



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

GUIDELINE

The Western Australian Contaminated Sites Auditor Scheme

Contaminated Sites Guidelines

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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>
EPA	Environmental Protection Authority
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
WAPC	Western Australian Planning Commission

1. Purpose

The purpose of this document is to provide information on the contaminated sites auditor scheme in Western Australia (WA). The scheme operates within the legislative framework provided by:

- the *Contaminated Sites Act 2003* (the Act);
- the *Contaminated Sites Regulations 2006* (the Regulations); and
- the *National Environment Protection (Assessment of Site Contamination) Measure 1999* (NEPM).

This guideline is consistent with Schedule B9 of the NEPM - *Guideline on Competencies & Acceptance of Environmental Auditors and Related Professionals*.

This document provides information on:

- the WA contaminated sites auditor scheme
- the auditor accreditation process;
- the duties and responsibilities of auditors; and
- the circumstances when a mandatory audit report is required.

Detailed information on the auditor accreditation process is provided in *Contaminated Sites Guideline Accreditation of Contaminated Sites Auditors in Western Australia* (DER 2016a).

Guidance on the contents of mandatory auditor's reports is provided in *Contaminated Sites Guideline Requirements for Mandatory Auditor's Reports* (DER 2016b).

2. Introduction

2.1. Background

The Act and Regulations provide for the identification, recording, management and remediation of known and suspected contaminated sites in WA. The Department of Environment Regulation (DER) is responsible for administering the Act, which includes:

- classifying sites based on the risk to human health and the environment,
- maintaining the contaminated sites database, associated records and register,
- issuing regulatory notices where appropriate action is not being undertaken voluntarily, and
- providing site 'sign-off or clearances' through certain site classifications and Certificates of Contamination Audit.

In recognition of the specialist nature of the assessment and remediation of contaminated sites, the Act provides for auditors to undertake an independent review of site assessments and/or remediation work carried out by other professionals. These reviews are mandatory in prescribed circumstances. The Act and Regulations set out the requirements for the accreditation of auditors, the duties of auditors and the circumstances in which auditors must be engaged

DER has discretionary powers to accredit an individual (not a consultancy or company) as an auditor and may limit or impose conditions on the auditor's accreditation. Once accredited, DER provides the auditor with 'an authority' as written evidence of his or her accreditation which specifies any limits or conditions imposed on the auditor's duties (if applicable).

The WA contaminated sites auditor scheme is similar to schemes operating in New South Wales, Victoria and South Australia. Auditors accredited in other Australian jurisdictions may seek accreditation in WA under mutual recognition legislation. Similarly, auditors who gain accreditation in WA may seek accreditation in other Australian jurisdictions.

Contact details of currently accredited auditors to work in WA are available from the DER website at www.der.wa.gov.au/your-environment/contaminated-sites/53-contaminated-sites-auditors.

2.2. Objectives of the Contaminated Sites Auditor Scheme

The contaminated sites auditor scheme achieves a number of objectives, including:

- ensuring contaminated site assessments and remediation works consistently meet appropriate standards consistent with the object of the Act to protect human health, the environment and environmental values;
- providing greater certainty to interested persons concerning the contamination status of sites in WA;
- reducing pressure on public resources (including DER and the Department of Health); and

- improving access to expert technical advice for the community, financial institutions, planners and industry.

2.3. Legislation

The key sections of the Act and the Regulations relating to the contaminated sites auditor scheme are listed below:

CS Act	Content
s.11	Auditor's duty to report known or suspected contamination.
s.44	Auditor's report in relation to a notice.
s.69 and r.39	Accreditation of auditors.
s.70	Authority of accredited auditor.
s.71	Offences relating to accreditation
s.73	Certification of mandatory auditor's reports
s.74	Offences relating to mandatory auditor's reports
s.75	Self-incriminatory information not exempt
s.76	Use of information
Regulations	Content
r.31	When mandatory auditor's reports are required.
r.32	Mandatory auditor's reports – s.73 (required content)
rr.35–55	Accreditation of auditors
rr.57-62	Functions of auditors
Schedule 3	Auditor code of conduct

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

3. The Contaminated Sites Auditor Scheme in Western Australia

3.1. Overview

DER is responsible for administering the accreditation process for auditors under Part 7 of the Act and Part 9 of the Regulations. In order to accredit auditors, DER carries out certain functions including:

- establishing selection criteria for accreditation;
- calling for applications from persons seeking accreditation and administering the accreditation process;
- establishing selection panels and/or seeking advice from relevant persons to assist DER in assessing the competence of persons seeking accreditation; and
- assessing whether or not a person seeking accreditation has the requisite knowledge, skills and resources and is a fit and proper person to be accredited.

