



Government of **Western Australia**
Department of **Environment Regulation**

GUIDELINE

Requirements for Mandatory Auditors' Reports

Contaminated Sites Guidelines

November 2016

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Abbreviations

Act	<i>Contaminated Sites Act 2003</i>
CCA	Certificate of Contamination Audit
DER	Department of Environment Regulation In this document, DER refers to the relevant Delegated Officer(s) under the <i>Contaminated Sites Act 2003</i> and <i>Contaminated Sites Regulations 2006</i>
DP-IPO	Deposited Plan for Interest Purposes Only
MAR	Mandatory Auditor's Report
NEPM	<i>National Environment Protection (Assessment of Site Contamination) Measure</i>
r	Regulation (of the Regulations)
RAP	Remedial Action Plan
Regulations	<i>Contaminated Sites Regulations 2006</i>
s	Section (of the Act)
SMP	Site Management Plan
WA	Western Australia

1. Purpose

The purpose of this document is to provide supplementary information to that contained in *The Western Australian Contaminated Sites Auditor Scheme* in the *Contaminated Sites Guidelines* series, which was published by the Department of Environment Regulation (DER) in November 2016 (DER 2016a). This document specifically provides guidance to accredited contaminated sites auditors on the requirements for mandatory auditor's reports (MARs).

The legislative framework for the contaminated sites auditor scheme operating in Western Australia (WA) is provided by the *Contaminated Sites Act 2003* (the Act) and the *Contaminated Sites Regulations 2006* (the Regulations), and the revised national site assessment framework provided in the *National Environment Protection (Assessment of Site Contamination) Measure 1999* (NEPM).

This document provides guidance on:

- Scope of mandatory auditor's reports (MARs) including staged developments.
- Content of MARs.
- Requirements for endorsing Site Management Plans (responsibility for management of residual contamination).

This guideline is intended to improve understanding of the requirements for MARs that are submitted to DER.

It may also be useful to persons wishing to engage an auditor for mandatory or other purposes.

2. Introduction

2.1. Legislative Framework

Part 7 Division 2 of the Act and Part 9 Division 2 of the Regulations address the requirements for MARs.

Act	Content
s.73	Certification of the MAR by the person commissioning the audit and the auditor (with respect to provision of information).
s.74	Offences related to MARs.
s.75	Self-incriminatory information not exempt.
s.76	Use of information for the purposes of the Act.
Regulations	Content
r.31	Circumstances when MARs are required.
r.32	MARs – required content and requirements of an auditor’s report including findings, conclusions and recommendations regarding the site, including part of a report by persons other than the auditor.
r.57	Requirement to provide copy of MAR and timeframe.
r.60	Auditors to take guidelines into account.

Refer to regulation 31 and DER 2016a for further information on the circumstances when a MAR is required under the CS Act and the *Environmental Protection Act 1986*.

Copies of all Western Australian legislation may be accessed from the State Law Publisher website at www.slp.wa.gov.au/Index.html.

2.2. Definition of ‘Audit’

The Regulations provide the following definition of ‘audit’

“**audit**”, in relation to a site, means to carry out a review of the investigation, or remediation of a site to determine one or more of the following —

- (a) the nature and extent of any contamination of the site;
- (b) the nature and extent of the investigation or remediation of the site;
- (c) whether any restrictions on the use of the site are required;

- (d) the suitability of the land for a specific use, or a specific range of uses;
- (e) whether any further investigation of the site is required, recommended or necessary;
- (f) whether any further remediation of the site is required, recommended or necessary so that the site is suitable for all uses, or for a specific use, or a specific range of uses;
- (g) the suitability or appropriateness of a management plan.

2.3. The Scope of a Mandatory Auditor's Report (MAR)

A MAR is required to provide an independent critical review of the information to be submitted by the client/environmental consultant to comply with relevant provisions of the Act and Regulations.

Regulation 32 (1) Mandatory auditor's report — section 73

- (1) A mandatory auditor's report is to —
- (a) report on the audit of a site undertaken by the auditor; and
 - (b) report the findings of the auditor's critical review of the site investigation, remediation, management or monitoring, as is relevant; and
 - (c) state the conclusions made by the auditor and give reasons for the conclusions; and
 - (d) where relevant, make —
 - (i) a recommendation as to the classification of the site; and
 - (ii) where the classification recommended is *contaminated* — *restricted use, remediated for restricted use* or *contaminated — remediation required*, make a recommendation as to the restrictions on the use of the site;
- and
- (e) contain any other information that the auditor considers relevant, taking into account any relevant guidelines.

