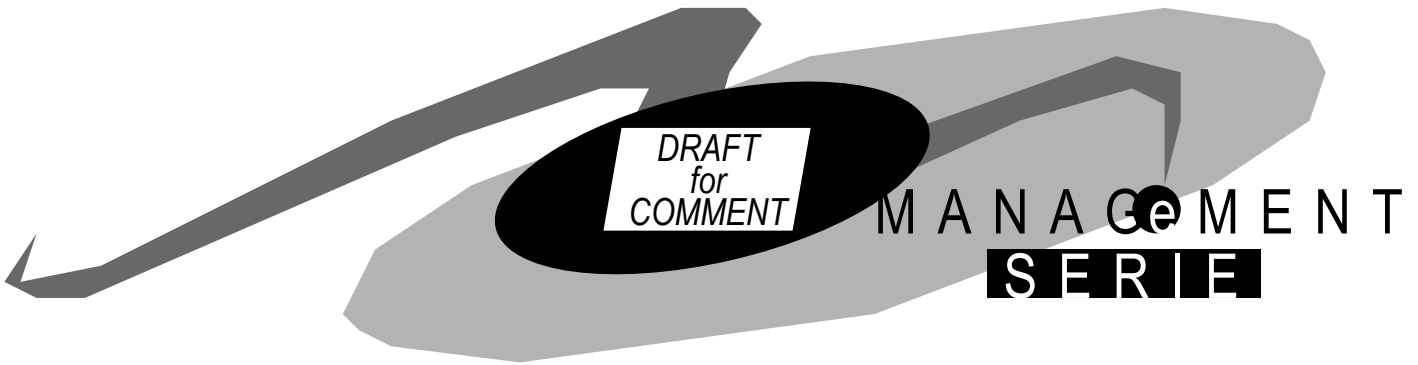




Department of
Environmental Protection

Contaminated Sites
Management Series

Certificate of Contamination Audit Scheme



JULY 2000

WESTERN AUSTRALIA

PREFACE

This guidance document has been prepared by the Department of Environmental Protection (DEP) to outline the certificate of contamination audit scheme. This scheme will enable landowners, developers, financiers or recipients of regulatory notices to obtain a government assurance on the contamination status of a site, or a portion of a site, and the site's suitability for a particular land-use.

If you wish to comment on this document please forward written comments, prior to October 2000, to:

Manager – Contaminated Sites Branch
Pollution Prevention Division
Department of Environmental Protection
PO Box K822, Perth WA 6842
Fax: 08 9322 1598

Comments by E-mail should be sent to:
dep_info@environ.wa.gov.au

LIMITATIONS

This document refers to clauses within the draft *Contaminated Sites Bill 2000*, and certain aspects of this document may change subject to changes within the Bill. The guideline applies to persons seeking a certificate of contamination audit for a site that has been investigated or remediated. The certificate of contamination audit scheme is to be established under the draft Act and this document provides guidance on the application and limitations of the scheme. The DEP should be consulted where guidance on policy issues are not covered in this guideline.

DISCLAIMER

This document has been prepared by the Department of Environmental Protection (DEP) in good faith exercising all due care and attention. No representation or warranty, expressed or implied, is made as to the relevance, accuracy, completeness or fitness for purposes of this document in respect of any particular user's circumstances. Users of this document should satisfy themselves concerning its application to their situation, and where necessary seek expert advice.

CONTAMINATED SITES MANAGEMENT SERIES

This guideline forms part of a management series being developed by the DEP to assist in the assessment and management of contaminated sites in Western Australia. This document outlines the certificate of contamination audit scheme, which is established under the *Contaminated Sites Bill 2000*.

The management series has been developed to address certain key aspects of contaminated site assessment and management in Western Australia. The series will comprise of the following guidelines:

- Certificate of Contamination Audit Scheme
- Contaminated Site Assessment – A General Guideline for Reporting
- Contaminated Site Assessment Criteria
- Contaminated Site Assessment - Guidelines for the Development of Sampling and Analysis Programs
- Disclosure Statements
- Guidelines for the Assessment of Sites Incorporating Underground Storage Tanks
- Guidelines for the Proposed Contaminated Site Auditor Accreditation Scheme
- Planning Guidelines
- Potentially Contaminating Activities, Industries, and Landuses

Reference to these guidelines should ensure that the minimum requirements of the DEP are satisfied.

