



Decision in respect of appeal against classification

Contaminated Sites Act 2003, Part 8, Division 2

Appellant: Lance Gregory & Francis Dale Gregory
Site: 26 Nimitz St, Exmouth
Lot 617 on Plan 172623 as shown on Certificate of Title 1850/436
Decision: Appeal Dismissed
Date: 6 February 2013

1.0 SUMMARY

- 1.1 The Department of Environment and Conservation (DEC) classified the property known as **26 Nimitz St, Exmouth** as *possibly contaminated – investigation required* under the *Contaminated Sites Act 2003* (the Act) on 16 August 2011. DEC's reasons for the classification were set out in the 'Notice of Classification' given in accordance with section 15 of the Act on 25 October 2010.
- 1.2 The reason for classification was because an environmental investigation on a neighbouring site to the West (former power station) found groundwater contamination at the boundary, hydraulically down gradient and from the petrol station. The fuel products found were not consistent with products used at the former power station, but were consistent with fuel products at the petrol station. Concentrations of short chain hydrocarbons and benzene were in excess of Department of Health criteria for non-potable groundwater use; the extent of groundwater contamination and soil contamination of the site were unknown.
- 1.3 On 8 December 2010 the Contaminated Sites Committee (Committee) received from the Appellant an appeal against the classification. The Appellant is the owner of the site. The appeal was lodged in accordance with sections 18 and 79 of the Act, within the 45 day time to appeal set in the Notice of Classification and outlining some grounds of appeal addressed below.
- 1.4 The Appellant provided a number of technical reports and other evidence to be considered by the Committee, including:
 - a) Letter from Mike Laughton-Smith of Western Power dated 5 March 2004
 - b) Letter from Lance Gregory dated 29 August 2011
 - c) Letter from Lance Gregory dated 1 October 2011 (in response to CEO s80 Appeal Report dated
 - d) Engtech (Aust) Pty Ltd – Preliminary and Detailed Site Investigation Report dated April 2012
 - e) Letter from Lance Gregory dated 23 October 2012
 - f) Letter and attached data from Lance Gregory dated 21 January 2013

- 1.5 On 29 July 2011, in accordance with section 80 of the Act, the Committee forwarded a copy of the appeal and supporting information to the CEO of DEC for its report.
- 1.6 The CEO of DEC also provided a Supplementary s80 Report dated 10 September 2012, following the submission by the Appellant of the April 2012 Engtech Report.
- 1.7 The CEO's reports were forwarded to the Appellant respectively on 22 August 2011 and 27 September 2012 for response.
- 1.8 The Committee considered the appeal and supporting documents, and the CEO's report on 6 February 2013. The Committee decided that the appeal should be **dismissed** for the reasons set out below. Under section 82(2) of the Act this decision of the Committee is final and without appeal.

REASONS FOR DECISION

2.0 APPEAL GROUNDS (SUMMARY)

Ground 1

There is no risk, because Western Power told the Appellant in its letter dated 5 March 2004 that there was no risk from the Power Station's diesel plume.

Ground 2

No one has investigated the Appellant's land to show there is a problem.

Ground 3

The Appellant's practices include vigilance by keeping records and there has been no evidence of fuel loss.

Ground 4

DEC should prove where contamination is coming from, and undertake investigations.

3.0 COMMITTEE'S FINDINGS

The Committee notes that the investigations undertaken by the Appellant and subsequent Preliminary and Detailed Site Investigation Report (the Report) dated April 2012 conducted by Engtech (Aust) Pty Ltd is in itself a response to Grounds 1 and 2. These grounds of appeal are dismissed.

Committee notes that the Report found evidence of contamination of both soil and groundwater on the site. The vigilance of the Appellant was unfortunately not enough to ensure contamination did not occur. Ground 3 of the appeal is dismissed.

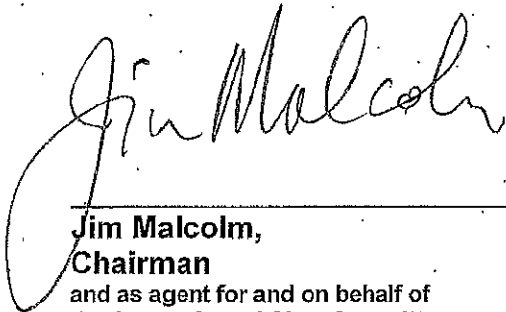
The Committee notes that DEC does not have responsibility to investigate contamination under the Act. Ground 4 of the appeal is dismissed.

The Committee notes that DEC has proposed an alternate classification of *contaminated – remediation required*. This may be appropriate in the circumstances, however the Committee has decided not to determine this for the purposes of this appeal, though the proposed draft reasons for classification appear to be accurate.

4.0 CONCLUSION

The Committee dismisses all grounds of appeal and upholds the current classification of *possibly contaminated – investigation required*.

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 DEC 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