



Government of Western Australia
Contaminated Sites Committee

NOTICE OF APPEAL DECISION

Contaminated Sites Act 2003, section 82

CSC No. 18/2007

LAND THIS DECISION RELATES TO

Lot 1 on Plan 24276 being all of the land comprised in Certificate of Title Volume 2194 Folio 385 otherwise known as "Perron Quarry" ("the site").

APPELLANT

The appellant in this matter is the owner of the site, being Electricity Generation Corporation trading as Verve Energy.

ORIGINAL CLASSIFICATION OF SITE

The appellant by notice of appeal lodged with the Contaminated Sites Committee ("Committee") on 16 November 2007 instituted an appeal against the classification of the site by the Department of Environment and Conservation ("DEC") as *contaminated-remediation required*.

APPEAL DECISION

The decision of the Committee in respect of this appeal is as follows:

The Committee affirms the classification of the site as *contaminated – remediation required*.

The Committee made this decision on 21 October 2008.

REASONS FOR DECISION

The Committee in making the above decision considered the appellant's submissions (including its original grounds of appeal in relation to the site), the CEO of DEC's submissions (including the s.80 report) and the relevant provisions of the *Contaminated Sites Act 2003* ("Act") and *Contaminated Sites Regulations 2006*.

The Committee makes the following comments in respect of the appellant's original grounds of appeal regarding the site.

Ground 1

Perron Quarry is not contaminated according to the definition of "contaminated" in the Contaminated Sites Act.

1. The Committee notes that s.4 of the Act defines "contaminated" as follows:
 - 1.1. "contaminated", in relation to land, water or a site, means having a substance present in or on that land, water or site at above background concentrations that presents, or has the potential to present, a risk of harm to human health, the environment or any environmental value.
 - 1.2. However, land, water or a site, or land, water or a site of a prescribed class or description, is not contaminated where the regulations so provide.
2. The Committee notes the laboratory analysis results provided by the appellant showed elevated concentrations of 5 or more heavy metals in soil, fly ash and groundwater, and such concentrations were above Soil Ecological Investigation Levels (EILs) and water guideline assessment levels.
3. In the absence of other information to the contrary (eg further health and ecological risk assessments), the Committee considers the exceedances of EILs and water guideline assessment levels as evidence that the substances referred to above are present and have the potential to present a risk of harm to human health, the environment or any environmental value.
4. The Committee notes that the recovery bores have been operating "to recycle the water component of the slurry and to prevent groundwater contamination" (URS report 2006).
 - 4.1. The Committee considers this activity to be a form of remediation which is required on an ongoing basis to prevent groundwater contamination.

Ground 2

Perron Quarry is not contributing contamination to groundwater according to the definition of "contaminated" in the Contaminated Sites Act.

1. The Committee considers that for the purposes of classification of a site, the presence of contamination is of primary concern, regardless of its source.

Ground 3

Perron Quarry is a licensed premise under Part 5 of the Environmental Protection Act 1986 to accept and store fly ash.

1. The Committee considers that the status of Perron Quarry as licensed premises under the *Environmental Protection Act 1986* is not relevant to the classification of the site under the Act.

Ground 4

Remediation of Perron Quarry is totally impractical.

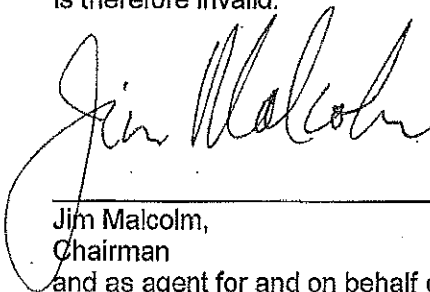
1. The Committee considers that the practicality at any point in time of options for remediation is not relevant to whether or not a site should be classified as requiring remediation.

In addition, the Committee makes the following comments in respect of the appellant's original grounds of appeal regarding the affected parcels of land, Lot 650 on Plan 251250 and Lot 712 on Plan 250228 being all of the land comprised in Certificate of Title Volume 2194 Folio 386 ("affected site").

The Committee notes the affected site was classified by DEC as *potentially contaminated-investigation required*.

The appellant has sought to appeal against the classification of the affected site. However, under section 18(2) of the Act only an owner or occupier who has been given notice under s.15(1)(b) may appeal against a classification of a site as *possibly contaminated – investigation required*.

As the appellant is not the owner or occupier of the affected site, this part of the appeal is therefore invalid.



Jim Malcolm,
Chairman
and as agent for and on behalf of
the Contaminated Sites Committee

20 November 2008

NOTICE: THE DECISION OF THE CONTAMINATED SITES COMMITTEE UNDER S.82 OF THE ACT IS FINAL AND WITHOUT APPEAL: S.82(2) OF THE ACT