



NSW Accredited Site Auditor Scheme – Meeting Minutes

Meeting:	NSW Accredited Site Auditor Scheme – Auditors’ Meeting	Date:	1 April 2022
Location:	Online: Microsoft Teams Meeting	Time:	10am-12.15pm
Last Meeting Date:	29 October 2021	Next Meeting Date:	October 2022
Present:	<p>EPA accredited site auditors - Adrian Hall, Andre Smit, Andrew Lau, Anthony Lane, Ben Wackett, Brad May, Charlie Barber, Chris Jewell, Michael Dunbavan, Brad Eismen, Fiona Robinson, David Gregory, Ian Gregson, Ian Swane, James Davis, Jason Clay, Julie Evans, Kylie Lloyd, Lange Jorstad, Marc Salmon, Mark Stuckey, Ross McFarland, Colin McKay, Melissa Porter, Mike Nash, Paul Moritz, Peter Beck, Peter Lavelle, Peter Ramsay, Rod Harwood, Rowena Salmon, Tony Scott, Paul Steinwede, Tim Chambers, Tom Onus, Caroline Vernon, Rebeka Hall, Alyson Macdonald</p> <p>Auditor’s Proxies - Daniela Balbachevsky, Stephan Pawelczyk, Geoff Fletcher</p> <p>NSW EPA – Anthea White, Jo Graham, Rose Cocks, Sam Waskett, Giselle Goloy, Victoria Lee, Armin Kavehei, Carolina Olmos, Joanne Stuart, Karen Marler, Mark Hanemann, Natalie Tan, Alan Ly, Helen Prifti</p>		
Apologies:	Andrew Kohlrusch, Amanda Lee, Graeme Miller, Phil Mulvey, Frank Mohen, Louise Walkden.		
Guests:	Kristin Wasley (Victoria EPA)		

Agenda items:

1. Introduction – Anthea White, NSW EPA

Welcome and Acknowledgment of Country

2. Audit Unit Update – Jo Graham, NSW EPA

Refer to presentation attached. The following items were discussed:

New accreditation panel

- The EPA is currently forming a new Accreditation Panel. Nominations for panel members closed on 18 March 2022.
- Once the new panel has been formed, the EPA plans to run a new accreditation round.

Automatic Mutual Recognition

- The EPA is awaiting the outcome on the decision from NSW Treasury for the request for a 5 year exemption from AMR. The primary purpose for the exemption request is to maintain the integrity of the scheme and ensure quality control of auditors working in NSW.

EPA organisation chart

- The EPA organisation chart is available here: <https://www.epa.nsw.gov.au/about-us/our-organisation/our-organisation>

Terminated audits

- The EPA reminded auditors to consider terminating audits where there has been no activity for some time. A termination notice needs to be sent to the EPA and should also go to the relevant consent authority.

EMPs/RAPs attached to Site Audit Statements

- Auditors are reminded to attach Environmental Management Plans and Remedial Action Plans to Site Audit Statements, where required.

Accreditation renewal letters / SAR review feedback letters

- The EPA requested auditors take the time to read the feedback letters that accompany renewal/review letters, as these often have requests for follow-up actions which may require a response from auditors back to the EPA.

The Auditor's participated in a Slido questionnaire to seek their views on the potential expansion of the auditor scheme to include the auditing of landfills and possibly other functions. Feedback was also sought on matters relating to the cost of professional indemnity insurance and accreditation fees.

3. Land & Resources Policy Update – Joanne Stuart, NSW EPA

Refer to presentation attached. The following items were discussed:

Regulatory reform

- *The Environment Legislation Amendment Act 2022* came into effect on 4 March 2022 and includes updates to seven pieces of legislation including *the Contaminated Land Management Act 1997* (CLM Act).
- *The Protection of the Environment Operations Act 1997* (POEO Act) amendments include allowing the EPA to issue notices to more than one person involved in a pollution incident and extends regulatory requirements to current and former directors and related corporate bodies.
- The CLM Act changes include:
 - extending existing financial assurance provisions to include ongoing maintenance orders and restrictive and positive public covenants. These were only currently available under Management Orders;
 - enabling the EPA to consider financial capacity when determining if a financial assurance is required;
 - allowing the EPA to issue clean-up or prevention notices as soon as contamination has been notified (for example, in the event of a leaking UPSS that may be posing risks to onsite/offsite users and the owner is not taking action); and
 - increasing maximum penalties to align with those available under the POEO Act.
- The CLM Regulation is currently on public consultation until 2 May 2022. The Regulation has to be remade by 1 September 2022 or it will lapse. Proposed changes include:
 - requiring the EPA and anyone required to provide a financial assurance, to consider EPA policy and guidelines on financial assurance;
 - enabling the EPA to waive or refund auditor accreditation fees in certain circumstances (such as parental leave);
 - requiring additional information to be included in site auditor annual returns;
- It was suggested that digital transformation should be integrated into the review process. The EPA welcomed all suggestions. Auditors are encouraged to make comments on the proposed changes to the CLM Regulation at: <https://yoursay.epa.nsw.gov.au/contaminated-land-management-clm-regulation-2022>.