In order to regulate the activities of auditors and to protect members of the public, DER also carries out the functions listed below:

Function/objective	Action
Record keeping/ monitoring the operation of the scheme	<ul style="list-style-type: none"> maintaining records of individuals accredited as auditors maintaining records in relation to professional indemnity (PI) insurance that each auditor is required to hold maintaining a record of each auditor's nominated expert support team maintaining records of audit commencement monitoring audit progress (e.g. auditor annual return) and review of mandatory audit reports
Investigating auditor conduct	<ul style="list-style-type: none"> investigating complaints against auditors inviting an auditor to make a submission if suspension, cancellation or refusal to renew their accreditation is proposed suspending, cancelling or refusing to renew auditor accreditations undertaking criminal proceedings for contraventions by auditors of the Act or Regulations
Restricting the scope of audits undertaken	imposing conditions on an auditor's accreditation (either on initial accreditation or subsequently)
Informing the public	maintaining an up-to-date list of contact details for accredited auditors on the DER website

Auditor support	<p>developing guidelines for use by environmental consultants, auditors, planners and the community on the assessment and management of contaminated sites in WA</p> <p>holding bi-annual meetings (or as required) with auditors to promote knowledge and understanding of new guidelines and to share knowledge relevant to auditing of contaminated sites</p>
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3.2. Requirements for Auditors

The minimum criteria that should be considered by regulatory authorities such as DER when assessing applicants are set out in Schedule B9 of the *National Environment Protection (Assessment of Site Contamination) Measure* (NEPM). In addition, the criteria which an applicant must satisfy in WA are set out in r 39 of the Regulations.

In particular, an auditor must:

- possess adequate theoretical and practical knowledge and skills to carry out the functions of an auditor;
- have access to persons with complementary expert knowledge and skills to assist him/her, where necessary, in carrying out the functions of an auditor;
- possess adequate knowledge and understanding of relevant laws and currently accepted industrial standards;
- hold professional indemnity insurance cover which is appropriate for the scope of audit projects undertaken; and
- otherwise be a fit and proper person to carry out the functions of an auditor.

3.3. Selection Panel

Under regulation 41 of the Regulations, DER may establish a selection panel of at least two panel members to assist in the assessment of applicants for accreditation as auditors. The selection panel generally includes senior DER officers and persons external to DER, including a representative of another Australian jurisdiction. In addition to the selection panel, DER seeks advice from other relevant sources to assist in decision-making on the application(s).¹

Following the interviews with short-listed applicants, the selection panel will recommend which applicants, if any, are suitable for accreditation as auditors.

3.4. Accreditation Procedure

DER will decide whether to accredit an individual as an auditor in WA after considering the application, any further information requested, the recommendations of the selection panel and any advice sought from other relevant sources.² A person will only be accredited as an auditor if DER is satisfied that the person meets the requirements of r.39 of the Regulations.

¹ r.41 of the Regulations.

² r.36(2) and r.41 of the Regulations.

Once the applicant has satisfied the accreditation requirements, he/she will receive notice in writing³ from DER and an authorisation card. The authorisation card will contain a statement that the person is an accredited auditor under the Act, the accreditation expiry date and, if applicable, any limitations or conditions imposed on the auditor's duties.

3.5. Period of Accreditation

The initial period of accreditation for all auditors in WA is one year. Subsequent periods of accreditation may be granted up to a maximum of five years, at the discretion of DER, where the auditor is actively participating in a number of audits and no substantive issues have been identified in the conduct of the auditor's work.

3.6. Accreditation Fees

Accreditation of a suitable applicant as an auditor takes place once the annual accreditation fee of 250 fee units⁴ specified in the Regulations has been paid.

This fee is non-refundable in the event of suspension or cancellation of accreditation. The same annual accreditation fee applies at renewal of accreditation.

3.7. Performance Review

Once accredited, DER may carry out a performance review of an auditor at any time and without notice to ensure that the standard of auditing is acceptable and that the auditor is adhering to the auditor code of conduct. The findings of a performance review may be used to determine whether the auditor's accreditation should be renewed, suspended or cancelled.

