

NSW ACCREDITED SITE AUDITOR SCHEME

Minutes for the Site Auditor Meeting – Friday 30 October 2020

Present

Auditors:

Adrian Hall
Alyson Macdonald
Amanda Lee
Andre Smit
Andrew Kohlrusch
Andrew Lau
Anthony Scott
Anthony Lane
Ben Wackett
Brad Eismen
Brad May
Caroline Vernon
Charlie Barber
Chris Jewell
Colin McKay
David Gregory
Fiona Robinson
Frank Mohen
Graeme Miller
Ian Gregson
James Davis
Jason Clay
Julie Evans
Kylie Lloyd
Louise Walkden
Marc Salmon
Mark Stuckey
Melissa Porter
Michael Dunbavan
Mike Nash
Peter Lavelle
Peter Ramsay
Paul Moritz
Philip Mulvey
Rebeka Hall

Rod Harwood
Peter Beck
Ross McFarland
Rowena Salmon
Sophie Wood
Tim Chambers
Tom Onus

NSW EPA:

David Fowler
Karen Marler
Rose Cocks
Hamish Campbell
Donna Phelan
Elizabeth Watson
Olivia Patterson
Matt Hart
Ben Livissianis
Giselle Goloy
Arminda Ryan
Sam Waskett
Carolina Olmos
Christina Low
Brenda Ioffrida
Marina Leung
Kate Sargent
Josh Godbee

Presenters (Affiliation):

Anthea White (EPA)
Jo Graham (EPA)
Magda Paszkiewicz (EPA)
Mark Rutherford (EPA)
Janina Beyer (DPIE
Science)
Marc Salmon (Easterly
Point Environmental)
Helen Prifti (EPA)

Apologies (Proxies):

Lange Jorstad (Yashu
Shrestha)
Paul Steinwede (Jonathan
Ho)
Ian Hosking
Ian Swane

Audit Panel:

Damien Davidson
Don White
Graeme Batley
Greg Davis
Paul Newell (apology)

Jurisdictions:

John Stewart (VIC EPA)

This is a record of the meeting. Any directions or policy guidelines made as a result of these discussions will be formally released under a separate cover.

1. Welcome and Meeting Objectives

Anthea White, NSW EPA

Anthea White welcomed all attendees and gave an acknowledgement of country.

Anthea gave an overview of who is online, given that all attendees are dialling in remotely, being auditors (or their proxies) members of the auditor accreditation panel, jurisdictional colleagues, presenters and EPA officers.

Anthea then outlined the meeting agenda.

2. Audit Unit

Jo Graham, NSW EPA

Refer to presentation attached.

Jo ran through the data from the recent annual returns, some administrative issues and provided a few clarifications which were sought in the feedback survey following the last meeting. Jo also discussed topics proposed for the next meeting proposed for March 2021 and asked for auditors to volunteer to present, either on the topics that have been requested or any other topics they may wish to cover.

Discussion

- Clarification was provided in the presentation for auditors to contact the enforcing authority if they become aware of non-compliance with an environmental management plan (EMP). There was a follow up query on who to contact if there is no enforcing authority for an EMP, for example if the enforceability mechanism is via a deed pole, and whether it would default to the EPA?
 - It was recommended in this situation to contact the EPA, particularly if there are potential human health or environmental risks from non-compliance with the EMP. The EPA will then determine the next steps.
- It was mentioned that the 2014 WorkCover 'Asbestos in or on Soils Guidelines' is currently under review. In response to this, it was further advised that there has been a first round of comments on the guidelines and that there will be a second round of review.

3. Land & Resources Policy

Magdalena Paszkiewicz, NSW EPA

Refer to presentation attached.

Magda discussed four main updates, including the draft revision to the Sampling Design Guidelines which is currently out for consultation, review of the EPA's Contaminated Land Certification Policy, the review of the Planning Guidelines and SEPP and development of a proposed practice note for preparing EMPs.

Discussion (Jo Graham and Magdalena Paszkiewicz):

- There was a query in relation to the revisions to the Planning Guidelines and whether it will include clarification around what "reviewed and approved" means in relation to signing off reports? Councils have started adopting this as a signoff mechanism alternative to an audit.
 - It was noted that the EPA is not leading the review, but it is a comment we can pass onto Planning. However, we are aware there is work being done to clarify the distinction between certified consultants and auditors in view of the feedback received from the last consultation on the draft.