Recent publications

- The revised *Contaminated land consultant certification policy* (NSW EPA, January 2022) (<https://www.epa.nsw.gov.au/publications/contaminatedland/21p3245-contaminated-land-consultant-certification-policy>)
- The EPA practice note - *Preparing environmental management plans for contaminated land* (NSW EPA, January 2022) (<https://www.epa.nsw.gov.au/-/media/epa/corporate-site/resources/contaminated-land/22p3473-emps-for-contaminated-land-practice-note.pdf?la=en&hash=CBC7F6F0E1997C8B5229A83A2407AEC7F7E5E31B>)

Resource Recovery Framework

- The Resource Recovery Framework (RRF) is being independently reviewed by Dr Cathy Wilkinson, the former head of the Victoria EPA and current Professor of Practice at the Monash Sustainable Development Institute. Dr Wilkinson will make recommendations as to potential areas of reform to the RRF. Consultation on an Issues Paper is available now until 6 May 2022, available from <https://yoursay.epa.nsw.gov.au/resource-recovery-framework>

Review of the POEO Waste Regulation

- Review of the POEO Waste Regulation has commenced but is at the very early stages. Internal scoping of issues is underway. Targeted external consultation is scheduled for May-June 2022. The Regulation needs to be re-made by 1 September 2023. Please direct any waste issues that you feel need to be addressed in the Regulation by emailing Sarah Crossie, Unit Head in the Land and Resources Policy Team, at sarah.crossie@epa.nsw.gov.au

Groundwater sampling guidelines

- Victoria EPA has recently released updated Groundwater Sampling Guidelines. The NSW EPA do not intend to formally endorse these guidelines, but they can be used alongside the existing NSW guidelines if consistent with the NEPM and NSW legislation.
- NSW EPA plan to update the *Guidelines for the Assessment and Management of Groundwater Contamination* (March 2007) very soon. The Sampling Design Guidelines (SDG) also touch briefly on groundwater sampling.
- The NSW EPA has also recently released the *Approved methods for the sampling and analysis of water pollutants in NSW* (available here: <https://www.epa.nsw.gov.au/licensing-and-regulation/licensing/environment-protection-licences/licensing-under-poeo-act-1997/licensing-to-regulate-water-pollution/approved-methods-for-sampling-and-analysing-water-pollutants>) which also touch on groundwater sampling.

Sampling Design Guidelines (SDG)

- The SDG are currently with the EPA publications team for editing and should be released very soon. There have been a number of changes from the draft that was out for consultation. Some more information has been included on segregation of soils, stockpiling and sampling densities. Some tables have also been updated. The structure remains largely the same. The changes made are not considered to warrant further consultation.

SEPP 55 and the Planning Guidelines

- SEPP 55 has been “lifted and shifted” into Chapter 4 of the new Resilience and Hazards SEPP. This commenced on 1 March 2022. There are no changes to the SEPP at this stage – it has just been combined with a number of other SEPPs.
- Planning have advised that the revision to the Planning Guidelines is in the final stages of internal drafting and review. The EPA is unaware if Planning will consult on these guidelines again externally.

Discussion

- An auditor queried that with the withdrawal of the EPA technical note for the Investigation of service station sites (NSW EPA, April 2014) there is now no technical standard available to auditors to reference for service station sites. In response another auditor noted they had been advised to refer to the *Guidelines for implementing the Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2019* but was of the opinion that this document does not cover the same material as the previous technical note. The EPA took this query on notice and sought a response which is provided below.