TABLE OF CONTENTS

	Page
PREFACE	i
LIMITATIONS	ii
DISCLAIMER	ii
CONTAMINATED SITES MANAGEMENT SERIES	iii
1. INTRODUCTION	1
1.1 Intent of these Guidelines.....	1
1.2 Definitions	1
1.3 Background.....	2
1.4 DEP Position Paper.....	2
2. WHAT IS A CERTIFICATE OF CONTAMINATION AUDIT?	3
3. WHAT IS THE OBJECTIVE OF A CERTIFICATE OF CONTAMINATION AUDIT?	4
4. WHEN ARE CERTIFICATES OF CONTAMINATION AUDIT REQUIRED?	5
5. HOW IS A CERTIFICATE OF CONTAMINATION AUDIT OBTAINED?	6
5.1 Information required.....	6
5.2 Fees associated with issuing a certificate of contamination audit	7
5.3 Process for issuing a certificate of contamination audit	7
6. REFERENCES	8
 APPENDIX	
1. Application Form	

1. INTRODUCTION

Redevelopment of contaminated land, often to more sensitive land-uses such as residential developments and public open space/parklands, is becoming increasingly common in Western Australia and associated with this is the need for assurance in relation to the contamination status of the land and its suitability for a particular landuse. The certificate of contamination audit scheme has been developed to provide a government assurance to landowners and potential landowners on the contamination status of a site, or a portion of a site, and its suitability for a particular land-use.

1.1 INTENT OF THESE GUIDELINES

This guideline will provide:

1. an outline of the certificate of contamination audit scheme;
2. the circumstances under which a certificate of contamination audit is issued; and
3. the process for obtaining a certificate of contamination audit.

1.2 DEFINITIONS

To assist in the interpretation of these guidelines the following definitions apply to terms used in this document:

“auditor” means a person accredited as a contaminated sites auditor under clause 64 of the *Contaminated Sites Bill 2000*;

“*caveat emptor*” means let the buyer beware;

“certificate” means a certificate of contamination audit issued under clause 52 of the *Contaminated Sites Bill 2000*;

“clean up notice” means a clean up notice served under clause 27 of the *Contaminated Sites Bill 2000*;

“*contaminated - restricted use*” means classified as such in accordance with Schedule 1 of the *Contaminated Sites Bill 2000* and generally is a site that does not pose a risk to human health or the environment under the existing landuse, but could if it were used for more sensitive purposes (eg. industrial use to residential use);

“*contaminated - remediation required*” means classified as such in accordance with Schedule 1 of the *Contaminated Sites Bill 2000* and generally is a site which poses a risk to human health and/or the environment under the existing landuse due to on-site contamination and/or the migration of contaminants off-site;

“CEO” means the Chief Executive Officer of the DEP;

“DEP” means the Department of Environmental Protection;

“*decontaminated*” means classified as such in accordance with Schedule 1 of the *Contaminated Sites Bill 2000* and generally is a site where the land has been contaminated, remediation has occurred and the land is now suitable for all uses;

“EPA” means the Environmental Protection Authority;

“hazard abatement notice” means a hazard abatement notice served under clause 29 of the *Contaminated Sites Bill 2000*;

“investigation notice” means an investigation notice served under clause 25 of the *Contaminated Sites Bill 2000*;

“liability” means being held as the person responsible for remediation in accordance with Part 4 of the *Contaminated Sites Bill 2000*;

“*not contaminated - unrestricted use*” means classified as such in accordance with Schedule 1 of the *Contaminated Sites Bill 2000* and generally is a site where an investigation has been undertaken and the land is found not to be contaminated;

“*potentially contaminated - investigation required*” means classified as such in accordance with Schedule 1 of the *Contaminated Sites Bill 2000* and generally is a site where there are grounds to indicate possible contamination of the land;

“regulatory notice” means an investigation notice, clean up notice or a hazard abatement notice; and

“statutory audit” means there is a requirement under the *Contaminated Sites Bill 2000*, or the *Environmental Protection Act 1986* (as amended) to engage an accredited auditor to independently assess the investigative or remedial works undertaken.

1.3 BACKGROUND

Prior to the release of the *Contaminated Sites Bill 2000*, the government was unable to provide or endorse any form of statutory ‘sign-off’ or ‘clearance’ for sites where contamination had been investigated and was considered to pose no unacceptable risk of harm to either human health or any environmental value. In general terms this ‘sign-off’ was sought where contamination was below adopted investigation levels or had been remediated to below the investigation levels. The need for formal ‘clearance’ of sites was identified to provide assurance to regulatory and planning authorities, purchasers, developers and lending institutions that a site was suitable for the intended land-use and to limit the risk of transfer of liability in relation to site contamination.