- In follow up to the above question, in considering the Contaminated Land Consultant Certification Policy (Certification Policy), it is important the Planning Guidelines are consistent with the EPA's view. There was a lot of confusion caused around wording in the last draft.
 - Noted. It is also understood Planning intend to consult again with the working groups consulted after the last draft of the Planning Guidelines.
- There was a comment that some of the ambiguity in the wording may have come from the wording in the Certification Policy, which was developed for a particular purpose by the EPA, but then used out of context in the draft Planning Guidelines, leading to the confusion.
 - Noted. The EPA has been working with Planning on this issue to try and make sure the wording is clearer, particularly in relation to auditor and certified consultant requirements. We will take feedback on board and provide this feedback to Planning.
- There was a query as to whether reports provided to an Auditor during an audit should be endorsed by a certified consultant? Also, whether audit reports should bear a stamp from a certified consultant?
 - It was noted that opinion had been sought by the EPA from auditors in the past about whether reports submitted to auditors should be written or reviewed and approved by a certified consultant and the feedback received from auditors was quite mixed so the issue was not pursued. (Noting, however, that for any sites regulated by the EPA which are being audited, the reports reviewed by the auditor should be written or reviewed and approved by a certified consultant as required by the EPA's Certification Policy).
 - There is no requirement for audit reports to bear certified consultants stamp as these are produced by an accredited auditor.
- There was a question about the timings for the revisions to the Planning Guidelines and whether the revision would be out soon?
 - It was understood that this is progressing well but the EPA is not aware of Planning's proposed timings. We can follow this up with Planning.
- In response to the above it was noted that some of the working groups took place several years ago and there had not been very much progress in the interim and it would be good to see the guidelines progressed more quickly.
 - Noted and feedback will be provided back to Planning.
- There was a comment that the EMP practice note would be welcomed as soon as possible.

4. EPA Prosecution – Forged Audit

Mark Rutherford, EPA

Refer to presentation attached.

Mark discussed the findings of the recent audit prosecution case. It was noted that this is a recent prosecution and therefore there is a certain amount of sensitivity to the parties involved. Mark noted the presentation is given from an investigator's perspective.

Discussion:

- A comment was made that this case provides good reason for Councils to require audits of sites with any complexity in regards to contamination as without an audit they don't have that "greater certainty".

- It was noted from an earlier presentation that there were 52 audits terminated in the last annual return period and it was queried whether there a process in place to follow up on these? Noting that in this instance, if the letter from the auditor hadn't been noted by Council this may never have been identified.
 - In response it was noted that the EPA regularly speak to councils on the auditor scheme. In 2019 the EPA met with over 300 council officers during a series of roadshows across NSW, which included education on contaminated land management matters and the site auditor scheme. Reference was made to the Council Regional Capacity Building (CRCB) program, discussed at previous auditor meetings, where the EPA recently presented to the CRCB officers and discussed the recent prosecution case and highlighted the measures councils should take to check site audit statements they receive.
The EPA takes the integrity of the auditor scheme very seriously, which is why on both occasions where forged audits have been identified the EPA has prosecuted. We also put checks in place and when we receive terminations, we do review these and follow up with Councils if considered required, but we are looking at what further measures we can put in place for terminations.
- There was a query as to whether the EPA follows up on the reasons given by the Site Auditor for a termination of an audit?
 - The EPA confirmed it does look at the terminations received and the reasons provided by the auditor and if there are unusual circumstances they are followed up.
- It was queried that given the guidelines do not require (i.e. should not must) notification to Council of cessation, does the EPA follow up where it is not evident that Council has also been notified?
 - The EPA confirmed it does follow up if it is considered required, but as said earlier, auditors are strongly recommended to send terminations to consent authorities as well as the EPA.
- It was queried whether in this case is it correct that the site audit statement (SAS) was not submitted to EPA, only to council?
 - That was confirmed to be correct, the EPA did not receive a copy of the SAS only a copy of the termination.
- There was a query as to whether consent authorities should be told that a SAS should only come to them from an auditor not a third party?
 - In response it was noted that within Councils there can be a number of different officers involved in the development process and therefore it may not be apparent to the council officer who eventually receives the SAS that it has not come directly from the auditor.
- A comment was made that the JBS&G Remedial Action Plan was doctored to be called a Site Validation Report, including a change in title, change in conclusions and some previous lab appendices also included.
- There was a query as to why the individual was prosecuted rather than ARCADIS?
 - In response it was noted that there is a vicarious liability clause and when investigating an offence like this, the investigator must always have the