Action Item No	Action	Person Responsible
3.1	The EPA to seek further clarification following the withdrawal of the technical note for the investigation of service station sites and change in technical content for the replacement guidance.	NSW EPA
	<p>The EPA can confirm that the <i>Guidelines for implementing the Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2019 (UPSS Guideline)</i> is now the central document collating all previous UPSS guidance. The UPSS Guideline incorporated and consolidated information that remained relevant from the outdated previous UPSS resources.</p> <p>All other previous NSW EPA UPSS documents, prescriptive guidance etc have now been retired. The EPA is no longer the Appropriate Regulating Authority for service station sites, and as such there was a need to re-evaluate our ongoing prescriptiveness in this space.</p> <p>There is also a series of targeted factsheets available on the EPA web page at: https://www.epa.nsw.gov.au/your-environment/contaminated-land/upss/resources-for-implementing-upss</p>	Resolved

4. Waste update – Helen Prifti, NSW EPA

Refer to presentation attached. The following items were discussed:

New templates for orders and exemptions

- New templates have been introduced for orders and exemptions, following internal and external review and learnings from prosecutions undertaken.
- The new templates have come about due to a desire to lift the standard of waste compliance standards, tighten regulatory control, track waste better and provide greater clarity to the community.
- The new Order has introduced a range of new concepts/conditions, and the template now includes:
 - Introduction up front (reminding people of their statutory obligations)
 - Supplier – using the term ‘supplier’ aligns with the POEO Act and captures both generators and processors
 - Occupier premises – this is the consumer of the product (again, the term aligns with the POEO Act)
 - Notify first – suppliers need to advise that they are acting under an Order to the EPA. This will work similar to a registration process and assist with tracking
 - Blending – this will mean being more explicit with what can be blended
 - Retesting – this outlines that the same sample cannot be retested again and again until the results are what the supplier wants to see. Unless there is a laboratory error or some other legitimate scientific reason, the sampling result should be considered and included. An auditor requested clarification on this, stating that it was their understanding that the current wording only allows for retesting in the case of a laboratory error - not for legitimate scientific reasons (such as a small lead paint particle in a sample). The EPA clarified that if it is a laboratory error, it is not considered retesting. If there is some other reason for the exceedance, this should be reported to the EPA and further investigations will be needed to understand and explain why. Another auditor asked whether the opportunity to discuss such circumstances will be stated in the Orders? The EPA advised they will consider this.
 - Segregation – allows for hotspots to be segregated in a stockpile
 - Batch of waste – stockpile defined. Being really clear what is a continuous process and a stockpile
 - Asbestos – it will be explicitly stated in the order than no asbestos can be present

- Accredited laboratory – it will also be explicit on the need to use an accredited laboratory
 - Guidance on what to do if you have a non-compliance
 - Test methods tabulated - for readability
 - New information to be supplied and recorded
- Although the Exemption is largely the same as before, it will include further clarification on matters such as residue waste exemptions; consignor, transporter, receiver exempt from tracking; detail that the occupier must have planning consent (if applicable) in place before material arrives, and more information on what exemptions do not apply to and record keeping
 - Targeted consultation started 7 February 2022 and ended 1 April 2022. Widespread and detailed feedback has been received covering a wide range of topics.

General waste questions raised

- An auditor asked if blended material imported to a site is audited is there an expectation to audit the two separate components used in the blend? As blending may have occurred at a third party location and way outside the audit scope.
The EPA intends to be very clear on the blending clauses so that it is clear what the final blending specification is required to be. Auditors would only need to consider that final blending specification.
- An auditor asked whether there will be an asbestos threshold in the updated resource recovery orders and exemption, like in the new Western Australian waste guidance?
The EPA confirmed that no asbestos can be present in the material.
- An auditor stated that the ENM Order could do with more clarity on manufactured chemicals that are not in the testing list, for example OCPs and PCBs.
The EPA confirmed that the ENM Order is planned to be reviewed next, once Recovered Fines are finalised.
- An Auditor stated that, with respect to OCP, PCB and PFAS, the opening blurb on the RRO says they should be absent, but in the definitions, it states that there must be less than the defined detection limits (for example, 5 µg/kg for PFAS). The auditor sought clarification on what should be done in circumstances where these compounds are detected at less than these defined detection limits?
The EPA confirmed that, if the compound is found at below the detection limits, this would pass the criteria of the Order and be permitted to be supplied.