During a review, DER may:

- examine documents received from the auditor together with the relevant environmental consultant report(s);
- ask the auditor to provide justification and supporting evidence for decisions made and conclusions drawn in a mandatory auditor's report (MAR);
- ask the auditor to meet with DER to discuss their auditing procedures and basis for decisions;
- investigate or collect samples from a site in relation to an audit undertaken; and/or
- take any other action deemed necessary to determine the standard of performance, including visiting an auditor's office and reviewing the auditor's files and correspondence.

³ s.70 of the Act.

⁴ r.40 of the Regulations, one fee unit is currently \$15.

3.8. Suspension, Cancellation or Refusal to Renew Accreditation

The Regulations detail circumstances in which DER must cancel or refuse to renew accreditation, and lists other circumstances in which DER, exercising discretion, may suspend, cancel or refuse to renew accreditation.

DER must cancel or refuse to renew an auditor's accreditation if:

- DER is no longer satisfied that the applicant meets the requirements for accreditation set out in r.39;⁵ or
- an auditor has been convicted of certain offences under the Act.⁶

DER may suspend, cancel or refuse to renew an auditor's accreditation if the auditor:

- has contravened the Act or Regulations;
- fails to take relevant guidelines into account or to follow a condition in a written authority of accreditation;
- has had their accreditation as an auditor cancelled, suspended or not renewed in any other Australian State or Territory, under a similar auditor scheme for the purposes of the *Mutual Recognition Act 1992*;⁷
- no longer holds appropriate professional indemnity insurance;⁸ or
- fails a performance review carried out by DER.⁹

In addition, an auditor's application for renewal may be refused if he or she has not produced a MAR since accreditation was granted or last renewed. This includes audit reports, equivalent to a MAR in WA, undertaken in other Australian jurisdictions.¹⁰

Prior to cancelling, suspending or refusing to renew an accreditation, DER must notify the auditor in writing of the proposed action and specify the grounds for the proposed cancellation, suspension or non-renewal. The auditor has 14 days in which to respond in writing as to why accreditation should not be cancelled, suspended or renewed.¹¹

In certain circumstances, an auditor's accreditation may be suspended to give DER sufficient time to determine whether to cancel or refuse to renew the auditor's accreditation. DER has up to 14 days from the day written notice is given to the auditor to make the decision.¹²

If an auditor's accreditation is suspended, an auditor cannot carry out any auditing functions pursuant to the Act or Regulations during the period of suspension.¹³

⁵ r.46(1)(a) of the Regulations.

⁶ r.46(1)(b) and r.47(1) of the Regulations.

⁷ r.48(2)(e) of the Regulations.

⁸ r.47(2)(b) of the Regulations.

⁹ r.48(2)(e) of the Regulations.

¹⁰ r.46(2) of the Regulations.

¹¹ r.49 of the Regulations.

¹² r.50 of the Regulations.

¹³ r.51 of the Regulations.

A person whose accreditation has been cancelled or not renewed as a result of being convicted of a criminal offence under certain provisions of the Act is ineligible to apply for accreditation for a period of three years from the date of cancellation or refusal to renew.¹⁴

A person whose accreditation ceases must return their authorisation card to DER.¹⁵

3.9. Complaints Against Auditors

DER will investigate any complaint made against an auditor that alleges he or she is in breach of the Act or Regulations (including the code of conduct for auditors).

A form for lodging a complaint is available on the DER website at www.der.wa.gov.au/your-environment/contaminated-sites/57-forms.

Commercial Matters

DER is not responsible for monitoring or regulating any aspect of the auditor's commercial business.

DER does not adjudicate, arbitrate or interfere in any commercial or contractual dispute or disagreement that may arise between the auditor, his or her client, or any other person, including disputes in relation to the payment of fees or charges for the delivery of services.

3.10. Auditor Meetings

DER holds meetings with auditors on a bi-annual basis (or as required) to discuss a range of topics relevant to auditors' duties, such as the introduction of new guidelines and policy development. DER also encourages auditors to put forward topics for discussion.

Auditors will be given at least three months written notice of the dates of these meetings and DER expects all auditors to attend in person.

3.11. Annual Returns

Auditors are required to submit an annual summary of all WA contaminated sites audits undertaken or in progress for the preceding financial year, or since the date of accreditation in the first year of obtaining accreditation in WA.

