

NSW ACCREDITED SITE AUDITOR SCHEME

Minutes for Site Auditor Meeting – Friday 25 October 2019

Present

Auditors:

Peter Beck
Tim Chambers
Jason Clay
James Davis
Michael Dunbavan
Julie Evans
Ian Gregson
Adrian Hall
Rod Harwood
Ian Hosking
Chris Jewell
Lange Jorstad
Andrew Kohlrusch
Anthony Lane
Peter Lavelle
Amanda Lee
Brad May
Alyson Macdonald
Ross McFarland
Colin McKay
Phillip Mulvey
Tom Onus
Melissa Porter
Fiona Robinson
Marc Salmon
Rowena Salmon
Tony Scott
Andre Smit
Paul Steinwede
Mark Stuckey
Ian Swane
Caroline Vernon
Ben Wackett
Robin Wagland
Louise Walkden
Sophie Wood

NSW EPA:

Arminda Ryan
Carolyn Walsh
Anthea White
Jo Graham
Sara Arthur
Marina Leung
Joanne Stuart
Fabiana Quinton
Rob Hogan
Ben Livissianis
Andrew Hawkins
Kristel Arnold
Rose Cocks
Karin Schianetz

Presenters (Affiliation):

Natalie Sommerville (NSW EPA)
Andrew Goulstone (DPIE Water)
John Williams (DPIE Water)
Jo Graham (NSW EPA)
Sara Arthur (NSW EPA)
Joanne Stuart (NSW EPA)
David Gathercole (NSW EPA)
Helen Prifti (NSW EPA)
Alex Pulkownik (UTS)

Apologies (Proxy):

Brad Eismen (Jonathan Ho)
David Gregory (Ben Pearce)
Rebeka Hall (Matthew Rendell)
Andrew Lau (Christine Louie)
Kylie Lloyd (Diana Turner)
Graeme Miller
Frank Mohen
Charlie Barber
Paul Moritz (Emily McGinty)
Mike Nash (Tim Wright)
Peter Ramsay (Stephan Pawelczyk)

Audit Panel:

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

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 & meeting objectives

Arminda Ryan, NSW EPA

Arminda Ryan (Director Contaminated Land Management) welcomed all attendees and gave an acknowledgement of country.

Arminda outlined some recent Machinery of Government changes. The EPA is now part of the Department of Planning, Industry and Environment (DPIE). Arminda also detailed some recent changes to the EPA executive structure, with a separate CEO, Tracey Mackey, and Chair, Carolyn Walsh. Arminda provided an overview of the backgrounds of both Tracey Mackey and Carolyn Walsh, welcoming Carolyn, who was in attendance at the meeting.

Arminda introduced those in attendance at the meeting, being auditors (noting a large number of proxies in attendance), members of the auditor accreditation panel, presenters from DPIE Water, Alex Pulkownik from UTS and EPA staff.

Arminda welcomed the four new auditors who have become accredited since the last meeting – Colin McKay, Alison Macdonald, Louise Walkden and Robin Wagland.

Arminda advised of the EPA's imminent office move to 4 Parramatta Square at the beginning of February 2020.

2. Address by EPA Chair

Carolyn Walsh, NSW EPA

Carolyn introduced herself and explained the separation of the role of Chair and CEO at the EPA and how she considered her role is to create a strategic agenda for the EPA and for management to focus on priority areas.

Carolyn explained complex legacy issues in contaminated land are very contentious and create concern among the public so the EPA's aim is to act promptly regarding these sites/issues, with the objective to instil in the community confidence in the work auditors and the EPA carries out.

Carolyn briefly discussed the health check carried out on the site auditor scheme and thanked all of those that participated.

3. Water management framework for monitoring bores

**Andrew Goulstone &
John Williams, DPIE Water**

Refer to presentation attached.

Discussion

- There was a query on where the 40m rule for unlicensed boreholes came from and whether groundwater bores less than 40m would still be recorded.
 - The 40m rule was the result of advice about the ability for cross contamination between shallow and deep aquifers. A form for unlicensed boreholes still needs to be submitted but no approval is required for bores less than 40m. It is known as a conditional exemption.
- There was a view from an auditor that most contaminated land bores are unlikely to be exempt as they do not meet the criteria as they are outside of the *Contaminated Land Management Act 1997* (CLM Act) or the planning process.
- There was discussion about the purpose of DPIE Water receiving all the information from the thousands of bores drilled each year and whether it can do anything with the data.
 - The information is collected in case the department needs it for future/final determinations. While there is a standard 250m buffer around regulated sites, the issue is when there is a plume. DPIE Water is working with the EPA around plume boundaries.

