



Seeking help from contaminated sites experts

Purpose

This fact sheet is designed to provide targeted information on how to access contaminated sites experts in Western Australia.

Introduction

The *Contaminated Sites Act 2003* (the Act) was introduced to identify, record, manage and clean up contamination. Under the Act, known or suspected contaminated sites must be reported to Department of Environment Regulation (DER), investigated and, if necessary, cleaned up (remediated).

Investigating and cleaning up contaminated sites is, in most cases, the responsibility of the polluter or current site owner. DER administers and enforces the Act which includes classifying sites (in consultation with the Department of Health) and making information on contaminated sites available to the public.

Landowners, occupiers and property developers may require the services of a competent environmental consultant with the skills and experience to carry out a site investigation and, if necessary, remediation works.

When do you need to hire an environmental consultant?

Land development – to fulfill a planning condition (e.g. subdivision or development approval), or Ministerial condition relating to contamination.

Requirements under the Act – when a site has been classified and action is required to investigate or remediate contamination; when DER issues a regulatory notice (investigation, clean up or hazard abatement notice); or if you are requesting a certificate of

contamination audit* under the Act.

Buying/selling property – as part of your pre-purchase due diligence enquiries when you are considering buying a property.

How to find a consultant

Professional associations – there are a number of professional associations that can provide contact details for their members.

- Australian Contaminated Land Consultants Association (WA) – www.aclca.org.au
- Environmental Consultants Association (WA) – www.eca.org.au
- Australian Institute of Geoscientists – www.aig.org.au
- Australian Society of Soil Science – www.soilscienceaustralia.com.au
- Environment Institute of Australia and New Zealand – www.eianz.org

*Certificate of contamination audit – statutory 'sign-off' providing government assurance as to the suitability of a site for a particular land use. In most circumstances it will enable the transfer of liability attached to the site. Submit a Form 3 and \$4125 to DER.

What qualities to look for in an environmental consultant

Contaminated site investigation and remediation require a wide variety of specialised skills from a range of experts, depending upon the complexity of the site and the contamination issues associated with it. Your consultant should have:

- experience in contaminated land assessment and management;
- detailed knowledge of DER's contaminated site guidelines, planning processes and local government regulations;
- appropriate insurance cover;
- documented procedures for completing a project, including a quality control and quality assurance program;
- appropriately qualified and experienced people for your site's specific requirements;
- a professional and ethical reputation;
- a proven ability to complete projects on budget and on schedule;
- a well-organised network or contacts to provide expert opinion when necessary; and
- excellent communication skills.

Selecting your consultant

Make a short list of potential contaminated land consultants who appear to have the necessary capabilities and qualifications. Aim to identify at least three candidates for further consideration.

When seeking a quote, make sure you provide potential consultants with as much information about your property as possible. Include the history of operations at the property, potential sources of contamination and any company records about where and how chemicals and wastes have been used or stored. This allows your consultant to make a more informed decision about the work involved, resulting in more accurate and cost effective quotations and investigations.

Developing a list of the services you require (scope of works) will allow a 'like for like' comparison and make selecting a consultant

much easier. DER's guidelines (available at www.der.wa.gov.au/contaminatedsites) provide a broad description of the key stages of contaminated site assessment and remediation and what is involved at each stage.

Getting a quote

In your request for a quote, consider asking potential consultants to include the following in their response:

- their understanding of the project and how they propose to carry out the work;
- the names, qualifications and experience of the proposed project team;
- the consultant's experience working on similar projects (project summaries, contact details and client references);
- details of the consultant's health and safety procedures and other relevant qualifications pertinent to the intended work;
- the consultant's familiarity with DER's contaminated sites guidelines and how they may apply to your site;
- the consultant's familiarity with the National Environment Protection (Assessment of Site Contamination) Measure 1999 (ASC NEPM);
- details and qualifications of all sub-contractors the consultant intends to use;
- detailed cost estimates;
- the timing of all phases of the project including a start and finish date; and
- the consultant's insurance details (including professional indemnity and public liability).

References

Finally, check references for all nominated team members. You can obtain valuable information about the standard of a consultant's work and their ability to communicate, stay on schedule and keep costs to a minimum, by talking to their clients.

Appointing the consultant

Once you have selected your preferred consultant, you need to draw up a contract that sets out the services they will be providing. Include conditions about the scope and nature of the work, the frequency of progress reports, indemnities, limits on liability and insurance, document ownership and retention procedures and cost structure.

Consultancy firms generally have their own standard terms of business so it is not always necessary for the client to draw up a contract themselves, however, you should review the terms carefully and consider obtaining legal advice.

There may be serious financial consequences if site assessment and remediation works do not meet the appropriate environmental and planning requirements. Poor quality and incomplete contaminated site reports may result in further work at additional cost to the landowner/occupier. Selecting the most appropriate consultant for your needs can save you considerable time and money.