The information required includes the project address/location, the engaging party, date of engagement, status of audit (for example, stage of investigation and whether in progress or on-hold), a summary of the current status of the site assessment or remediation at the site, and other information relevant to establishing the potential risk to public health, the environment and environmental values.

Auditors are also required to provide confirmation of their professional indemnity insurance (certificate of currency) and expert support team.

¹⁴ r.52 of the Regulations.

¹⁵ r.53 of the Regulations.

4. Roles and responsibilities

4.1. Role of the Auditor

The auditor's role is to independently and objectively review and form an opinion on the accuracy and completeness of the assessment, monitoring and/or remediation work undertaken by the environmental consultant (and their contractors), taking into account the requirements of the NEPM, the *Contaminated Sites Guidelines* and other relevant guidelines and standards.

Regulation 3 of the CS Regulations provides 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;

Auditors make recommendations in their audit reports regarding the completeness of assessment, remediation and/or validation works and on the appropriate site classification(s) after reviewing the relevant consultant reports. DER takes the recommendations in the audit report(s) into account when classifying the site.¹⁶

Auditors should:

- employ assessment methods and approaches consistent with current standards and guidelines for the assessment, remediation and management of site contamination;
- exercise due care, diligence and professional judgement (to the standard reasonably expected of an auditor performing the functions of an auditor under the Act) at all times during the conduct of an audit to ensure protection of human health, the environment and environment values;
- demonstrate leadership during the course of an audit and act at all times in a professional manner, upholding the independence and integrity of the audit system;

¹⁶ s.13 and s.63 of the Act.

- seek expert advice as necessary;
- exercise professional and independent judgement and apply knowledge and skills appropriately to each audit undertaken;
- provide appropriate guidance to the client; and
- update and maintain knowledge, skills and expertise consistent with good practice in assessment, remediation and management of site contamination.

Auditors have a duty of care to ensure protection of the health and safety of the community in general, and this specifically includes a duty of care towards site occupants and the client who commissioned them to carry out the audit.

4.2. Role of the Environmental Consultant

The professional/consultant (referred to here as the environmental consultant) engaged by the client to undertake the site assessment and/or remediation is the person who is responsible for designing and implementing the assessment and/or remediation program.

The environmental consultant should consult with the auditor at the project planning stage so that the auditor's feedback can be taken into account when finalising and implementing the program. Failure to satisfactorily address auditor feedback in a timely manner may lead to project delays and increased costs.

If the site assessment indicates that the site is contaminated and requires remediation, then an appropriate remedial action plan (RAP) and if necessary, a site management plan (SMP) should be developed by the environmental consultant. The environmental consultant developing the site RAP/SMP and validation strategy should consult with the auditor regarding the auditor's requirements. In particular, DER recommends that the auditor's agreement to the proposed clean-up levels and validation requirements is confirmed before the remediation works commence to avoid unnecessary project delays and costs.

4.3. Interactions Between the Auditor and the Environmental Consultant

In WA, the Act does not provide auditors with powers to undertake independent investigations or validation of remediation works. Consequently, auditors should not conduct any new investigation, data interpretation or risk assessment works as part of their review, or be directly involved in the design or implementation of any investigation program conducted by the environmental consultant engaged for that purpose, *beyond the provision of appropriate technical advice* to improve the effectiveness and/or efficiency of the works to be undertaken.

If the works undertaken by the consultant are inaccurate, incomplete and/or do not meet the appropriate standards, DER recommends that the auditor communicates this finding to his or her client and the environmental consultant, to provide an opportunity for the omissions or data gaps to be addressed before the auditor completes his or her review. It may not be necessary, however, for the consultant to close out all data gaps if these are minor and do not materially affect the reliability of the data or the conclusions drawn from the data, or if an acceptable management strategy is

proposed to mitigate the identified unacceptable risks.

If the environmental consultant (or client) is unable or unwilling to address significant data gaps, the auditor should comment in his or her audit report on the effect that the identified omissions and/or data gaps have on the findings, conclusions and/or recommendations arising from the works carried out.

5. Commissioning an Audit – When Must an Auditor be Engaged?

5.1. Legislative requirements

The Act and Regulations specify circumstances (mandatory requirements) when an auditor must be engaged to provide a MAR. There is no provision in the legislation for DER to waive the requirement for a MAR if one or more of these circumstances apply.

Auditors may also produce other reports on audits of sites under r.58.