perspective and keep in mind that the vicarious liability exists. Noting that right until the end of the investigation the investigator must be thorough in ensuring that there is no doubt left that the company that employed the employee, who was identified as being responsible for the offence, had liability. When considering liability consideration is given to the company's capacity to have known, had control, responsibility of, or that it's reasonable that a person could have intervened at a time to prevent the offence.

- It was not considered appropriate to go into the results of those particular questions, but that's what occurred during the investigation. At the end of the investigation the EPA was satisfied that that belief did not exist and that the employee had committed the offence in the absence of the involvement, assistance or knowledge of or participation of any other party, including the company.
- A comment was received advising that Wollongong City Council (now) requires all audit related correspondence (interim advice as well as SASs) to come directly from the auditor rather than a third party.

5. PFAS – NEMP 2.0

Janina Beyer, DPIE Science

Refer to presentation attached.

Janina provided an update of the changes between the PFAS National Environmental Management Plan (NEMP) 1 and NEMP 2 and highlighted some of the key changes that might be useful to the auditors, including the changes to the guideline values and sections of the NEMP which have been updated or include additional guidance.

Discussion:

- Graeme Batley was asked to provide an update on any developments on the PFOS 99% protection level?
 - In response it was noted the Water Quality Guideline Value is still being finalised but looks like being above 20 ng/L not 0.23 ng/L as in the current draft. Timing could not be confirmed.
 - In reference to the above it was also noted that with the Water Quality Guidelines, if a substance is bioaccumulative, the default is to go to the 99% species protection. When this guideline value comes out, all the considerations and text that have been added to NEMP 2 around bioaccumulation, particularly if it is in relation to human health receptors that might be eating seafood, those considerations are still important to take into account. So, the guideline value doesn't override any of those considerations.
- There was a query as to whether it is considered there will be more PFAS compounds being rolled into single guideline values in Australia using potency equivalence, like the recent European Food Safety Authority TDI which includes PFNA with PFOS, PFOA and PFHsX?
 - In response it was advised that as part of the NEMP and National Chemicals Working Group the Food Standards Australia New Zealand (FSANZ) TDI is adopted and that is what is in place at the moment. Not aware that FSANZ are re-looking at it, but one of the things being considered in terms of future NEMP work is going out to check what different jurisdictions internationally are doing, and whether they are combining different PFASs, or are they looking at

equivalence factors and how this can be considered moving forward. Noting that it's not necessarily the jurisdiction of the NEMP, but it could also possibly influence some of the ecological values and where things are going in that area and that's work being undertaken currently. Whether that gets incorporated into NEMP 3 or something in the future is not certain at the moment.

6. Introduction from the Executive Director Regulatory Practice & Environmental Solutions - David Fowler

David introduced himself and briefly discussed how the EPA has been realigned into a functional structure rather than a thematic structure. Noting some changes to the way the EPA operates specifically around our operational functions and our operational regulatory oversight. Also around the functions where subject matter experts sit, including the experts in air, water, noise, radiation, contaminated land regulation, gas regulation, forestry regulation, which all now sit within the Regulatory Practice and Environmental Solutions Division alongside our experts in data and intelligence, regulatory practice and regulatory support systems. The EPA has a very strong commitment to ensuring it maintains expertise across the subject matters it is responsible for regulating and that's what the teams that sit within the Environmental Solutions branch within the division are leading on. This is about ensuring the right capabilities are used to deliver sound regulatory decisions. Also, that the work of the EPA and how we're delivering on our purpose of delivering a healthy environment is understood through engagement with auditors, consultants, industry and the community at large.

Introduction from the Director Environmental Solutions (Chemicals, Land & Radiation) – Karen Marler

Karen introduced herself and noted that she is new to the area of contaminated land but not to the EPA having been in the operational space focussed on EPA regulation for a long time. Karen noted the important work of auditors and that she's familiar with the auditor scheme and the model that it is operated under, and is keen to explore how that model might play out in other areas of EPA regulation,

7. Draft Sampling Design Guidelines Marc Salmon, Easterly Point Environmental

Refer to presentation attached.