The scope of the audit and resulting MAR is informed by the circumstances which triggered the requirement for the MAR under regulation 31.

In the case of a source site, it is not appropriate for the client to restrict the scope to only cover the source site – the MAR must cover the affected parcels of land to the extent that the contamination has originated from that source site.

Earlier technical reports can provide relevant information for audits of subsequent work, for example, the rationale for a groundwater monitoring event may be presented in an earlier sampling and analysis quality plan (SAQP). If appropriate, the environmental consultant should provide the auditor with a compilation of earlier work (reports) which summarises their current relevance, to enable the auditor to undertake an efficient audit of the additional work undertaken.

If the earlier works were reviewed and approved by DER prior to the commencement of the Act, the scope of the audit should be discussed and agreed with DER prior to commencing the audit. This is because site-specific circumstances could affect the scope of the MAR.

As site classifications are specific to the cadastral information (lot on deposited plan) at the time of classification (and are recorded on the Contaminated Sites Database/reported sites register as such), the auditor's comments and recommendations for the appropriate site classification and any restrictions on use must also relate to the current cadastral boundaries.

Where the cadastral layout has changed (for example, by sub-division or amalgamation of lots) it is important to provide copies of the current certificates of title. If more than one cadastral change has occurred for a land parcel, it is helpful to include a table/plan of the cadastral changes to enable accurate identification of the audited area.

2.4. Timing for a Mandatory Auditor's Report

Unless the MAR is being prepared to report on work undertaken in response to a notice,¹ a MAR may be submitted at any stage of a project as appropriate, or as agreed in consultation with DER.

In most cases, it is recommended that a MAR is submitted to DER at the completion of project milestones such as the preliminary site investigation (PSI), detailed site investigation (DSI), and preparation of the remediation action plan (RAP) to enable auditor approval before proceeding to the next stage. If a PSI and DSI are expected to be completed within a 12 month period, it is acceptable to submit a combined MAR for these stages to DER.

2.5. Staged Developments and Site 'Clearance'

For large developments it is common for the proponent to proceed in stages with progressive assessment, remediation and validation of sub-areas of the site. The management of such projects may be complex and DER recommends that the proponent, environmental consultant and auditor work together to determine an effective and efficient strategy to enable a regulatory compliant outcome.

DER can provide 'clearance advice' for planning conditions for stages of a larger development, provided that the area for which clearance is sought is clearly defined on a suitable site plan showing the current cadastral boundaries, and an appropriate MAR has assessed and approved the relevant site assessment information for each stage of the site works.

¹ S.44 of the Act.

DER supports the use of deposited plans for interest purposes only (DP-IPO) where appropriate for large cadastral parcels (DER 2016b). These should be professionally surveyed and adequately define the assessment and/or remediation areas. An appropriate buffer should be included beyond the known extent of the contamination to ensure the entire extent of the contamination is included within the DP-IPO.

Where a staged audit approach is adopted, the developer should ensure that subsequent development activities do not adversely affect the previously audited areas. For example, management measures must be in place to prevent recontamination of decontaminated areas by subsequent earthworks. Consideration should also be given to any access or practical implications that may arise if previously audited portions of the site are sold prior to completion of the final MAR for the site.

2.6. Audit Completion/Termination

The MAR must be submitted to DER in electronic format and accompanied by electronic copies of all relevant consultants' reports no later than seven days after the auditor gives the report to the client.²

If after an audit has commenced the auditor is unable to proceed with or finalise the MAR for whatever reason, the auditor should notify DER within seven days.

2.7. Addendum to a MAR

A developer/landowner may change the intended use of the site after the relevant MAR has been submitted to DER. These land use changes range from site layout issues (for example relocation of buildings on the site) to a change in proposed land use (for example replacing low density housing with gardens with a less sensitive use, such as high density housing without gardens), or modified land use (for example, adding a basement car park to an apartment block).

Generally, if the changes are made within two years of the date of the original MAR, and providing there is no adverse material change in site conditions relevant to site contamination, an addendum to the MAR may be completed by the auditor and submitted to DER. Contact DER to discuss site-specific circumstances.