1.4 DEP POSITION PAPER

In July 1995, the DEP released a discussion paper on the Assessment and Management of Contaminated Sites in Western Australia. That paper sought public comments on the establishment of a system whereby accredited auditors would be given authority to issue ‘clearance’ for sites in relation to contamination. The comments received on the discussion paper, and reflected in the public position paper on the Assessment and Management of Contaminated Land and Groundwater in Western Australia released in May 1997, indicated that a system of accrediting auditors was generally supported. Those comments, however, indicated that government, not auditors, should undertake the issue of certificates of ‘clearance’ for sites.

2. WHAT IS A CERTIFICATE OF CONTAMINATION AUDIT?

Certificates are statements detailing the characteristics and extent of any contamination on a site and can only be issued by the DEP. A certificate is the primary statutory ‘sign-off’ mechanism provided by government for a site and one of the means of classifying a site in relation to the status of any soil or groundwater contamination. In most circumstances it will enable the transfer of liability attached to any site.

The issuing of a certificate provides a mechanism for demonstrating that all, or a portion of a site has been authoritatively and appropriately assessed and provides a government assurance as to the suitability of the site for a particular land-use.

Because a certificate provides a government assurance regarding the status of a site, if after a certificate has been issued, human health or environmental protection standards change which alter the classification of a site to “*contaminated - remediation required*,” then government will accept responsibility for remediation of that site. This acceptance of responsibility will be based solely on the information contained in the certificate and not include contamination that the certificate doesn’t address, such as contamination occurring after a certificate has been issued, or that which was not previously identified when the certificate was issued.

A certificate, once issued, is only a “snapshot in time” and is a valid statement about the status of identified contamination on a site at the date of issue. It does not cover the state of a site that may have arisen after a certificate is issued.

The person responsible for remediation of contamination on a site, or the landowner, may seek amendment to the classification and landuse suitability of a site as stated on a certificate, by undertaking further investigation and/or remedial works on the site. Where an amendment to the site classification is sought it is recommended that the land owner/occupier liaise with the Contaminated Sites Branch of the DEP to determine the scope of further works.

3. WHAT IS THE OBJECTIVE OF A CERTIFICATE OF CONTAMINATION AUDIT?

Certificates will provide two main functions. Firstly, they will allow regulatory and planning authorities to assess the known risks of a site in relation to contamination and therefore allow informed decisions about future land-uses of the site to be made.

Secondly, the presentation of a certificate along with full disclosure of all relevant information regarding site contamination such as previous site investigations, remediation works undertaken and laboratory results will allow for the legal transfer of liability associated with a contaminated site, from one party to another during land transactions.

A certificate represents the prime decision point on the part of government regarding any contaminated or potentially contaminated sites. It also represents the point where liability for negligent decision making is likely to accrue to government, and thus the decision to issue such a certificate can only be made when the DEP is certain of the facts regarding any piece of land.

The certainty about a site's status will need to be based upon a quality assured system to demonstrate that due process has been followed when the decision to issue a certificate is made. It is therefore reasonable that the persons using this service should pay for both the time associated with assessing any site information and the development of the certificate system, as outlined here. Fees associated with the issuing of a certificate are discussed in Section 5.3.

Because a certificate can only be issued when the DEP is certain about the status of contamination on a site, drawn from information provided to the DEP, the classifications that are able to be made by a certificate will be limited to the following:

1. *not contaminated - unrestricted use;*
2. *contaminated – restricted use;*
3. *contaminated – remediation required; or*
4. *decontaminated.*

Clearly where a site is classified as “*potentially contaminated – investigation required*” there is insufficient information for the DEP to be certain about the contamination status of the site and hence a certificate will not be able to be issued under the *Contaminated Sites Bill 2000*.

4. WHEN ARE CERTIFICATES OF CONTAMINATION AUDIT REQUIRED?

There is no legal compulsion for any person to obtain a certificate from the DEP. It is expected, however, that requests for certificates will be market driven with certificates required by regulatory agencies, industry, business, legal and financial bodies whenever land is being transferred, or a decision relating to its suitability for future or ongoing uses is required.

In particular it is expected that lending institutions will be reluctant to finance the purchase of a property that is classified as “*potentially contaminated - investigation required*”, for which a certificate cannot be issued. This will not necessarily preclude the transfer of ownership of such sites, but *caveat emptor* will prevail.