Marc clarified that the presentation was based on his view and interpretation of the draft guidelines and that he was not speaking on behalf of the EPA.

Marc briefly explained the consultation process, provided a brief summary of how the guidelines were developed, discussed the structure of the guidelines, the approach taken in preparing the guidelines, the Data Quality Objectives (DQO) process, sampling design including an example, a discussion of Table 3 (number of samples), and ran through an example of the application of the maximum probable error method for determining the number of samples.

At the end of the presentation Marc noted some areas he considered could be expanded, noting he would like to see more information on groundwater and trend

analyses, more information on incremental sampling and that the triad section would benefit from more information. Marc noted that these were some of the specific areas that he intended to provide comments on and encouraged others to identify anything that they consider should be included, noting that the consultation process now occurring is the opportunity to provide feedback.

Discussion:

- There was a comment made that it would be good if, as an industry, quality assurance (QA) and quality control (QC) could be clearly differentiated. The starting point would be to stop referring to "QAQC".
 - It was agreed this was not well understood by many.
- There was a comment in response to 'lines of evidence' and the use of other means of investigation (e.g. geophysics) for large sites. Noting that it is rare to have a waste dump without some metal in it.
 - It was agreed that lines of evidence / weight of evidence certainly has its place and reference was made to Appendix G of Part 1 of the draft guidelines: '*Further Methods for Consideration.*'
- There was a comment that sampling density proportionate to land use sensitivity is considered a good approach.
 - Whilst it was agreed that a site needs to be adequately characterised, it was considered that there are other mechanisms for dealing with that going forward. If the site history or information on a site, for example, the site is a former gas works or service station, then it would be evident that a greater sampling density is required. But the view was that whilst Table 3 is for site characterisation, it should not be considered the end point. But it was noted that there are alternative views on this and therefore comments on this aspect of the draft guidelines are recommended.
- There was a comment that judgemental sampling is listed in the NEPM as an appropriate means of assessment. Therefore, surely lines of evidence should be used to justify any sampling approach?
 - This was agreed, noting that if there is a good site history, good field data and detailed inspections etc. then these are all good lines of evidence. But sometimes it can be difficult to get a reasonable site history, and there can often be gaps. So judgemental / targeted sampling is certainly appropriate in the right circumstances. As always, it's getting the weight of evidence / lines of evidence right and basing this on a good conceptual site model (CSM), which is vital.
- There was a comment that geophysical methods can screen agricultural land for areas that might indicate buried fill or old structures.
- There was a comment that Table 3 seems to be very prescriptive and includes a lot of "musts" but this does not seem to correlate with the presentation discussion.
 - This was confirmed, noting what was said at the start of the presentation that this is not the EPA voice on this. Again, comments on the consultation draft were recommended.

- There was a comment that design of the sampling strategy (grid and/or judgmental) should be an output of the DQOs and initial CSM.
 - Agreed.
- In response to the comment above there was a further comment that there is also a need to make sure that if judgmental sampling is used then uni-variate statistics are not used for interpretation.
 - It was noted that there is a section in the document on geo statistics.
- There was a query as to whether the guideline provides guidance on what is an acceptable maximum probable error?
 - It was advised that there is not a specific reference, although there was a suggestion it should be 35-50%, but it was not known if there was a policy position on that, but the suggestion was to provide comments.
- There was a comment that there should be more information regarding groundwater trend analysis.
 - Agreed.
- There was a comment on whether the guidelines are trying to cover too much and therefore run the risk of discrediting something that is not included.
- There was a request to extend the consultation period considering the importance of this guideline.
 - The EPA advised this would be considered and discussed internally and a response provided as soon as possible after the meeting.
- There was a comment that trend analysis should be used with caution on groundwater. Noting that on too many occasions statistics alone are being used.
 - Agreed. This was considered to be a widespread problem.

