in writing to the Committee. Notice of an appeal must be lodged within 21 days after the day on which written notification of the classification was received.

The Committee's decision in relation to the appeal is final, with no further appeal allowed to either the Committee or to a court of law.

Need more information?

DEC has published a series of fact sheets and administrative and technical guidelines to assist with the assessment, management and remediation of contaminated sites in Western Australia; these are available by going to www.dec.wa.gov.au/contaminatedsites.

Further information is available by mail from the address below or by calling the Contaminated Sites Section on 1300 762 982.

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