² r.57 of the Regulations.

3. Conducting and Reporting on Audits

3.1. Introduction

The purpose of a site audit is to determine whether, in the opinion of the auditor, the contamination investigation, remediation and validation works undertaken by the environmental consultant(s) are complete, accurate, defensible and in accordance with WA legislation, relevant guidelines and policies.

The audit must also determine whether the environmental consultant's work is sufficiently robust to form a basis for decisions or actions relating to the current and/or future use of the site.

3.2. Information to be Reviewed

An auditor engaged to undertake a MAR must review all relevant information collected and presented by the client and their environmental consultant(s), as part of the audit process. This may include but is not limited to:

- information relevant to a preliminary site investigation;
- reports on previous environmental investigations/monitoring and remediation;
- sampling and analysis quality plans;
- community engagement plans and reports;
- detailed site investigation reports and associated technical reports, such as detailed risk assessment and contaminant fate and transport modelling;
- remedial action plans;
- site remediation and validation reports; and
- site management plans.

In reviewing the consultant's proposed program of work and/or sampling and analysis quality plan, the auditor may identify more effective/efficient approaches of achieving the desired outcome and this should be communicated to the client and the consultant.

As described in section 2.4, a MAR can cover one or more stages of the site contamination assessment and management process. The auditor should confirm that the environmental consultant has submitted an appropriate detailed summary of records request to DER – submit Form 2, available from DER website at www.der.wa.gov.au/your-environment/contaminated-sites/57-forms, to ensure all relevant reports and information held by DER can be considered in the audit process.

False or Misleading Information

It is an offence under s.94 of the Act for a person to make false statements or fail to disclose materially relevant information when reporting a site to DER, or when complying with a requirement to provide information to DER.

An auditor should ensure that the client understands their responsibilities in providing all materially relevant information to the consultant undertaking the assessment and/or remediation works, and to an auditor engaged for the purposes of providing a report under the Act.

DER will rely on the findings of the MAR to classify or reclassify the audited site.

3.3. MAR Requirements

3.3.1. Use of Guidelines

The auditor is required to take into account the guidelines listed in *Appendix A* when carrying out the functions of an auditor.³

DER acknowledges that alternative approaches, guidelines and standards may be used to investigate and assess contamination and auditors should evaluate the suitability and appropriateness of their use by exercising their professional judgement. If variation from the approaches set out in the listed guidelines is warranted, the auditor must make specific reference to the variation in the auditor's report and include sufficient justification to support the use of the alternative approach, guideline or standard as relevant.

3.3.2. Report Content

The MAR is the material outcome of a site audit and must document the auditor's critical and independent review of the information collected by the environmental consultant during the contaminated site assessment and remediation process.

The report must clearly set out the rationale for the auditor's technical findings, assumptions, justifications and conclusions/recommendations and contain the information required under regulation 32 as to findings, conclusion and, where relevant, recommendation as to classification.

The MAR must be prepared by the auditor (or by staff under the direct supervision of the auditor) and reflect the judgement and opinion of the auditor regarding the contamination status of the site and its suitability for the current and/or future land use(s). If the auditor has relied on input from others, including expert support team members, the auditor must be satisfied that the completed body of work forms an adequate basis for decision-making.

The MAR must be capable of being relied on by the person who commissioned the audit, and by DER in performing its duties under the Act.

³ r.60 of the Regulations.

The MAR must include parcel-specific information on the following:

- an evaluation of the contamination status of each land parcel comprising the site (including all affected land parcels);
- an assessment of whether the contamination poses or potentially poses a risk of harm to public health, the environment or any environmental value;
- an assessment of whether the contamination status of the site has, or potentially has, a detrimental effect on the use of the site/environmental values, including surface and groundwater resources;
- an assessment as to whether the condition of the site is impacting surrounding land and/or land uses;
- an assessment as to whether any further investigation is required, recommended or necessary;
- an assessment as to whether any remediation or risk mitigation/management measures are required at the site and recommendations relating to remediation or risk mitigation/management measures;
- an assessment of the completeness and effectiveness of any remediation or risk mitigation/management measures employed at the site;
- the suitability or appropriateness of a management plan;
- an evaluation of the suitability of the site (parcel-specific where relevant) for the current or proposed land uses; and
- a recommendation for the classification⁴ of each land parcel comprising the site, and any recommended restrictions relating to the use of the land parcels/site.