8. Waste – Q & A

Helen Prifti, NSW EPA

Helen started by responding to two questions which were submitted prior to the meeting:

- There was a question received regarding criteria that soil recyclers would apply for determining acceptability to receive material that has a trace of PFAS but otherwise meets CT1 thresholds. Is there such a criteria for “recyclable” soils?
 - It was noted that most recycling facilities that take construction and demolition waste and other sorts of waste have thresholds that sit on their licence for when they can receive soils, to make sure they are not getting any additional contaminated material. The criteria on their licence is based on the contaminant thresholds within the Waste Classification Guidelines in the first table (CT1). Although because not all analytes and metals are listed in that table, the soil tables on the licence have some additional contaminant thresholds such as zinc and copper and also some lower numbers than in the Waste Classification Guidelines because those numbers are designed for landfilling as opposed to soil recycling.
 - In response to the question around how to manage PFAS, several years ago an addendum was placed to the Waste Classification Guidelines to add some criteria for chemical testing of PFAS and includes leachability, concentration and a total but there is not a CT1 equivalent threshold, which is just a total for

PFAS for classification purposes. When it comes to taking soils to the recycling facilities, the EPA's current position, (which the EPA is in the process of preparing some interim guidance more broadly around PFAS from the EPA's perspective), is that they should be tested for a non-detect limit with an Limit of Reporting (LOR) of 5µg/kg. In terms of the addendum, the EPA is looking at a process of revising that because they were interim numbers put in a couple of years ago when all of the PFAS science was fairly new and it predates the NEMP process and the NEPM around PFAS. The NEMP now has numbers in there for landfill disposal and the issue is that those criteria were derived for a classification of landfills that do not exist in NSW (NSW define landfills in a slightly different way). The challenge is to look at what those numbers mean for the way landfills are classified in NSW and what those thresholds should actually be. It is likely that some of those numbers will change in the short term.

- There was a question asking the EPA to confirm its position on commercially quarried products in relation to the definition of Virgin Excavated Natural Material (VENM). Noting that some correspondence to individual companies has been seen confirming that commercially quarried material is not considered a waste and therefore would not be required to be classified under the waste classification process or require a VENM certificate but there does not appear to be any clear statement to this effect on the EPA's website.
 - In response it was noted that VENM is a type of waste classification and it applies to material which has been excavated and does not contain any waste materials or manufactured chemicals etc., but is only applicable when dealing with a waste material that is excavated. So, it has to be a waste in the first place and VENM is then a category of waste and it is pre-classified as general solid waste (non-putrescible). Quarried material could be VENM if you were to call it a waste but quarried materials are not waste as they are purposely excavated as a product. It is not the remnant of an activity or a by-product or something that's left over or surplus, so it wouldn't meet the definition of waste in the first place. For example, quarrying for sandstone or coal mining or any sort of mining activities, the product that is being extracted is not considered to be waste. However, if there was a site, where, for example, they wanted to strip back all of the top material and remove it from site to get to the material below, it could be argued that the top layer being taken off-site could be waste and therefore it could be classified as VENM if it met all of the criteria. But commercial products don't need to carry a VENM certification or assessment to be sold and to be processed and it's not required because it's not a waste in the first place.

Open Discussion:

- A question was asked as to whether separate lots on the same "site" are being treated differently now and whether this is for all wastes or just asbestos? Noting that traditionally on a site, regardless of how many lots and DPs there are, the material could be moved around the site, without it being considered waste.
 - In response it was noted that the issue of on-site and off-site is one that is addressed on a regular basis. The is not a black and white answer to this issue and there are a number of circumstances where it could be seen as either on-site or as off-site. For example, if there was a sub-division that was occurring, and the land is being cleared, fill brought on for setting up a large development site, and although the plans for that site may have a number of different lot and

DPs and it may eventually be sold off as separate parcels of land; if that remediation work or that development is captured under one DA and one proposal with one proponent, then moving material across that may be seen as one site. Once those properties have been sold off though and are being managed under different entities, different owners etc., then moving material from one lot to another lot may be seen as off-site. It's not always about whether you physically left the site through a public road or not as there have been examples where soils have needed to be moved to another part of a site but via a public road, and a pragmatic approach can be taken in these situations. But it's always a case by case situation and it's not always an obvious answer and these issues are being looked at constantly. With regards to whether it's asbestos or not, it doesn't make any difference, the on-site or off-site issue is more the question regardless of what is being moved.

