

DECISION

JURISDICTION	:	CONTAMINATED SITES COMMITTEE (APPEAL AGAINST SITE CLASSIFICATION)
ACT	:	CONTAMINATED SITES ACT 2003 (WA)
CITATION	:	PITT PETCHEY PTY LTD [2025] CSCWA 01
MEMBERS	:	W DODGE, CHAIRPERSON C BARTON, MEMBER H BROOKES, MEMBER V BRYANT, MEMBER P MCNAB, MEMBER
DETERMINED ON THE PAPERS	:	12 AUGUST 2025
FILE NO	:	CSC 03/2024
APPLICANT	:	PITT PETCHEY PTY LTD

Catchwords:

Appeal against site classification - Notice of Classification - Classification as “contaminated – remediation required” – Underground Storage Tank – Petrol Station – Site includes land adjacent to Capel River – Appeal Dismissed.

Legislation:

Contaminated Sites Act 2003 (WA), s 4(1), s 11, s 18, s 80(a), s 82, Schedule 1

Result:

The appeal is dismissed. The site classification of *contaminated – remediation required* is affirmed.

Representation:

Applicant	:	Mills Oakley
Other parties	:	N/A
Case(s) referred to in decision	:	<i>Greenland Resources Pty Ltd v Contaminated Sites Committee [No 2]</i> [2024] WASC 162

REASONS FOR DECISION OF THE COMMITTEE:

Introduction

1. This decision is the determination of an appeal against a Contaminated Site Classification pursuant to s 18 of the *Contaminated Sites Act 2003* (WA) (CS Act).
2. So far as is relevant, s 18 provides as follows:

18. Appeals against classification

[...]

(3) A person who is –

[...]

(c) an occupier, who has been given notice under section 15(1)(b),
of a site classified as –

(d) contaminated – remediation required;

[...]

may appeal against the classification, or the inclusion in the site of land of
which the person is an owner, occupier or responsible for remediation.

(4) An appeal is to be brought, dealt with and determined in accordance with
Part 8 [of the CS Act which governs appeals].

3. On 22 November 2022, a delegate of the Chief Executive Officer (CEO) of the Department of Water and Environmental Regulation (DWER)¹ issued a notice of classification² which included two individual parcels of land (the site) namely:

(a) 93 Capel Drive, Capel, described as Lot 16 on Diagram 2484 as shown on
Certificate of Title Volume 2042 Folio 522; and

¹ The CEO and DWER are used interchangeably throughout this document and should be understood to have the same meaning.

² See s 15 of the CS Act which lists the various parties who are to be notified of the classification of a site.

- (b) A parcel of land described as an “Approximate spatial representation of section of Capel Drive (Landgate PIN: 11434451, Land ID: 3469435), Capel WA 6271”.
4. The CEO classified the site as:
- possibly contaminated – investigation required.*³
5. On 10 January 2024, the CEO re-classified the site and issued a notice of re-classification (notice of classification) to Pitt Petchey Pty Ltd. The CEO re-classified the site as:
- contaminated – remediation required.*⁴
6. In the notice of classification, issued on 10 January 2024, the CEO concluded that:
- [t]he site is contaminated, and remediation is required to reduce risks to human health, the environment and environmental values to acceptable levels. Therefore, the site is classified as ‘contaminated – remediation required’.*
7. The term “contaminated” is defined in s 4 of the CS Act as follows:
- (1) *In this Act –*
- 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.
8. Schedule 1 of the CS Act specifies the following criterion for the classification *contaminated – remediation required*:
- The site is contaminated and remediation is required.*
9. On 26 February 2024, the Pitt Petchey Pty Ltd (the Applicant), applied to the Contaminated Sites Committee (Committee) for a review of DWER’s decision. The Applicant seeks to in effect have the classification altered to *possibly contaminated – investigation required*.

The site

10. As referred to in paragraph 3 above, the site encompasses two individual parcels of land which are located adjacent to and adjoining each other.

93 Capel Drive, Capel

11. The Committee understands that the Applicant leases this parcel of land and operates a service station and café trading as Colroy’s Country Kitchen and Service Station. The lease and such activities, in the Committee’s view, make the Applicant an “occupier” as defined in

³ Schedule 1 of the CS Act lists the possible classification of sites including *possibly contaminated - investigation required*.