- There was discussion about regulated sites and how groundwater information on those sites is captured and the practicality of sharing this information.
 - A communications protocol is being developed between DPIE Water and the EPA. Meetings have been held to ensure good exchange of information in real time. We are working on clarifying the buffer around declared contaminated sites to be based on the edge of the plume.
- There was concern expressed about sites with off-site plumes and how it would be formalised to prevent future abstraction bores from being allowed.
 - DPIE Water don't manage the water quality at the site, or whether it's a health risk or not, only the ability to extract water or the ability to draw water to deviate the plume flow path. DPIE Water do not regulate the plumes, or devise what criteria it needs to meet, or define the actual plume for regulation purposes. The communications protocol being developed with the EPA will make the process clear to both agencies and those stakeholders involved.
 - On regulated sites it is much easier, as it's a collaborative approach. The EPA will work with Health and DPIE Water. There are technology issues and we are looking at a GIS based solution. There is an opportunity in the review of the CLM Act for the EPA to specify requirements about the type of information that's provided; information sharing will be much improved if it is GIS based. In the interim, the EPA is working on a solution for now and how we want to be operating longer term, particularly around sharing the information. There are legislative restrictions under the *Government Information (Public Access) Act 2009* and the *Privacy and Personal Information Protection Act 1998* about sharing information as the EPA doesn't own the consultant's reports. We are happy to have auditors input as we progress this protocol. Please send any information/queries to the auditors' mailbox.
- There was a query about the regulation of groundwater injection works.
 - It is something to be built into the groundwater recharge policy. That policy will have a couple of elements, but it is still being considered. At this point in time there are no approval processes in place.
- There was discussion about the use of Environmental Protection Licences for remediation/treatment of groundwater, whether it would be needed for trials.
 - It's generally used for the discharge of polluted water. If you are polluting waters, then you need a licence. The aim is to get water treated to a point where it no longer needs a licence under the *Protection of the Environment Operations Act 1997*.

4. Update on Water Quality Guidelines

Sara Arthur, NSW EPA

Refer to presentation attached.

No discussion.

5. Health Check Review of Audit Scheme

Natalie Somerville, NSW EPA

Refer to presentation attached.

Discussion

- There was discussion as to why the Health Check review was not broader.
 - The terms of reference are developed in consultation with the business owners. The focus areas are used to find where the business areas have the greatest risk. For the health check review of the auditor scheme the focus of the terms of reference was auditor accreditation.
 - The risk identification didn't just come from the EPA, the health check panel also asked the people being interviewed, which included council officers, auditors and people that had been through the accreditation process both successfully and unsuccessfully.
- There was discussion on whether the auditors will get to review the draft health check report and the responses to the recommendations.

- The report is final and the responses to the recommendations have already been made. The EPA was given a week to respond, so there was no time to consult. Although the report is internal the EPA wants to be transparent and will provide a copy to auditors. We will consult on the implementation on a number of the recommendations.
- There was discussion regarding the health check recommendation to investigate further measures to mitigate against conflict of interest, and whether it is a problem or rather a perceived problem.
 - A number of the recommendations require the EPA to investigate and consider whether action is required. There is very much a difference between an actual and a perceived problem. The panel use their experience from other programs when identifying potential risks and not just the knowledge of the program they are reviewing.
 - Conflict of interest and regulatory capture across regulators is a hot topic, not just across NSW and Australia but around the world, particularly with some of the outcomes that have come from the Royal Commission so it's front of mind. It doesn't necessarily mean that there is an actual conflict of interest there, however, other regulators have been heavily criticised in relation to this, so we need to know it has been well documented.
- It was raised the site auditor guidelines require auditors to report issues to the EPA and auditors don't receive feedback on reports they make. It was suggested the EPA should give feedback to auditors on the outcome of the reports they make.
 - This has been discussed previously and related to when waste notifications are received. The EPA can't reveal the confidential investigation process.
- It was asked whether the EPA would accept suggestions from auditors on terms of reference for future reviews.
 - These reviews are meant to be quick and not meant to be an extensive review of all of our schemes.
 - Health check interviewees are a sample of stakeholders and we can't involve everyone. If we spent all our time reviewing with external input for every element of the scheme, we would spend all our time doing this and not getting on with the job. If we involve everyone every time, we are not going to get the range of reviews done.
 - To further clarify, the panel was given a list of accredited site auditors and some were flagged that had expressed some particular concerns about the operation of the scheme. Some help was provided to the panel with council contacts, together with some information about councils that had experience of the auditor scheme. A list of people was provided and the panel chose the sample of people they wanted to interview.
 - If future health checks are done of the auditor scheme a similar process would be adopted and there would be no intention that all stakeholders would be consulted on every aspect of the scheme.
 - These reviews are pitched as a second line of defence in relation to risk. There are then processes for further insight to delve deeper and wider. Health checks are a quick process, total time is generally 4 weeks, which is quite quick compared to an audit.
- There was a view from a number of auditors that they do get surveyed after each of the auditor meetings which is anonymous, therefore providing an opportunity to provide feedback on the auditor scheme. Also, it was felt the auditors have a good and open relationship with the EPA and have plenty of opportunity to raise issues.

6. Audit Unit

Jo Graham, NSW EPA

Refer to presentation attached.