- It was noted that there is an issue at the moment with labs who have standard LOR of 0.1 µg/kg for PFOS/PFHxS who are being asked to raise them to align with another lab who reports LORs of 5 µg/kg. The EPA was asked for their position on this, noting it was considered that the LOR should not be stipulated by anyone but the lab(s).
 - In response it was advised that it is not the EPA's position to be telling the labs what to do with their methodologies and of course if they can be more sensitive and accurate with their analyses, then from a scientific perspective that is a good thing. The more that can be detected the better. But the EPA would not encourage someone to lift the LOR, the EPA only specifies LOR if there is a requirement for something to be a non-detect, if it's more sensitive that is fine, but for PFAS the EPA requires a minimum LOR of 5µg/kg to set a clear position of what our expectation is.
- Following up from the response to the above it was commented that this is actually happening, as two labs have advised that consultants are asking the labs to raise the LOR so that it meets the other labs LOR, which is significantly higher, greater than an order of magnitude higher. It is considered this is being done to avoid detecting the PFAS on the sites.
 - It was noted that the EPA probably can't comment on this as it is outside our jurisdiction, but it is not good practice to ask for a lab to test less sensitively. It was suggested that National Association of Testing Authorities (NATA) or others may have a position on this issue, but that it is probably one for the analytical labs to follow up.
- Clarification was sought that coal is not VENM, but overburden is?
 - The response was potentially, as the overburden is the waste that's being generated from that activity. If it has to be removed off-site, then perhaps, although often it is kept onsite. But the coal is a product that is being extracted, and so is not a waste material.
- There was a comment that landscaping products can be complicated because they're usually a blend of materials and not all landscaped product suppliers are familiar with the extensive list of resource recovery exemptions that may apply to some of their products. For example, if a stable waste is blended with green waste and quarried soil and sand, then it gets quite complicated. A simplified summary of how to deal with these issues was requested.

- In response it was noted it can be a complicated in the way that the orders and exemptions are currently framed, in that the material that meets the conditions of the order is the material for which the exemption applies. A lot of the engineering type orders, such as recovered aggregate or slag and coal ash, which are blended with other engineering type products have clauses in them to say this material or this order is for the individual product or one that is blended with something else, so it allows for the blending of certain waste products before or after supply at that point making sure that it covers off on both options.
 - For the organic wastes there are only a couple that have those clauses and it is evident that landscapers are definitely mixing mulch or compost with VENM, or even sometimes with quarried materials such as a sandstone or a basalt type material. The EPA is looking at a project to amend the templates for the orders and exemptions to ensure that there are some improvements in some of the language, the consistency, enforceability, but also to clarify some of these blending concepts. The order is clearer if it's a non-waste but when materials start to be blended, for example, mulch with potentially some other waste, then something that's no longer a mulch or compost starts to be generated. The EPA is looking at trying to clarify this and make sure that those blends are stipulated in those orders, so it is clearer for the landscapers and for whoever is purchasing that material on what that blend is actually permitted to be.
- Following up from the above response, it was noted that this would be very useful and the timing for this was sought.
 - In response the EPA noted it hopes to have a package of proposed changes around February 2021. The EPA is looking at making some broader improvements to the way the orders and exemption framework is managed, which includes some guidance on understanding the resource recovery framework that expands on the current guidelines, including the processes required for applying for an exemption and what the expectations are and what is done with that exemption. There are no statutory timeframes and nothing outlined on the EPA website, so the intention is to include approximate timings and also at developing online application forms and systems. So rather than an application being submitted in any format with varying detail, and often not having the right information or attachments, the plan is to streamline that process, similar to the grants process or the e-connect system where licensing and variations are managed. The aim of which is to receive applications in a consistent format. Feedback has been received from industry and people like yourselves, and also from the internal team that reviews these applications, and has been taken on board to make sure there's more consistency and transparency. In making some changes to the language the EPA would be very interested in the feedback from auditors in particular because some of the technical wording is often tricky to put in plain English. The wording needs to be scientifically valid, plain English and legally enforceable and that's challenging sometimes, so feedback received on those sorts of things would be greatly appreciated. It was suggested that at the first auditors' meeting next year there will hopefully be some updates on this.

- There was a comment in response to an earlier question that it was understood that if it falls within the development footprint crossing boundaries in the development application does not apply.
 - The comment was confirmed as correct.