⁴ The change in classification follows DWER receiving further information concerning contamination relevant to the site. This material so far as is relevant is considered by the Committee, below.

s 3 of the CS Act.⁵ It is understood by the Committee that fuel infrastructure and equipment (i.e., including underground storage tanks (USTs), fill points, bowzers and fuel lines [“UST system”]) are located on this parcel of land as identified in the dangerous goods licensing information provided to the Committee by the Applicant.⁶

12. The Certificate of Title shows Gardner Super Pty Ltd (Gardner) as the registered proprietor of this parcel of land.
13. DWER issued to Gardner a notice of classification but Gardner did not seek a review of the notice and did not take any part in these proceedings despite being invited to do so by the Committee.

Land described with a “spatial representation” Landgate PIN: 11434451

14. No information pertaining to land ownership or occupancy has been made available to the Committee.
15. Aerial imagery provided by Landgate displays the site boundary to include a portion of the Capel River which, as will appear below, is relevant to this matter.

Procedural History

16. On 19 March 2024, the Committee requested, from the CEO, a report on the appeal pursuant to s 80(a) of the CS Act. This report (Appeal Report) was received by the Committee on 22 August 2024.
17. On 27 August 2024, the Committee provided the Appeal Report to the Applicant.
18. On 28 February 2025,⁷ the Applicant sent a response to the Committee which included additional information not initially provided to the Committee.⁸

Supplementary Information

19. On 20 March 2025, the Committee met to determine the matter. However, the Committee noted that there was insufficient material to make a final decision and that further information should be sought from the parties.
20. Accordingly, on 3 April 2025, the Committee wrote to both DWER and the Applicant and requested them to provide supplementary information to further support their respective positions.

⁵ Section 3 of the CS Act includes the following definition: “**occupier**, in relation to land, means a person in occupation or control of the land, whether or not the person also owns the land”.

⁶ See, Dangerous Goods Site Licence number DGS001686.

⁷ The Applicant was granted two extensions to provide the Committee with a response to the Appeal Report.

⁸ This additional information was provided from the Department of Energy, Mines, Industry Regulation and Safety (DEMIRS) following an FOI request by the Applicant. This information mainly relates to historical licensing under dangerous goods legislation.

21. Additional information was subsequently provided to the Committee by DWER on 2 May 2025 and by the Applicant on 15 May 2025.

Disposition of the Appeal

22. In making its decision the Committee has considered all documentation provided by both the Applicant and DWER and has given due regard⁹ to the following guidelines.
- DWER, *Assessment and management of contaminated sites*, November 2021 (2021 Guideline) which provides guidance on the assessment and management of contaminated sites in Western Australia within the legislative framework of the CS Act and the revised national site assessment framework provided in the *National Environment Protection (Assessment of Site Contamination) Measure 1999*.¹⁰
23. We have already foreshadowed above the relevance to the appeal, of the Capel River which forms a portion of the site. As is particularised below, evidence of contamination was identified within the area of the Capel River (including hydrocarbon sheen and odours).
24. For the reasons set out in detail below, the Committee has concluded that the Applicant's grounds of appeal have not been made out and that the classification of the site by the CEO as *contaminated – remediation required* should be affirmed.
25. In short, this is because there is sufficient material before the Committee to support a finding that the UST system present on the Applicant's parcel of land is, more likely than not, a source of contamination at the site that has migrated into the Capel River. The Applicant has not provided sufficient material to displace this assessment. Therefore, the CEO's classification remains appropriate, as the Committee is satisfied that the site requires remediation.
26. We now turn to consider, in detail, the Applicant's grounds of appeal.

Grounds of Appeal

27. The Applicant is objecting to the site classification of *contaminated – remediation required* on the ground which the Applicant identifies as:¹¹

Despite the suspicion that the occupier's service station operation was responsible for the spill of fuel into the Capel River, removal of the only infrastructure equipment identified as possibly being the source of contamination of the Capel River has

⁹ See CS Act, s 13(4) and see *Greenland Resources Pty Ltd v Contaminated Sites Committee [No 2]* [2024] WASC 162, at para [153] on the status and use of the guidelines for both the CEO and the Committee. Both notices of classification in this appeal refer to these guidelines.

¹⁰ A national inter-governmental environmental standard referred to as the ASC NEPM or more generally known as "NEPM".

¹¹ This ground appears in the Appeal Form submitted to the Committee dated 26 February 2024.

proved that it is not the equipment responsible for the contamination of the Capel River.

28. The Applicant further submits:

The Land is not contaminated.

The Riverbank is contaminated however the occupier is not the person responsible for remediation pursuant to section 25 [of the] Contaminated Sites Act 2003 because the occupier did not cause or contribute to the contamination of the Riverbank.