5.1.1. Requirements for a MAR under the Act

In accordance with s 44 and rr 29(2)(d) and 31(1), there are a number of specific circumstances when an auditor must be engaged to provide a MAR,¹⁷ including when:

- an **investigation, clean up or hazard abatement notice** is given, the notice will require the person on whom the notice is binding, to engage an auditor to produce a MAR on the actions taken to comply with the requirements of the notice;¹⁸
- a **Certificate of Contamination Audit (CCA)** is requested, the request must be accompanied by a MAR;¹⁹
- a report is submitted to DER containing information relevant to the investigation, assessment, monitoring or remediation of a **source site**²⁰ (that is when contamination has moved beyond the boundaries of the site on which it originated, to affect another land parcel(s));
- a report is submitted to DER, containing information relevant to the investigation, assessment, monitoring or remediation of a site, for the purpose of complying or attempting to comply with another **written law or a condition or requirement imposed under another written law**²¹ (for example, a condition of subdivision approval issued by the Western Australian Planning Commission); or
- **DER requests in writing** that a MAR be provided in respect of a site that presents particularly complex technical issues, or where inadequate reports or information have been provided, or to enable the site to be properly dealt with under the Act.²²

The wording of r.31 makes it clear that a MAR is to accompany the submission of every report submitted to DER relating to the investigation, assessment, monitoring or remediation of a site. Depending on the site-specific circumstances, an individual MAR may cover more than one report relating to a project milestone as long as these reports are provided to DER in one submission accompanied by the MAR.

¹⁷ Definition of “Mandatory Auditor’s Report” s.3 of the Act.

¹⁸ s.44 of the Act.

¹⁹ subsection.62(3)(e) of the Act read with r.29(2)d of the Regulations.

²⁰ r.31(1)(b) of the Regulations and definition of “source site” in s.3 of the Act.

²¹ r.31(1)(c) of the Regulations.

²² r.31(1)(d) of the Regulations.

5.1.2. Requirements for a MAR under the EP Act

The Environmental Protection Authority (EPA) may require a MAR to be submitted in certain circumstances under Part IV of the *Environmental Protection Act 1986* (the EP Act). For example, a MAR may be required when the EPA undertakes an assessment of a “significant proposal” (for example to redevelop land) if contaminated site issues are referred to it under s.38 of the EP Act, or where the EPA requests further information related to a contaminated sites issue under s.38A; or where a “scheme” is referred to it under s.48A of that Act.

The engagement of an auditor may also be required as a ministerial condition for proposals or schemes formally assessed by the EPA, or as a condition of works approvals or licences issued under the EP Act.

Other statutory mechanisms which may require the engagement of an auditor include planning conditions and development approvals.

5.2. Timing

DER recommends that the auditor is engaged at the start of the site investigation process or as early as possible to maximise efficiency and to minimise potential delays in the process. Generally, the auditor should be engaged before or at the same time as the environmental consultant. This will provide an opportunity for early discussion between the auditor, the client and the environmental consultant to ensure the program of work is as efficient and effective as possible for the site-specific circumstances.

5.3. Completion/Termination of an Audit

The MAR is required to 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.²³

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.

5.4. Responsibility for Audit Costs

The cost of engaging a contaminated sites auditor is the responsibility of the client who commissioned the audit, irrespective of whether the work was initiated voluntarily or as a statutory requirement of the Act or EP Act.

²³ r.57 of the Regulations.

6. Auditor Duties and Responsibilities

6.1. Responsibilities of Auditors

An accredited auditor has certain responsibilities that must be fulfilled to maintain their status as an auditor in WA and to uphold the integrity of the contaminated sites auditor scheme.