- There was a query as to whether once a soil/waste material has been 'recycled', is this material then no longer considered waste (and then triggering further chemical assessment) when importing to another site?
 - In response it was advised it depends – if a material has been recycled, for example, a recovered fines or processed soil type material that's come from a concrete demolition recycler, that material, if it's supplied for beneficial re-use, should comply with the condition of a resource recovery order and then it doesn't require further testing and sampling to go to its receiving site, as long as it has been validated against the conditions of an order. But the only caveat is the material is still a waste at that point and the exemption that applies to the receiving site is basically just removing the legal implications of it being a waste, such as not needing a license, or to pay the levy or to report to the EPA on that receiving site. It was also suggested that there are times when a material may have come out of a recycling facility and meets the conditions of an order, but there may be circumstances by which whoever is taking this material on may want to do further testing, to see whether there are going to be any site-specific considerations, for example, just because it's come out and is approved by an order, there may be other chemical sensitivities in the site that it is going to. There may also be physical properties that need to be considered, or it may not have the right structural capabilities or compaction requirements. So, there are cases where some further analyses may be required on that product. But it's still all waste and it would need to meet an order at least before going out to that site.

- If an Environment Protection Licence (EPL) provides provision for road construction related activities such as handling, movement and storage of material within the site. Can they then retain materials (in a cell) and meet the Protection of the Environment Operations Act 1997 (POEO Act) requirements? By way of example, road construction light rail crosses a lot of boundaries; if the intention is to dig up material and retain it on-site, because a lot of material needs to be retained, and it's contaminated, but the intention is to put it in a cell; is any specific wording required in the EPL to allow this to happen?
 - In response it was advised that the trigger for a resource recovery order and exemption is the scheduled activity of “waste disposal (application to land)” in Schedule 1 of the POEO Act, and this issue is a bit in the reverse. “Waste disposal (application to land)” is only triggered if waste is received from off-site at a certain threshold and composition. If that material is generated on-site then it is not triggered and therefore neither is a licence for that disposal or an exemption for that re-use. There may be circumstances within that EPL, depending on how that road construction licence is created, for a provision stating where material goes or how it's managed. That would be something that's case-specific to that licence and may be more around environmental controls as opposed to triggering waste disposal application to land or any exemption perspective. It is unlikely that a resource recovery exemption and order for that activity would be required. It may potentially be required for

processing, but maybe not, it depends what is being done, but consideration needs to be given to waste is being received from off-site and therefore whether it triggers any of the provisions in the legislation that require extra permissions or consents to be obtained.

- A comment was received whether there was any update on the placement of asbestos in a containment cell, considering the pre-classification of asbestos waste in the regulations? In particular taking into consideration section 144AAA, 'off the site at which it is generated'. Asbestos is pre-classified in that section in that it must go to a licenced facility and apart from that very tenuous statement, it seems unclear whether asbestos is able to be retained onsite within a containment cell. How do you define whether it is "off the site from which it is generated," because if waste is being generated from a remediation process, then it is being generated on the site? Or is the assumption that the asbestos material was originally a product brought from off-site and therefore disposal onsite is allowable? A lot of containment cells are being constructed for asbestos and if that's the case and that doesn't apply then it's a direct contravention of that particular section of the regulation which has penalties of \$2million for a corporation.
 - In response it was noted that the EPA was not able to provide legal advice, but it was considered that the section is referring to where asbestos waste is disposed of off-site. That offence provision was put in to make it a clearer and easier penalty for the illegal movement and dumping of asbestos waste. If asbestos waste is generated at a site and it then went off-site for disposal, then it would have to go somewhere where it was lawfully able to receive that waste. For example, a landfill that is licensed to receive special waste / asbestos waste. If it went to, for example, a recycling facility that was not allowed to take asbestos waste (and most of them are not), or it went to another landfill that is not licensed to take asbestos waste, then that offence provision could be triggered. It is about moving that material off-site. Then it is back to the argument of what is offsite, but once that is clarified, then leaving that material in a containment cell would not be seen as being in breach of that part of the legislation.

9. Other business

Jo Graham, NSW EPA

- No other business items were raised.
- The presenters and everyone attending were thanked and the meeting was closed.
- The next meeting has been provisionally scheduled for **Friday 26 March 2021**.