Failure to provide sufficient information at the parcel scale can lead to significant delays in DER accepting the MAR.

The following signed statements must be included in the MAR:

- A statement (*Commissioner's Statement – Form H, available from the DER website*) identifying and signed by the person who commissioned the report to the effect that the person:
 - i) has not provided information to the auditor that the person knows is false or misleading in a material particular;
 - ii) has not provided information with reckless disregard as to whether or not the information is false or misleading in a material particular; and
 - iii) has disclosed to the auditor all information that the person knows is materially relevant.⁵
- A statement (*Auditor's Statement – Form I, available from the DER website*) identifying and signed by the auditor to the effect that the report is accurate and that the auditor:

⁴ Schedule 1 of the Act provides a list of classification descriptions.

⁵ s.73 of the Act.

- i) has not provided information in the report that the auditor knows is false or misleading in a material particular;
- ii) has not provided information in the report with reckless disregard as to whether or not the information is false or misleading in a material particular; and
- iii) has disclosed in the report all information that the auditor knows is materially relevant.⁶

3.3.3. Report Format

The MAR should include a critical evaluation of the work carried out (a narrative summary of the environmental consultant's work is not acceptable). The MAR should be factual, concise and informative and presented in language and format that is accessible and easily understood by a range of technical and non-technical readers.

Reporting checklists are provided in Appendix A of Contaminated Sites Guideline *Assessment and Management of Contaminated Sites* (DER 2014) to assist environmental consultants in the preparation of their technical reports. The checklists are not intended to be exhaustive and further information may need to be reported to adequately document the specific works undertaken to address site-specific conditions. If the consultant's report omits information included in the reporting checklist or required by a relevant guideline, an explanation of why this information was not considered relevant/necessary by the auditor should be included in the MAR.

3.3.4. Expert Support Team

When preparing a MAR, the auditor must detail the involvement of his/her expert support team in conducting the site audit. Where part of a MAR has been prepared by a person other than the auditor, that person must be clearly identified and sign the report to confirm the accuracy of the work undertaken.⁷ The Expert Support Team Statement (Form J, available from the DER website) is provided for this purpose.

Auditors are expected to consult their respective expert support team member on any material issues for which they have not demonstrated an expert level of knowledge in their application for accreditation. The auditor should provide reasons in his/her report as to why expert support team members were not used where the audit subject matter indicates their expertise may have been relevant.

The auditor must make the final decision about the suitability of the site for current and/or proposed land uses and, as part of their decision process, critically assess the information provided by his/her expert support team.

3.3.5. Community Engagement

As part of the audit process, an auditor must evaluate the level and type of community engagement proposed and implemented with respect to the recommendations in the NEPM and DER guidelines.

In particular, the auditor should ensure that the community engagement plan includes appropriate engagement with affected site owners and occupiers and that this is

⁶ s.73 of the Act.

⁷ r.32(2) of the Regulations.

carried out in a timely manner. DER expects that source site owners will provide affected site owners and occupiers with access to the site technical reports and appropriate non-technical summaries. This is particularly important where permanent or temporary restrictions on the use of land or groundwater are necessary.

3.3.6. Recommendation with Respect to Site Classification(s)

The Regulations require that the auditor recommend a classification⁸ for each land parcel comprising the site, and any restrictions relating to the use of that land parcel.

There may be instances where an auditor considers it necessary for a restricted use classification to be applied to one or more affected land parcels. For example, this could be due to the presence of soil and/or groundwater contamination at that site that may pose a risk to site residents or maintenance workers under certain circumstances.

3.3.7. Endorsement of Site Management Plans

If a Site Management Plan (SMP) is required to manage residual contamination after remediation has occurred, the auditor must review and endorse the relevant Site Management Plan. Before endorsing the SMP, the auditor must ensure that:

- site contamination or chemical substances remaining at the site are managed and/or monitored so that they do not present an unacceptable risk to human health, the environment and environmental values (onsite and offsite receptors);
- the SMP is sufficiently detailed to enable the responsible party to correctly implement the necessary management measures;
- the relevant authorities have been consulted during the development and finalisation of the SMP;
- the parties responsible for implementing the management measures are clearly identified;
- the parties responsible have been consulted and have formally agreed to their assigned responsibilities;
- adequate provision for protection of human health is included if there is a risk that residual contamination is disturbed during ongoing maintenance (a work health and safety plan will commonly be required);
- appropriate review and, if necessary, contingency measures are included and are capable of being implemented in an appropriate timeframe to prevent a risk of harm to human health or the environment materialising; and
- arrangements are in place to provide copies of the SMP to all site owners and occupiers, including all future site owners and occupiers.

