



Government of Western Australia
Contaminated Sites Committee

Decision in Respect of Appeal Against Classification

Contaminated Sites Committee (CSC 1/2014)

Contaminated Sites Act 2003, Part 8, Division 2

Appellant: Bio-Organics Pty Ltd

Site: Lot 36 on Diagram 66394 as shown on certificate of title volume 1666 folio 695
Known as 36 Abernethy Road, Oakford.

Decision: **Appeal Dismissed**
Classification remains *possibly contaminated – investigation required*

Date: 25 February 2015

1.0 Summary

- 1.1 The Site is currently owned by Joseph and Naline Avila and occupied by Bio-Organics Pty Ltd ("Bio-Organics") which, until recently, operated composting and liquid waste operations on the Site.
- 1.2 The Site was classified *possibly contaminated – investigation required* (PCIR) by the Department of Environment Regulation ("DER"). The notice of classification, dated 12 December 2013, stated that appeals against the classification needed to be lodged "within 30 days of being given this notification".
- 1.3 Bio-Organics lodged a Notice of Appeal Against Site Classification, dated 17 January 2014 and the Committee accepted it as a valid appeal (see 4.1 below). The appeal raised one ground of appeal.
- 1.4 Bio-Organics subsequently employed a consultant to carry out further investigations at the Site and reports of these investigations were made available to the Committee and DER.
- 1.5 On 27 October 2014 the Committee received an email from Bio-Organics that provided further "supplementary information pertaining to our appeal against the site classification".
- 1.6 On 17 November 2014, in accordance with section 80 of the *Contaminated Sites Act 2003* ("CS Act") the Committee asked the CEO of DER to provide a report on the appeal. The report was received on 24 December 2014 and subsequently forwarded to the appellant for response.
- 1.7 Bio-Organics' response (dated 9 February 2015) was received by the Committee on 13 February 2015. The response addressed both the present appeal and Bio-Organics' later appeal against the provisions of an investigation notice. While the

correspondence addressed each of the eleven grounds of the latter appeal it did not specifically address the ground of the present appeal.

- 1.8 The Committee considered all documents provided by both the Appellant and CEO throughout the document exchange listed above.
- 1.9 The Committee decided that the appeal should be **dismissed** for the reasons set out below and that the classification should remain *possibly contaminated – investigation required*. Under section 82(2) of the Act this decision of the Committee is final and without appeal.

2.0 Appeal Grounds (Summary)

Preliminary Grounds of Appeal

- 2.1 The ground provided in the Notice of Appeal stated “The classification of the site is premature in the context of recently issued licence issued under Part V of the *Environmental Protection Act 1986* (EP Act) (Licence number L8475/2010/2) which requires groundwater investigations to be undertaken.”
- 2.2 In the attached letter the appellant stated:
 - 2.2.1 “While we accept that further work is required to determine whether composting activities have resulted in impacts to groundwater, in view of the ... licence requirement the classification of the site under the Contaminated Sites Act is considered to be premature.
 - 2.2.2 An enforceable process for undertaking additional investigations into the site is in place which is aimed at improving the current understanding of groundwater quality and flows. The results of these investigations will inform what, if any, further work is required.
 - 2.2.3 We therefore respectfully request that the classification be removed pending the results of these investigations.”

Supplementary Grounds of Appeal

- 2.3 In its email of 27 October 2014, Bio-Organics quotes correspondence from Peter Keating and Mia Harris that states:
 - 2.3.1 “The classification of Mr Joe Avila’s property as “*Possibly Contaminated – Investigation Required*” is unjustified given that the groundwater quality analysis, with the exception of SJS2 ammonia (as N) failed to identify nutrient levels in excess of appropriate assessment levels as published by the Department of Environment (2010).”
 - 2.3.2 “there is no evidence to suggest the holding pond to the south of the property is a source of nutrient contamination to the Birrega Main Drain (WRC 1997).” and
 - 2.3.3 “the water quality testing commissioned by the Shire of Serpentine-Jarrahdale, conducted by Stass (Nov 2013), provided no evidence that the groundwater within the site is being contaminated by Bio-Organics and therefore the classification of ‘possibly contaminated – investigation required’ is unwarranted and unjustified.”

- 2.3.4 "Additionally, the likely outcome of such contamination investigation would be increased management rather than a remediation process due to the nature of the identified possible contaminants (N and P)."
- 2.4 In addition the email states "Classification of the site and any further investigation would not result in any form of physical remediation. The result would be altered management practises. These management practises have already been implemented and therefore no further form of remediation is relevant."
- 2.5 Further, Bio-Organics states "There is no evidence of such a nutrient or contamination "plume" of any kind on the subject site. Documentation from Strategen Environmental (previously provided) concluded exactly the opposite. ... Up and down stream testing show anolytes (sic) at background levels and only variations due to farming practises conducted in an appropriate way."