29. The Committee understands that the Applicant is only appealing the classification so far as it relates to the Applicant's parcel of land (i.e., 93 Capel Drive and not the entire site as appears in the notice of classification).¹²

30. The Applicant provided an accompanying letter outlining, amongst other matters, "*Capel River contamination event*"¹³ relating to the Capel River itself that occurred sometime in September 2022, and the remediation works that followed, including the removal of an UST on the Applicant's parcel of the land. This, the Committee understands is the "... *removal of the only infrastructure equipment*" referred to in the Applicant's Appeal Form.

31. The background to the Applicant's claim relates to a recommendation of "Action Required" made by DWER, appearing in both the original classification and the re-classification of the site "*to remove the UST and impacted soil, to the extent possible, which is likely to be acting as an ongoing secondary source of contamination [related to the Capel River]*".¹⁴ This recommendation was carried out by the Applicant.

32. The Applicant provided to the Committee with its Appeal Form a copy of a report prepared by Lyon Environmental entitled *Underground Storage Tank Soil Validation Investigation*, dated 12 February 2024 (Lyon Report). The Lyon Report includes the results of samples taken from soils beneath the site after the UST was removed. This report is examined in more detail below.

33. The Applicant, based on its supplementary information provided to the Committee (including the Lyon Report), submits that the results of the soil samples in particular (i.e., "*clean sand surrounding the UST pit*") is evidence, "*that contamination is emanating from another source unconnected with the [the Applicant's] Property.*"

¹² As the extract from s 18 of the CS Act as is set out above makes clear, a person may appeal against the inclusion in the classified site of land which the person is an occupier: see s 18 (3) of the CS Act. Nevertheless, the matter before the Committee is a site classification which includes the Applicant's parcel of land.

¹³ It is not clear what this specific event precisely was. However, it appears to be related to the release of significant amounts of Premium 98 fuel: see para 47.

¹⁴ This is sometimes referred to in the documentation as "Tank 3".

34. The Applicant submits that the “[other] *source*” referred to above relates to a separate parcel of land located at 84 Capel Drive, Capel which is understood to be near to the site. The Committee understands that 84 Capel Drive previously operated as a service station.¹⁵
35. The Applicant concludes its submission with a request that the Committee should remove the classification of the site until such time as it is established that the site is, in fact, contaminated and therefore the source of contamination of the Capel River.

DWER’s Appeal Report

36. DWER submits that the site was first classified on 22 November 2022 as *possibly contaminated – investigation required*, based on “*visual and olfactory evidence (including odour and staining) of hydrocarbons (such as from petrol or diesel) [that] was identified at a riverbank to Capel River.*”
37. DWER states that it had received information indicating that a UST, located on the site, had failed an integrity test. Further, that 3,450 litres of petroleum hydrocarbons were estimated to have leaked from that UST.¹⁶ DWER further states that the identification of hydrocarbons at the Capel River was verified by an environmental consultant from Western Environmental Pty Ltd (WEPL)¹⁷ and by DWER officers.
38. DWER further submits that a decision was made to reclassify the site on 10 January 2024 as *contaminated - remediation required* based on reports made by the public¹⁸ that suggested that hydrocarbons were continuing to discharge into the Capel River. These reports notified DWER “*of a strong hydrocarbon odour and an oily sheen on the surface of the Capel River*”. The decision was also based on “*results of ambient air monitoring and surface water headspace monitoring at the Capel River and riverbank completed between 12 January 2023 and 7 September 2023 which found that Volatile Organic Compounds (VOCs) were present in low concentrations.*”
39. DWER acknowledges that the UST that failed the integrity test was removed and that soil samples were subsequently collected from the base and the walls of the excavation pit. DWER contends that the Lyon Report was limited in scope and consequently was insufficient to rule out hydrocarbon impacts associated with the UST.

¹⁵ At this point the Committee observes that, regardless of the specific source of contamination, the issue remains is whether there is sufficient evidence to support a finding that remediation of the site is required.

¹⁶ This appears to be a reference, in part, to a Tanknology Australia preliminary test results report dated 14 September 2022. It is however unclear how the figure of 3,450 litres was derived.

¹⁷ WEPL was engaged in 2022 by the Applicant as environmental consultants to provide remediation services at the site.

¹⁸ Attachment 7, DWER Incident Report number 69347, dated 30 March 2023; Attachment 8, DWER Incident Report number 70987, dated 9 August 2023; and Attachment 9; DWER Incident Report number 72667, dated 30 November 2023.