If appropriate, DER can host an electronic copy of the SMP on the DER website at www.der.wa.gov.au/your-environment/contaminated-sites/74-site-management-plans.

⁸ Regulation 32 (1)(d); Schedule 1 of the Act provides a list of classification descriptions.

References

Contaminated Sites Act 2003

www.slp.wa.gov.au/legislation/statutes.nsf/main_actsif_c.html.

Contaminated Sites Regulations 2006

www.slp.wa.gov.au/legislation/statutes.nsf/main_subsisif_c.html.

National Environment Protection (Assessment of Site Contamination) Measure 1999, National Environment Protection Council <http://www.nepc.gov.au/nepms/assessment-site-contamination>.

DER, 2014. *Assessment and management of contaminated sites* Contaminated Sites Guidelines, Department of Environment Regulation, WA www.der.wa.gov.au/your-environment/contaminated-sites/61-contaminated-sites-guidelines?showall=&start=1.

DER 2016a *The Western Australian Contaminated Sites Auditor Scheme* Contaminated Sites Guidelines Department of Environment Regulation, WA, October 2016 www.der.wa.gov.au/your-environment/contaminated-sites/61-contaminated-sites-guidelines?showall=&start=1.

DER, 2016b. *Identification, reporting and classification of contaminated sites* Contaminated Sites Guidelines, Department of Environment Regulation, WA www.der.wa.gov.au/your-environment/contaminated-sites/61-contaminated-sites-guidelines?showall=&start=1.

Appendix A – List of Guidelines

Key documents relevant to contaminated sites auditing in WA are listed below.

DER's *Contaminated Sites Guidelines* provide guidance on the assessment and management of contaminated sites in WA. The titles of guidelines, prepared for the purposes of section 97(1) of the Act, are published in the *Gazette* in accordance with section 97(4) of the Act.

Auditors must take into account guidelines gazetted under section 97(4) of the Act when carrying out any function of an Auditor.⁹

As at November 2016, the titles of the following *Contaminated Sites Guidelines* which have been or are intended to be published in the *Gazette* are:

Section of the Act	Contaminated Sites Guideline
s.97(1)a (assessment, management and reporting)	<p><i>Assessment and management of contaminated sites</i> (DER, December 2014)*.</p> <p><i>Identification, reporting and classification of contaminated sites</i> DER (2016b).</p> <p><i>Use of Monitored Natural Attenuation for Groundwater Remediation</i> (April 2004)*.</p> <p><i>Guidelines for the Assessment, Remediation and Management of Asbestos-Contaminated Sites</i> (DoH and DEC, May 2009).</p>
s.97(1)b (identification and classification)	<p><i>Assessment and management of contaminated sites</i> (DER, December 2014)*.</p> <p><i>Identification, reporting and classification of contaminated sites</i> DER (2016b).</p>
s.97(1)c (community consultation)	<p><i>Assessment and management of contaminated sites</i> (DER, December 2014)*.</p>

* To be revised in 2016.

In addition, DER has published the *Interim Guideline on the assessment and management of perfluoroalkyl and polyfluoroalkyl substances (PFAS)* in the Contaminated Sites Guideline series. This document will be updated in late 2016.

The NEPM and the Contaminated Sites Guidelines include references to documents which provide supporting or further information. Auditors should have regard to these references as appropriate. Other guidelines and documents may be relevant for the independent review of contaminated site investigations, monitoring and remediation

⁹ r.60 of the Regulations.

works. It is the responsibility of the auditor to identify and apply such guidelines where relevant.

Auditors should take into account the currency of documents and published updates/revised versions as appropriate. Auditors should satisfy themselves that they have taken into account all relevant documents in carrying out site contamination audits and, where appropriate, reference those documents in the audit report.