5. WA DOH Asbestos Guidelines – NSW EPA Position Statement – Mark Hanemann, NSW EPA

Refer to presentation attached. The following items were discussed:

- The 2021 WA DOH Asbestos Guidelines replaces the previous 2009 version. It is considered a useful tool in the management of asbestos, but it is not wholly consistent with the NSW approach
- The 2021 WA DOH guidance amplifies some of the inconsistencies between the WA and NSW approach
- It is important to note that while the 2009 version of the guidance is referenced in NEPM and indirectly in the NSW EPA guidelines, the 2021 version is not an approved guideline under s105 of the CLM Act.
- In response to the release of the WA DOH 2021 guidelines the NSW EPA formed a working group of internal contaminated land, waste policy and legal officers to consider the application of the WA guidance in NSW. The outcome of the working group considerations was that there was no need for legislative or policy changes in NSW. Instead, a position statement is to be published to reiterate the NSW EPA's position. It is hoped this will be released in the next two weeks. The EPA will advise auditors once this becomes available. Note: the position statement is a NSW EPA position statement, not a whole of government one.
- The EPA noted that there is further work to be done on the issue of asbestos in soils, including clarification needed on definitions of waste, reuse and contamination
- The main differences between WA and NSW are:
 - WA supports site-specific clean-up goals for asbestos, whereas NSW EPA does not support these, because of the uncertainty and variability of parameters. NSW EPA supports

assessment of site-specific exposure scenarios and the development of a robust conceptual site model.

- WA allows the reuse of low levels of asbestos in soils, after screening and validation. In NSW, the POEO Act prohibits the reuse or recycling of asbestos waste in any form. Screening is considered a form of recycling.
- The NSW approach to asbestos in soils (asbins) permits:
 - Excavation and transport of asbins to a licensed waste facility
 - Burying of asbins in an approved containment cell on the same site as where the waste has been generated
 - Stockpiling and segregation of asbins for purposes of waste classification and disposal
 - In-situ capping of asbins without disturbances (where certain requirements are met, such as planning approval where required etc)
- What is not permitted in NSW:
 - The transport of asbins to another site for containment or reuse
 - Process, dilute or treat asbins for re-use
 - Re-use of asbins under the resource recovery framework
- The EPA is continuing to work with other agencies, such as SafeWork, on the development of future guidance, which is hoped to include worked examples providing approved approaches/advice. This is still a few months away.
- The EPA acknowledges that all the answers in regard to questions on reuse, waste, contamination etc are not currently available, but work is being done with its Legal team to provide further guidance on these. This is an evolving area of work.
- The updated Sampling Design Guidelines are soon to be released, and these include guidance on sampling densities for asbestos contaminated soils, stockpiling and segregation
- The EPA is always open to considering its position on asbestos where new technical data or legal opinion becomes available

A series of questions were raised by auditors following this presentation, which were taken on notice and detailed below (responses to these questions will be provided to auditors when possible):

Action Item No	Action	Person Responsible
5.1	Slides shown at the meeting were slightly different to those sent to the auditors prior to the meeting. Note: the presentation was updated a copy of the latest version will be provided with the minutes.	EPA - to be sent alongside minutes & published on website
5.2	If more than 10 tonnes of asbins is being contained on site and the site is not regulated or classed as Category 1 remediation work under the EP&A Act, it technically falls foul of the Land Pollution Offence in the POEO Regulation 2009. Is the "10 tonnes" asbestos or asbins? Or "asbestos waste" Some clarification is required.	EPA - this issue has been referred to the relevant EPA Policy team who are considering further regulatory reform.
5.3.	Previous EPA advice implied you could segregate areas of (asbestos) impacted stockpiles and use those stockpiles that have not been impacted. Is segregation considered "treatment"?	EPA – responses to follow
5.4.	What is the definition of reuse? Is there a difference if it was generated onsite or offsite?	
<i>Continued on the next page</i>		

5.5.	The EPA endorsed remediation hierarchy starts with removal or destruction of contaminants and re-use of remediated soil on site. Would destruction of contaminants and re-use of soil be considered "re-use" or "recycling"?	EPA – responses to follow
5.6.	Does the segregation / screening of ASBINS and validation as per NEPM allow for 'reuse' if criteria is met?	
5.7.	Does NSW (asbestos) policy allow for risk-based land-use decisions? For example, if a defensible process (e.g. Activity Based Survey) conservatively concludes there is no risk, then can the site be concluded as suitable for the proposed use?	
5.8.	If soils are re-used on site, are they a waste?	
5.9.	Is the EPA position paper consistent with the legislation and waste regulations (i.e., on-site versus off-site etc)?	

6. Role of the site auditor in assessing sustainability – Fiona Robinson, Ramboll

Refer to presentation attached.

Fiona Robinson provided a fascinating presentation on sustainability in contaminated land, and the role of the site auditor in assessing this. The presentation included a number of cases studies and resulted in a rich discussion among the auditors.

7. Slido session – auditor meeting feedback

The auditors were asked to provide quick responses and feedback on the auditor meeting. This included suggested topics and volunteers to present at future meetings.

8. Other Business

No other business items were raised.

Next meeting is scheduled for October 2022 (date to be confirmed)