The only people who may apply for a certificate in accordance with *Contaminated Sites Bill 2000* are the following people:

1. The owner or occupier of the land
2. A person who is responsible for remediation of a site; or
3. Recipients of an investigation notice.

A certificate is required for a landowner or person responsible for remediation of contamination if they wish to have a site removed from the register of confirmed contaminated sites, be it “*contaminated – remediation required*” or “*contaminated – restricted use.*”

Recipients of an investigation notice, upon compliance with that notice, will be required to request a certificate to have the land re-classified and the notice cancelled.

Finally, the provision of a certificate and full disclosure of available information will allow for the transfer of liability associated with any contaminated site during land transactions.

5. HOW IS A CERTIFICATE OF CONTAMINATION AUDIT OBTAINED?

A certificate can only be obtained from the DEP by lodging an appropriate application form. An application for a certificate needs to be made to the CEO on the appropriate application form (see Appendix 1), accompanied by relevant supporting information and the issuing fee. The issuing fee will be refunded if the CEO refuses to grant a certificate or is unable to issue a certificate. There will also be a fee payable to the DEP for assessment of the supporting information. You will be advised of the amount of this fee upon completion of the assessment by the DEP. The rates are outlined in section 5.2 below.

Once received, the CEO has the authority to decline to deal with the application if there is insufficient information received with, or prior to the application, or the issuing and assessment fees have not been received.

To obtain a certificate, the application form (see Appendix 1) should be submitted along with the appropriate supporting information and fees to:

Manager, Contaminated Sites Branch
Department of Environmental Protection,
PO Box K822
Perth WA 6842.

5.1 INFORMATION REQUIRED

Before a certificate can be issued it is necessary to submit with, or prior to the application for the DEP for review, a report providing information regarding any investigation or remediation work undertaken on the site, or portion of the site.

In general terms, the report(s) submitted to the DEP need to succinctly provide the results of investigations and remedial works undertaken or commissioned for the site, which indicate the site is at, or has been remediated to, a defined standard and is suitable for a particular land-use.

The information requirements and format of reports regarding contaminated site investigations and remediation can be obtained from the DEP guidance document entitled "*Contaminated Site Assessment – A General Guideline for Reporting.*" This document was produced to assist people in reporting on the investigation, remediation and validation of contaminated sites. The CEO will have the authority to return, without consideration or assessment, any report that is not in an appropriate format or does not contain all the relevant information regarding the stage(s) of assessment which have been submitted for review. Submitting information to the standard outlined in the DEP guidance document on reporting will ensure that reports are assessed by the DEP.

Site assessments should be undertaken generally and where appropriate, in accordance with the National Environmental Protection (Assessment of Site Contamination) Measure, December 1999 and the DEP guidance documents entitled "*Contaminated Site Assessment - Guidelines for the Development of Sampling and Analysis Program*" and "*Guidelines for the Assessment of Sites Incorporating Underground Storage Tanks.*"

Where a statutory audit is required, the auditor must submit the site audit statement, reports and recommendations to the DEP, to allow a certificate to be issued. The DEP document entitled "*Guidelines for the Proposed Contaminated Site Auditor Accreditation Scheme*" outlines when a statutory audit is necessary, but in general terms recipients of regulatory notices, or persons with proposals being formally assessed by the EPA are required to engage an auditor.

5.2 FEES ASSOCIATED WITH ISSUING A CERTIFICATE OF CONTAMINATION AUDIT

There are two charges that may be associated with the issuing of certificates. Firstly, the DEP will charge for work involved in assessing reports relating to the investigation, remediation and validation of contaminated sites, on a 'fee for service' basis. This includes assessing reports submitted with an application for a certificate. It is envisaged that this charge will be \$125 per hour.

Where auditors are used to independently assess the investigative, remedial or validation works undertaken, then the assessment fee will be reduced by 60% to \$50 per hour.

The second fee associated with the issuing of a certificate is the issuing fee. As stated previously, the issuing of a certificate represents the point where liability for negligent decision making is likely to accrue to government and as such there will be a cost associated with that potential for liability transfer. The fee for issuing a certificate will be \$1500.

5.3 PROCESS FOR ISSUING A CERTIFICATE OF CONTAMINATION AUDIT

Once an application has been received by the DEP, there are four possible outcomes:

- The CEO declines to deal with the application on the grounds of insufficient information or fees having been received and notifies the applicant accordingly.
- The CEO issues a certificate classifying the site on the basis of being assured about the status of contamination from the information provided.
- The CEO issues a statement in writing classifying the site as "potentially contaminated - investigation required", on the basis of being uncertain about the status of contamination from the information provided.
- The CEO issues a regulatory notice on the basis of believing that regulatory intervention is required to resolve public health or environmental issues.