40. DWER notes that the Applicant claimed that WEPL had undertaken groundwater monitoring. However, DWER states that they were not aware of any groundwater monitoring having been carried out.¹⁹
41. In summary DWER submits that *“the site has not been fully investigated and that it is likely the hydrocarbon discharge is sourced from one or more of fuel storage and/or fuel distribution infrastructures at the site”* and that there are *“multiple lines of evidence to suggest that the hydrocarbon discharge at the Capel River is sourced from 93 Capel Drive”*.
42. DWER submits therefore that the appeal should be dismissed and the current classification of the site be affirmed.²⁰

Committee’s Consideration

43. The Committee turns to the principal objection made by the Applicant which is to the effect that the removal of the UST has *“proved”* that it is not their equipment that caused contamination of the Capel River.
44. The Committee acknowledges that the UST was removed, and soil validation testing works (such as they were) was undertaken by Lyon Environmental.
45. However, the Committee does not accept the Applicant’s claim that the removal of the UST and the subsequent sampling of the soil completed by Lyon Environmental *“proves”* that the fuel storage equipment was not the cause of the contamination of the Capel River.
46. This is because the Committee has been provided with clear evidence, referenced immediately below, that supports a finding that the UST system was a likely source of contamination, and that product leaked from the UST into the Capel River.
47. This evidence includes:
- Photographs, attached to the Lyon Report, of the UST removal, indicating that the tank may have been damaged or corroded;
 - A fuel inventory report showing a loss of “Premium 98” fuel to have occurred on or around the date of the “contamination event”;
 - Tanknology Australia’s preliminary test results dated 14 September 2022, that the UST failed an integrity test. This is the tank, referenced immediately above, that is the subject of the fuel inventory report showing a loss of product;
 - An email sent from DMIRS (Senior Dangerous Good Officer) to the Applicant dated 15 September 2022 stating that *“I am satisfied the Premium 98 tank ... has leaked*

¹⁹ Although requested by the Committee, the Applicant has provided no groundwater data and no confirmation that groundwater had ever been tested.

²⁰ DWER notes, in effect, that it will update the ‘reasons for classification’ to reflect the removal of the “damaged tank” as confirmed in the Lyon Report.

product and all product was removed ...” Further, within the same email the officer suggested that the UST be isolated and not be used; and

- The submission of a formal report of contamination²¹ noting the loss of product from the site.

48. Further, the Committee has decided that the Lyon Report cannot be relied upon to establish that the UST *“is not the equipment responsible for the contamination of the Capel River”*, as is claimed by the Applicant. This is for the reasons that follow.²²

49. First, it appears that soil validation samples were not collected immediately after the UST was removed. Documentation provided to the Committee by the Applicant indicates that the UST was removed from the site on 29 January 2024 and the Lyon Report references 1 February 2024 as the date that their sampling consultant was on the site.

50. This delay raises concerns about the integrity of the sample locations, particularly given that the photographic evidence contained within the Lyon Report suggests that there was pit wall instability and possible caving. The Committee is of the view that such conditions may have obscured or altered the original tank pit boundaries, impeding representative sampling of soil in direct contact with the UST and thereby undermining the reliability of the samples as evidence of the absence of contamination.

51. Further, it is not clear to the Committee the extent of losses of volatile petroleum hydrocarbons that may have occurred from the time of the tank removal to the time of sampling, and to the time when these samples were received by the analytical laboratory.

52. Secondly, the Lyon Report identifies the works to remove the UST and sample the tank pit void. However, the Lyon Report does not include any investigation of the rest of the UST system such as associated pipework from the bowzers to the UST.

53. The Applicant has not commissioned such an inquiry which might have been thought to be a relatively standard course of action. Indeed, the Lyon Report recommends

*“[a]dditional soil investigations to effectively assess and characterise potential contamination at the site should target bowzers and remaining underground storage tank. Due to the likelihood of perched water (<4m), groundwater investigations should accompany any future soil boring investigations completed at the site.”*²³

²¹ See reg 6 and Form 1 of the *Contaminated Sites Regulations 2006* (WA). The Committee is prevented by law from identifying the informant see s 96(1) of the CS Act. Nevertheless, the Committee is satisfied as to the veracity of the report.

²² Nothing in the observations that follow is intended to cast any doubt on the competency or reputation of Lyon. Rather, the Committee accepts that such limitations as have been established must be ascribed to the limited brief given to Lyon.

²³ See Lyon Report at p 8.