3.0 Reasons for Classification and the CEO's response to the Appeal (summary)

- 3.1 In consultation with the Department of Health, the DER classified the Site PCIR for a number of reasons, including:
 - 3.1.1 The land use of "licenced compost manufacturing facility" has the potential to cause contamination as specified in the "Potentially Contaminating Activities, Industries and Landuses" (Department of Environment, 2004).
 - 3.1.2 Limited groundwater investigations were carried out in 2013, and do not meet the standard required by DER's "Contaminated Sites Management Series" guidelines. In any event, metals and nutrients in groundwater were detected at concentrations exceeding the Australian Drinking Water Guidelines, Irrigation Guidelines and Aquatic Systems – Freshwater guidelines, as well as the domestic non-potable groundwater use guidelines as published in "Assessment Levels for Soil, Sediment and Water" (Department of Environment and Conservation, 2010).
 - 3.1.3 Nutrients (Nitrogen) were also found to exceed the South-west Australian Aquatic Ecosystems Guidelines for Fresh and Marine Water Quality as published in the Australian and New Zealand Guidelines for Fresh and Marine Quality Water (Australian and New Zealand Environment and Conservation Council – ANZECC & Agriculture and Resource Management Council of Australia and New Zealand – ARMCANZ, 2000).
 - 3.1.4 The criteria used are relevant due to the proximity of wetlands and groundwater potentially used for domestic use and/or irrigation. Further groundwater investigations are required to delineate the lateral and vertical extent of groundwater impact at the Site, and off-site (if it has migrated). Further investigation is also required to determine the risk to human health, the environment and environmental values.
 - 3.1.5 No soil investigations have yet been undertaken; the Site has not been fully investigated.
- 3.2 The CEO of DER responded to Bio-Organics appeal ground of premature classification with the following points:
 - 3.2.1 After reviewing the available technical information, multiple exceedances of appropriate criteria were identified. Exceedances exist in both nutrients (total nitrogen, total phosphorus, nitrate and ammonia), and metals.

- 3.2.2 Groundwater monitoring data indicates possible contamination of the site, and it is likely the groundwater contamination has moved offsite.
- 3.2.3 Since the classification of PCIR, the appellant has engaged Strategen Environmental Services Pty Ltd to undertake investigations.
- 3.2.4 The requirements under the CS Act are not mutually exclusive from the requirements under the EP Act, and the two separate processes address separate regulatory, technical and environmental objectives.

4.0 Committee's decision

- 4.1 Bio-Organics lodged a Notice of Appeal Against Site Classification, dated 17 January 2014 (a Saturday) and received by the Contaminated Sites Committee ("Committee") on 20 January 2014 (the following Tuesday) and concluded the appeal was valid because the Committee has no evidence of the precise date on which Bio-Organics was given notice of the classification, but making reasonable allowance for mail delays during the pre-Christmas season, the Committee has accepted that this appeal was received within the prescribed appeal period. The appeal fulfilled all other statutory requirements to be valid.
- 4.2 Under the CS Act the CEO of DER is required to classify a site after receiving a report of known or suspected contamination. The existence of a requirement under the EP Act does not remove that requirement.
- 4.3 The possible classifications and associated criteria (in the absence of evidence of remediation) for the Site (per Schedule 1 of the CS Act) are:
 - 4.3.1 *Report not substantiated (RNS)* – a report under section 11 or 12 provides no ground to indicate possible contamination of the site;
 - 4.3.2 *Possibly contaminated – investigation required (PCIR)* – there are grounds to indicate possible contamination of the site;
 - 4.3.3 *Not contaminated - unrestricted use (NCUU)* – after investigation, the site is found not to be contaminated;;
 - 4.3.4 *Contaminated – restricted use (CRU)* – the site is contaminated but suitable for restricted use; or
 - 4.3.5 *Contaminated – remediation required (CRR)* – the site is contaminated and remediation is required.
- 4.4 In the s80 report the CEO of DER states "Further investigations, including installation of additional groundwater monitoring wells, to adequately delineate the nature and extent of groundwater impacts, and the conduct of an assessment of risk to potential human health and ecological receptors is required." In its letter of 17 January 2014 Bio-organics states "we accept that further work is required to determine whether composting activities have resulted in impacts to groundwater". The Committee agrees.
- 4.5 The Committee is not satisfied that the available information from investigations conducted to date justifies a classification of the Site with any other classification than PCIR. The criterion for PCIR ("There are grounds to indicate possible contamination of the site.") is met for the subject Site.

- 4.6 Given the inadequacy of the investigations to date, claims that those investigations have shown there is no contamination on the Site lack sufficient evidentiary support to warrant supporting the appeal.
- 4.7 With respect to the application of the CS Act at the same time as the EP Act, the Committee has concluded that under the terms of section 9 of the CS Act, site classifications are complementary to, and not in derogation to the provisions of the EP Act. The requirements and intent of the EP Act are separate and distinct from those of the CS Act and the requirements of both Acts may be concurrently enforced, if appropriate. The Committee makes no comment regarding the application of the EP Act to the site, but considers in relation to the CS Act that classification of the site is appropriate.
- 4.8 The Committee has decided that the appeal should be dismissed and that the PCIR classification should stand.

5.0 Conclusion

The Committee dismisses all grounds of appeal.

Note: section 82(2) of the Act provides that the Committee's decision under that section is final and without appeal. Section 83 of the Act provides that the CEO of the Department is to give effect to the outcome of the appeal as soon as practicable and to ensure that the details are published in the prescribed manner.



Jim Malcolm
Chairman

and as agent for and on behalf of
the Contaminated Sites Committee

11 March 2015