



Buyer beware – buying and selling contaminated land

Purpose

This fact sheet is designed to provide targeted information on buying and selling contaminated land in Western Australia.

Introduction

The *Contaminated Sites Act 2003* (the Act) was introduced to identify, record, manage and clean up contamination. Under the Act, known or suspected contaminated sites must be reported to the Department of Environment Regulation (DER), investigated and, if necessary, cleaned up (remediated).

Investigating and cleaning up contaminated sites is, in most cases, the responsibility of the polluter or current site owner. DER administers and enforces the Act which includes classifying sites (in consultation with the Department of Health) and making information on contaminated sites available to the public.

It is not unusual for residential subdivisions to be built on land that was previously used for potentially contaminating activities, such as service stations, heavy industry and market gardens.

People buying, selling or leasing land need to know if the land being purchased was once a contaminated site and be aware of their obligations under the Act.

Failing to recognise that land is contaminated can have long term consequences for both the buyer and seller including potential prosecution and obligation to pay for remediation of the land in the future.

Thorough due diligence

Investigating and cleaning up contaminated sites can be expensive. Prospective purchasers should be aware of the risk of potential contamination and carry out careful, thorough pre-purchase enquiries (due diligence).

When buying, selling or leasing property, you and/or your real estate professional should search published contaminated sites information as part of any routine, pre-purchase due diligence enquiry.

Steps to take before you buy

1. Search DER records – check the contaminated sites database or submit a Form 2 to DER to find out if the property you are looking to buy has been reported as a known or suspected contaminated site.
2. Find out as much as you can about the property's history. How was the land used in the past?
 - Check local government records, historic certificates of title and aerial photographs (available from [Landgate](#)).
 - Talk to neighbours – they may know the history of the property and what went on there in the past.
3. Search for information on properties nearby. Contamination on adjacent or surrounding sites may affect your property – for example, is there a service station nearby?
4. If you need a formal, thorough investigation for potential contamination, consider engaging an environmental consultant to carry out a preliminary site investigation

(PSI). See [Fact Sheet 3, Seeking help from contaminated sites experts.](#)

Potentially contaminating activities

DER's guideline, [Assessment and management of contaminated sites](#) includes a quick reference list of activities, industries and land uses which could lead to contamination. This list is not exhaustive and you should also consider surrounding and historical uses of the land which may have resulted in contamination at the property.

Who is responsible for remediation or cleaning up contamination?

If you are buying, selling or leasing contaminated land in Western Australia, you need to be aware of your obligations under the Act. It provides a hierarchy of responsibility for remediation and associated costs for investigating and cleaning up contamination. Under s 24 of the Act, a person is responsible for remediation of a site:

- a) if they have caused or contributed to the contamination of the site;
- b) if they are an owner or occupier of the site who has changed, or proposes to change, the use to which land that comprises all or part of the site is put; or
- c) if they are an owner of the site, or of a source site.

The term "owner" in the Act is defined to include a mortgagee in possession.

Under the Act, the person responsible for the remediation costs is responsible for cleaning up the land and water to make it safe and suitable for its current (zoned) use.

However, if you intend to change the land use, for example, develop a market garden into a residential housing estate, a land use that

requires the land to be cleaned up to a higher standard, it is the owner/occupier changing the land use who is responsible for any additional clean-up costs to ensure the site is fit for the new purpose.

Pre-sale disclosure requirements

Some site classifications require disclosure to potential new owners/occupiers when selling or leasing property. Disclosure is required for sites classified:

- contaminated – remediation required;
- contaminated – restricted use; or
- remediated for restricted use.

Site owners are required to complete and sign a [Form 6](#) and provide copies to a potential new owner, mortgagees or lessees and DER at least 14 days before transactions are completed – for example, 14 days before settlement date for a sale or date the mortgage is registered or lease is signed/commences. We suggest you also include a copy of the Basic Summary of Records which can be downloaded from [DER's website](#). You must also disclose if a regulatory notice such as an investigation or clean-up notice has been served on your property.

If you fail to disclose this information, you are committing an offence and a penalty may apply.

Maximum Penalty: \$125,000.

Possible maximum daily penalty: \$25,000.

Although it is not mandatory to disclose information on sites classified *possibly contaminated – investigation required*, DER recommends that sellers advise potential purchasers of a property's contamination status.

False or misleading information

When reporting contamination, requesting information from DER, disclosing contamination under s 68 or providing information to the CEO or Contaminated Sites Committee, a person must not provide false or misleading information or fail to disclose all relevant information.

Maximum penalty: \$125,000.

Possible maximum daily penalty: \$25,000.

More information

For advice on contaminated sites or related matters, please contact DER's **contaminated sites information line 1300 762 982** or email contaminated.sites@der.wa.gov.au

This document is available in alternative formats and other languages on request.

Related documents

Other fact sheets in this series:

1. Identifying and reporting contaminated sites
2. How to access information on contaminated sites
3. Seeking help from contaminated sites experts
4. Buyer beware – buying and selling contaminated land

Guidelines relating to investigating and managing contaminated sites are available at www.der.wa.gov.au/contaminatedsites

Legislation

This document is provided for guidance only. It should not be relied upon to address every aspect of the relevant legislation. The full text of the *Contaminated Sites Act 2003* is available electronically from the State Law Publisher website at www.slp.wa.gov.au

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Legal advice

The information provided to you by DER in relation to this matter does not constitute legal advice. Due to the range of legal issues potentially involved in this matter, DER recommends that you obtain independent legal advice.