54. The Committee acknowledges that Lyon Environmental completed only a limited scope of works; however, the Committee agrees with DWER that leaks from UST fuel delivery infrastructure (bowzers and piping) are well-recognised sources of petroleum hydrocarbon contamination that require testing as part of a reliable assessment of contamination impacts at service station sites.²⁴
55. No groundwater investigations were undertaken near to the UST (nor elsewhere at the site), as was recommended in the Lyon Report.²⁵ The recommended course reflects standard practice when removing USTs that are reported to have leaked (especially when in close vicinity to groundwater or surface water).
56. Given the above limitations, the Lyon Report does not carry sufficient weight to rule out that the UST is not the source of contamination, especially when there is a body of reliable evidence that indicates to the contrary.
57. While the Committee acknowledges the possibility that there may be additional sources of contamination within the vicinity of the site, this does not detract from the evidence that the Applicant's parcel of land is the likely source of contamination of the site.
58. For these reasons, the Committee concludes that the principal objection set out in the Applicant's grounds of appeal has not been made out.
59. The Committee turns briefly to address the other matters raised by the Applicant.
60. The first of these is an unsupported and general claim that "[the Applicant's parcel of land] is *not contaminated*". As is set out above, the Applicant's appeal was in relation to the inclusion of its land in the classification of the site, but as was also pointed out, the jurisdiction of the Committee covers the Applicant's parcel of land and extends to the adjacent parcel of land including part of the Capel River.
61. The Committee notes that, apart from the material set out above concerning the contamination deriving from the UST system, there is other material demonstrating a clear link between the petroleum hydrocarbon contamination in the air, including odours, and in the Capel River.
62. This material was provided to the Committee by both the Applicant and DWER and is comprised of the results of various specialist tests to identify contamination, as follows:

²⁴ See e.g., National Environment Protection Council, *Assessment of Underground Storage Systems* (2003) paper prepared by L Cattlin and M Fanning (SA, EPA) at p 121 (Abstract): "Underground Storage Systems ... pose one of the major sources of soil and groundwater contamination due to the potential for leakage of product ...", and *Causes of Releases from UST Systems*, US EPA, September 1987, which identifies that a significant proportion of leaking UST systems are due to tank fittings and delivery pipes.

²⁵ See Lyon Report p 8.

- a. DWER Photoionisation Detector (PID) reports for 13 October 2022 and 27 October 2022 (i.e., tests of air quality);
 - b. A ChemCentre WA laboratory certificate documenting the results of surface water and soil samples taken, by DWER, near the Capel River; and
 - c. results from 19 Volatile Organic Compound (VOC) monitoring events completed during the period 16 January 2023 until 28 September 2023 (derived from WEPL).
63. Collectively this material is sufficient to support a finding that contamination is present on the site and in the Capel River in the words of the statutory definition²⁶ *“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”*.
64. It follows that there is clear evidence of the presence of contamination at the site as a whole and there is evidence of the UST being the source of that contamination noting that the UST is located within the Applicant’s parcel of land. Therefore, the Committee considers that a link between the source of contamination on the Applicant’s land and the observed contamination of the Capel River has been established and that the two parcels of land that are the subject of the notice of classification are both contaminated and require remediation for the purposes of the CS Act.
65. Therefore, there is no substance in the Applicant’s claim that the Applicant’s land is not contaminated.
66. The final matter raised by the Applicant is to the effect that if the Capel River is contaminated, then somebody else is responsible for contamination in accordance with s 25 of the CS Act. This is because, so the Applicant claims, the Applicant did not *“cause or contribute to the contamination”*.
67. The question of responsibility for remediation under s 25 of the CS Act is not before the Committee in the context of an appeal against a site classification.
68. Consequently, there is no validity in the Applicant’s submission on this matter.

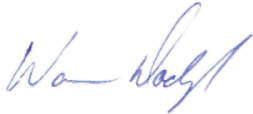
²⁶ See the definition of “contaminated” in s 4(1) of the CS Act.

Conclusion

69. The Committee is satisfied that there is sufficient material to conclude that the UST system present on the Applicant's parcel of land is, more likely than not, a source of contamination at the site that has migrated into the Capel River. For the reasons stated above, the Applicant's grounds of appeal have not been made out and, consequently, the Committee must dismiss the Appeal and affirm the decision under review.

I certify that the preceding paragraphs comprise the reasons for decision of the Contaminated Sites Committee.

W DODGE, CHAIRPERSON

A handwritten signature in blue ink, appearing to read 'W. Dodge', is written over the printed name.

12 August 2025