Certificates will in all cases be issued to the site owner and where relevant, to a site occupier, the person responsible for remediation of contamination, or the recipient of a regulatory notice.

In the cases of points 3 and 4 above, additional investigative, remedial and/or validation work will need to be undertaken where the extent of contamination has not been delineated, or where the current or proposed land-use is not compatible with the existing contamination. They may also relate to the possibility of contamination having moved offsite.

Where necessary in undertaking assessment of reports, the DEP may seek advice from other government agencies in relation to the site such as the Health Department (HDWA), Agriculture Department (AgWA), Department of Minerals and Energy (DME) or Water & Rivers Commission (WRC).

6. REFERENCES

- Australian and New Zealand Environment and Conservation Council National Health and Medical Research Council (ANZECC & NHMRC), 1992. *Australian and New Zealand Guidelines for the Assessment and Management of Contaminated Sites*.
- Department of Environmental Protection (DEP), 1997. *Public Position Paper. Assessment and management of contaminated land and groundwater in Western Australia*.
- Department of Environmental Protection (DEP), 2000. *Potentially Contaminating Activities, Industries, and Landuses*.
- Department of Environmental Protection (DEP), 1999. *Guidelines for the Proposed Contaminated Site Auditor Accreditation Scheme (draft)*.
- Department of Environmental Protection (DEP), 2000. *Guidelines for the Assessment of Sites Incorporating Underground Storage Tanks (draft)*.
- Department of Environmental Protection (DEP), 2000. *Contaminated Site assessment - Guideline for the Development of Sampling and Analysis Programs (draft)*.
- National Environment Protection Council (NEPC), 1999. *National Environmental Protection (Assessment of Site Contamination) Measure; Schedule B(10) Guideline on Competencies and Acceptance of Environmental Auditors and Related Professionals*.
- New South Wales Environment Protection Authority, 1998. *Contaminated Sites - Guidelines for the New South Wales Site Auditor Scheme*.
- Victorian Environment Protection Authority, 1997. Information Bulletin, Publication 533. *Environmental Auditor (Contaminated Land) Appointment Guidelines*.
- Victorian Environment Protection Authority, 1992. Information Bulletin, Publication WM91/14. *Guidelines for Environmental Auditors, Contaminated Land, Issue of Certificates of Environmental Audit*.

APPENDIX 1 - APPLICATION FORM

Department of Environmental Protection

Certificate of Contamination Audit - Contaminated Sites

Only the following people should be making application for Certificate of Contamination Audit:

- Owner or occupier of the land.
- Person responsible for remediation of the site.
- Person to whom an investigation notice has been given in respect to the land.

Applicant Details:

Full name of company (or individual if not a company)		ACN and/or ABN
Address		Postcode
Phone	Fax	

Ownership Details:

Site Owner		ACN and/or ABN
Site Occupier		ACN and/or ABN
Address		Postcode
Phone	Fax	

Site Identification:

Site Name		
Lot No.	House No.	Street
Suburb		State
		Postcode
Certificate of Title Details (including volume/folio)		Local Government Authority
Longitude/Latitude OR Northing/Easting		Current Zoning

Please submit the application together with attachments to The Director, Pollution Prevention Division, Department of Environmental Protection, PO Box K822, Perth 6842

Recommended Classification:

Type of Classification (please tick)

- (i) Not contaminated - unrestricted use (ii) Contaminated - restricted use
(iii) Contaminated - remediation required (iv) Decontaminated

Where 'Contaminated - restricted use' is required, please provide detail of restrictions (eg. no water abstraction, commercial/industrial only):

Site Details: Where further space is required, please attach it to the application.

Remediation work(s) undertaken:

Contamination information source:

Contaminants of concern:

Media (eg. soil, groundwater)

History of Investigations:

Have there been previous soil and/or groundwater investigations undertaken? Yes No

If yes, please provide details on report title, date and author:

Additional Information:

Where additional information is attached, please indicate the names of all documents and number of loose pages, if applicable.

Certification by Applicant:

I certify that the information contained in this application (including attachments) is accurate and correct

Signature

Date

Full Name & Position Title (where the statement is provided by a corporation, the form must be signed by a person authorised to do so by the corporation):