General responsibilities of auditors	
Auditor title	To use the title of “Auditor” or “Accredited Contaminated Sites Auditor” only when carrying out a function of an auditor (r.59).
Report known and suspected contamination	To report known and suspected contaminated sites to DER when engaged to provide a report for the purposes of the Act in respect of the site(s) (s11)
MAR	<p>To prepare a MAR for each contaminated site audit undertaken for the purposes of the Act and Regulations;</p> <p>To assess all relevant information relating to the site prior to providing a MAR and recommendations on each land parcel indicating that a site has been appropriately investigated, meets, or has been remediated to, a defined standard and is suitable for a particular land use; and</p> <p>To provide a statement (<i>Auditor’s Statement Form I</i>) that he/she has reviewed all of the information relevant to each part of the contaminated site audit.</p> <p>Not to provide any false or misleading information, nor fail to include any relevant information in relation to a MAR.</p>
Expert support team	<p>To consult expert support team members on technical issues that are outside the auditor’s professional competencies and document in the MAR when and from whom the advice was obtained;</p> <p>To consider those areas of expertise that he/she claims a high level of expertise versus basic proficiency when deciding to consult (or not) their expert support team member; and</p> <p>To obtain a statement from each expert support team member, confirming their part in the preparation of the contaminated site audit ²⁴ (<i>Expert Support Team Statement Form J</i>).</p>
Validation	To conduct a site visit to personally verify the completion of site remediation and management works. Auditors may delegate a member of their audit team to carry out interim site visits to verify progress; however, the auditor should carry out the final site visit.

²⁴ r.32(2) of the Regulations.

In addition, an auditor should report to DER any significant environmental or human health risk posed by a site he/she is auditing as soon as the auditor becomes aware of the risk. This is particularly important where the auditor considers that a site is contaminated and there is an immediate and serious risk of harm to human health, the environment or any environmental value. DER will take the auditor's advice into account when considering if a hazard abatement notice should be served.

6.2. Engagement to Produce a MAR and Auditor's Duty to Report

An auditor who is engaged to produce a MAR (or any other report required for the purposes of the Act with respect to the site), has a duty to report²⁵ the site to DER:

- within 21 days (or such later period approved by DER) after the day the auditor first knew that the site was contaminated²⁶ (unless the auditor knows that the site had already been reported to DER in accordance with the provisions of the Act); or
- as soon as is reasonably practicable after first suspecting that the site is contaminated.²⁷

The report of a known or suspected contaminated site is via the prescribed form (Form 1 available from the DER website at <https://www.der.wa.gov.au/your-environment/contaminated-sites/57-forms>).

An auditor is to notify DER of their engagement (*Audit Notification Form G*), within seven days after the day the auditor is engaged to provide a MAR.²⁸ The notification should include the client's details, reason for the appointment, site location (Certificate of Title details) and the name of the environmental consultant undertaking the investigation (assessment) and/or remediation.

Where the auditor engages other experts in conducting the site audit, the auditor must make the final decision about the suitability of the site for current or proposed land uses.

6.3. Duty to Submit a Copy of the MAR to DER

An auditor is to provide DER with an electronic copy of the MAR no later than seven days after the auditor has provided the report to the person who engaged the auditor.²⁹ Electronic copies of the consultant's report(s) reviewed in the MAR must also be provided for DER records.

6.4. DER Request for Interim Advice

On occasion, DER may request an auditor to provide interim advice and/or supporting information in order to make a regulatory decision or provide advice as part of its regulatory role. This may arise in relation to sites subject to an environmental condition, such as a planning or development condition, a source site or other circumstance to which r.31 applies. Typically these requests have been made when an auditor has been appointed for a source site, and one or more owners of affected

²⁵ All reports under s.11 of the Act must be made using Form 1 in Schedule 1 of the Regulations.

²⁶ subsection.11(3)(a) of the Act.

²⁷ subsection.11(3)(b) of the Act.

²⁸ r.55(3) of the Regulations.

²⁹ r.57 of the Regulations.

sites wish to develop, or otherwise change, the use of their properties and the Western Australian Planning Commission (WAPC) has requested advice from DER. As DER is entitled to rely on an auditor's interim advice for the purposes of the Act,³⁰ the quality of the advice must be of the same standard as for a MAR.

6.5. Change in Circumstances – Auditors' Responsibility to Notify DER

An auditor must notify DER in writing, within seven days, if;³¹

- there is a change in circumstances that may affect the auditor's eligibility for accreditation;
- any substantially similar accreditation held by the auditor under a written law of another State or Territory about the contamination of land is cancelled, suspended or not renewed;
- an auditor becomes unemployed, self-employed or employed by an employer other than the employer that the auditor was employed by, when the auditor became accredited;
- an auditor no longer has access to any person/s who could assist him or her to carry out his or her function as an auditor (for example, the persons in his/her expert support team);
- an auditor becomes aware of any information that is materially relevant to the person's accreditation as an auditor that the person has not disclosed to DER;³² and
- any term of their professional indemnity insurance policy is changed or is likely to change in the future, in any material particular, or the auditor no longer holds that policy, or such a policy is no longer held in respect of the auditor (written notification to be provided as soon as possible).³³

In addition, 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 in writing within seven days.