Engaging an auditor

In some circumstances, your consultant's work will have to be reviewed by an accredited contaminated sites auditor who will submit a mandatory auditor's report to DER.

Contaminated site auditors independently review reports on assessment, remediation and validation work to ensure environmental consultants' methodology and interpretation of data is consistent with relevant guidelines.

A **mandatory auditor's report** is required when:

- your property is a source site – contamination has moved away from the site where it originated to affect other properties;
- a technical report is required to comply with a planning or Ministerial condition or similar statutory requirement relating to contamination;
- a regulatory notice is issued by DER under

the Act (e.g. investigation, clean up or hazard abatement notice); or

- a certificate of contamination audit is requested.

DER may also require an auditor's report for a site that presents complex technical issues or sites where inadequate reports have been provided in the past.

Contaminated site auditors are highly experienced consultants accredited by DER under the Act. Experts in their respective fields, their skills range from engineering, hydrogeology and environmental chemistry to ecotoxicology and risk assessment. DER accredited auditors are required to demonstrate a higher level of understanding in both theoretical and practical areas of environmental investigation, assessment, monitoring and remediation.

An auditor may also be engaged to provide expert guidance and submit a 'voluntary' auditor's report to DER in support of a proposal or assessment (for example, a prospective buyer seeking technical advice on contamination issues associated with a property). A voluntary report should meet the same requirements as a mandatory auditor's report.

Maximise the value of engaging a contaminated sites auditor

Engage your auditor at the earliest opportunity

Commission an auditor early in order to maximise the benefit of his/her advice and guidance on your project. Late auditor involvement in a project can result in significant additional costs and delays including having to revisit investigations in order to comply with regulatory and technical standards.

Define the scope and purpose of the audit

The auditor's principal role is to provide an independent, detailed and objective technical

review of all reports to be submitted to DER. It is you, and not the auditor, who defines the scope and purpose of the audit.

Provide your auditor with ALL the relevant information

The auditor is required to consider all reports relevant to your site that you intend to submit to DER and will require you to sign a statutory declaration confirming that you have provided all the relevant information for the audit.

Listen to your auditor's advice

You are paying your auditor to ensure that your environmental consultant is delivering competent, comprehensive work that complies with the technical standards required by DER.

Your auditor is not your advocate

Your auditor is required to provide DER with an independent, detailed and objective technical review of your environmental consultant's work and make recommendations to DER based on his or her findings. The auditor cannot correct errors, solve problems or make supporting arguments on your behalf – that is your consultant's job.

Timeframes

DER aims to review and respond to all mandatory auditor reports within 21 days (DER's target response time for technical reports which are not accompanied by a mandatory auditor's report is 45 days). This review period may be longer for more complex or involved projects or where DER is required to consult the Department of Health for advice on asbestos, radiation or human health risk assessments.

Submitting an auditor's report significantly simplifies and shortens DER's review process because DER is legally entitled to rely on the auditor's conclusions. If turnaround times are critical to your project, DER recommends you agree upon review timeframes when you engage your environmental consultant and auditor to ensure your expectations and timeframes can be met.

How do I engage an auditor for my project?

Consultants may recommend particular auditors for your investigation, but it remains your responsibility to hire the auditor who must be independent of the consultant.

There are around 30 auditors accredited by DER to work in Western Australia.

A complete list of auditors accredited by DER under the Act is available at www.der.wa.gov.au/contaminatedsites

When hiring an auditor, DER recommends that you:

- make a short list of accredited contaminated sites auditors and contact at least three; and
- talk with or meet shortlisted auditors to gauge their understanding of your circumstances – sometimes a phone call can help clarify your site's complexity, your timing requirements and the auditor's availability to carry out the work.

False or misleading information (s 94)

When reporting contamination, requesting information from DER, disclosing contamination under s 68 or providing information to the CEO or Contaminated Sites Committee, a person must not provide false or misleading information or fail to disclose all relevant information.

Maximum penalty: \$125,000.

Possible maximum daily penalty: \$25,000.

More information

For advice on contaminated sites or related matters, please contact DER's **contaminated sites information line 1300 762 982** or email contaminated.sites@der.wa.gov.au

This document is available in alternative formats and other languages on request.

Related documents

Other fact sheets in this series:

1. Identifying and reporting contaminated sites
2. How to access information on contaminated sites
4. Site classifications and appeals
5. Buyer beware – buying and selling contaminated land

Guidelines relating to investigating and managing contaminated sites are available at www.der.wa.gov.au/contaminatedsites

Legislation

This document is provided for guidance only. It should not be relied upon to address every aspect of the relevant legislation. The full text of the *Contaminated Sites Act 2003* is available electronically from the State Law Publisher website at www.slp.wa.gov.au

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Legal advice

The information provided to you by DER in relation to this matter does not constitute legal advice. Due to the range of legal issues potentially involved in this matter, DER recommends that you obtain independent legal advice.