



LEGAL LINES – WA Property News December 2003

CONTAMINATED SITES ACT 2003 – General Overview

The Contaminated Sites Act 2003 (“the Act”) received assent on 7 November 2003. It is likely that the Act will be operative mid-2004.

The Act *requires* owners/occupiers, polluters and auditors engaged under the Act to report sites that they know or suspect to be contaminated to the Department of Environmental Protection (“DEP”). If these people fail to report a contaminated site, they face a penalty of up to \$250,000 (individuals) and \$1.25 million (corporations). What constitutes “suspecting” a site to be contaminated is likely to be a source of considerable judicial review over the years ahead.

A site is “contaminated” where there is a substance present above the background level that presents, or potentially presents a risk of harm to human health or the environment.

Upon receiving a report, the CEO of the DEP will classify the site as 1 of 7 classes. Only class 6 sites, “contaminated – remediation required”, need to be remediated. Subject to some exceptions, the Act takes a “polluter pays” approach to remediation.

The Government expects that landowners will continue to voluntarily investigate and remediate contamination on their land. If voluntary action is not taken, the Act allows for the CEO to take steps to ensure the objectives of the Act are met. For example, the CEO can issue notices requiring an investigation of a site, or that a site be remediated. If the recipient of the notice does not comply, the CEO can take the necessary action and recover reasonable costs from the recipient of the notice.

The Act has enforcement provisions which empowers the CEO to initiate court proceedings. There are also provisions for daily penalties for continuing offences.

The major implication for property transactions is that an owner of land must disclose, to potential owners, mortgagees or lessees, whether the land is contaminated and is subject to restricted use or if remediation is required, at least 14 days before completing the transaction. Failing to disclose this information can result in a maximum penalty of \$125,000 and the possibility of legal action.

Graham Goerke
Partner
Jackson McDonald

*Jackson McDonald Barristers & Solicitors
St Georges Centre
81 St Georges Terrace, Perth WA 6000
GPO Box M97, Perth WA 6843*

*Telephone: (08) 9426 6611
Facsimile: (08) 9321 2002
Web Site: www.jacmac.com.au
Email: jacmac@jacmac.com.au*