An auditor must notify DER and each person who has engaged the auditor to perform the function, as soon as practicable after a conflict of interest, or potential conflict of interest comes to the auditor's knowledge³⁴.

6.6. Auditor Code of Conduct

The Code of Conduct for Auditors (Schedule 3 of the Regulations) sets out standards to which auditors must adhere when carrying out any function as an auditor:

- avoiding situations which may give rise to actual or potential conflicts of interest;
- avoiding situations giving rise to the receipt of gifts or other benefits affecting or

³⁰ s 76 Use of information

³¹ r.55(1) of the Regulations.

³² r.55(2) of the Regulations.

³³ r.56 of the Regulations.

³⁴ r.62(1) of the Regulations.

potentially affecting the auditor's impartiality; and

- performing duties diligently, impartially and conscientiously, to the best of the auditor's ability.

In addition the auditor should:

- exercise due care and professional judgement to the standard which may be reasonably expected of a qualified and experienced environmental professional appointed as an auditor under the Act;
- demonstrate a sufficient level of independence from the person who engaged the auditor to satisfy a 'reasonable person' that the outcome of the audit will not be influenced by the relationship (the auditor must also consider the independence of his or her expert support team);
- act in a professional manner while upholding the independence and integrity of the scheme; and
- avoid situations that may lead to a conflict of interest to which r 62 applies.

A list of offences and associated penalties relating to the functions of an auditor pursuant to the Act and Regulations is provided in *Appendix A*.

6.7. Conflict of Interest

Regulation 62(1) requires that if an auditor has a potential or actual conflict of interest, whether or not the situation comes within the scope of the Code of Conduct or r 62(2),³⁵ the auditor is required, as soon as is practicable, to notify DER and each person engaging the auditor, of the conflict or potential conflict.

By way of example, a conflict of interest arises in the following circumstances:

- the auditor (or person employed or engaged by the auditor) is employed by, contracted to, or regularly works in association with the person or organisation currently undertaking the assessment or remediation of the site being audited;
- the auditor (or person employed or engaged by the auditor) is, or is related to, a person by whom any part of the site is owned or occupied;
- the auditor (or person employed or engaged by the auditor) has a direct or indirect pecuniary interest in any part of the land or any activity carried out on any part of the land; and/or
- the likelihood that a person employed or engaged by the auditor has a particular interest and could be influenced, or might appear to be influenced, in performing the work the person is employed or engaged to perform.

In circumstances when an auditor has undertaken or has been involved in the assessment, remediation or management of contamination of a particular site (that is, employed as the consultant with respect to the site), the auditor must decline all subsequent requests to audit that site.

³⁵ Person employed or engaged by an Accredited Auditor.

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.

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, *Accreditation of Contaminated Sites Auditors in Western Australia*, Contaminated Sites Guidelines, Department of Environment Regulation, Perth www.der.wa.gov.au/your-environment/contaminated-sites/61-contaminated-sites-guidelines?showall=&start=1.

DER, 2016b, *Requirements for Mandatory Auditor's Reports*, Contaminated Sites Guidelines, Department of Environment Regulation, Perth www.der.wa.gov.au/your-environment/contaminated-sites/61-contaminated-sites-guidelines?showall=&start=1

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

Appendix A – Offences and penalties

There are a number of offences and monetary penalties relating to the duties of an auditor accredited in WA which are listed below – refer to the *Contaminated Sites Act 2003* and the *Contaminated Sites Regulations 2006* for details.

Section or Regulation	Issue Offence relates to	Penalty
s.(11)(3)	Failure to report known or suspected contaminated sites	\$250 000, and a daily penalty of \$50 000
s.11(9)	Malicious reporting or without reasonable grounds	\$250 000
s. 70(3)	Accreditation	\$125 000 and a daily penalty of \$25 000
s. 71	Accreditation	\$125 000
s. 74	Mandatory auditor's reports	\$250 000
Regulation 53	Return of identity card (authority)	\$1000
Regulation 55	Notification to CEO in certain circumstances	\$1000
Regulation 56	Maintenance of professional indemnity insurance	\$1000
Regulation 57	Provision of copy of mandatory audit report to CEO	\$1000
Regulation 59	Use of 'auditor' title	\$1000
Regulation 62	Conflict of interest	\$1000