Discussion

- There was a request to clarify soft skills.
 - This mainly relates to communication skills.
- There was discussion about when the harmonisation of the accreditation process will occur.

- The EPA is aiming for the procedure for the process to be submitted to the Heads of EPA (HEPA) for the March/April 2020 meeting.
- It was suggested the proposed conflict of interest form could be attached to the site audit notification form.
- It was asked whether consideration had been given to adopting the Victorian system of placing all site audit statements, site audit reports and supporting documents on the public register?
 - We would like to do that but currently we are restricted by the legislation.
 - We plan to work towards this and it is being considered as part of the CLM Act review.
- It was noted there are three auditor meetings in different jurisdictions within two weeks. It was asked if there is an opportunity to arrange one forum where technical issues could be discussed.
 - This has been asked before and it suits some people, but there are a lot of auditors who only work in NSW. The EPA does try to work with other jurisdictions and we will do our best to change meetings when they clash. The NSW EPA always has auditor meetings every March and October.
- There was discussion around NSW EPA representatives attending other jurisdictional meetings, which was considered to be beneficial.
 - NSW EPA officers have attended other jurisdiction meetings before. Attendance depends on budgets and whether agenda items are relevant to the NSW EPA.

7. Regulatory Practice & Programs (Policy)

Joanne Stuart, NSW EPA

Refer to presentation attached.

Discussion

- It was asked whether the UPSS (Underground Petroleum Storage System) training modules will be available for public access.
 - The modules have been designed for council officers to log in and access.

8. Breakout Session

Sara Arthur & Jo Graham, NSW EPA

Active Environmental Management Plans (EMPs) for residential sites

Workshop questions: Should active EMPs be used in residential settings? If yes, which scenarios and why? If no, why not?

Feedback provided included:

- Active EMPs may be suitable for high density residential developments where there is strata or a body corporation. However, it would need to be well resourced and actions would have to be undertaken by a qualified person.
- Evidence would have to be provided to demonstrate that there was a management system the requirements could be incorporated into.
- There would have to be a requirement for regular reporting to council/the EPA.
- Active EMPs are not suitable for Torrens title properties. Homeowners don't have the expertise to handle issues such as this.
- It's not about residential but is about whether it's feasible and enforceable.
- Not suitable for low density as no controls or body corporate.
- There is a need to consider the risk if it fails – acute versus chronic risk and how any defect failures affect the risk. Also, passive systems need to work with that life time risk.
- If there is a risk under any building it needs to be assessed regardless of the type of dwelling or site.

Basements and requirements to change site audit statement (SAS) form

Workshop questions: Does the SAS form need to be altered to make it clearer when a site is suitable for a particular use with or without a basement? If yes, how do you think the form should be altered and what information would have to be recorded? If no, please explain why.

Feedback provided included:

- Mixed response - Yes, change the form to help make it clearer. No to changing the form, as the tick box for 'other' land uses allows it to be done that way.
- Sometimes a client doesn't want "other" ticked. Council doesn't always read the site audit statement.
- Ticking "other" can be quite useful in a variety of scenarios.
- Audits should ensure site is able to be used for all foreseeable future uses.
- Using the tick box 'other' with a note is an option. However, some development professionals might not understand.
- If you're signing a pre-existing box on a SAS you need to consider all possible development uses for that site.

9. PFAS Update

David Gathercole, NSW EPA

Refer to presentation attached.

Discussion

- There was discussion on whether the EPA has a program to re-visit the precautionary dietary advice and biota sampling and if there is a time frame for re-evaluating this?
 - There is a NSW PFAS Expert Panel and NSW Technical Advisory Group that provide any required precautionary dietary advice. NSW Government agencies are part of the Expert Panel and Technical Advisory Group, including the DPIE Food Authority, DPIE Fisheries, DPIE Science, the EPA and the Office of the Chief Scientist and Engineer. The biota studies were done in 2017/18 and the EPA will revisit those. Some further studies are planned next year to re-evaluate the precautionary dietary advice and to also go back to communities where precautionary dietary advice has been given. The precautionary dietary advice given to the community has been one on one and the plan is to continue this approach and provide updates to create some dialogue, so it's not scattered, it's personal. The plan is to do that every few years.
- There was a query on the reliance the EPA is putting on the NEMP (the PFAS National Environmental Management Plan).
 - The National PFAS guidance is in the NEMP and the NSW PFAS Investigation Program is guided by the NEMP. The EPA has representatives working with the National Working Group sub committees that developed, review and update the NEMP. It is understood that there are some issues with some of the ecological criteria. We do rely very heavily on the human health criteria. Our PFAS investigations have a human health focus. With ecological guidelines, they may have been set quite stringently and it is understood there have been some comments received through the NEMP 2.0 consultation on the 99th percentile and 95th percentile in terms of compliance, so that is being reviewed as part of NEMP 2.0
- There was a query as to whether the NHMRC (National Health and Medical Research Council) guidelines for recreational waters for PFAS will be endorsed by the EPA in the short term or not?
 - It is being considered but at this stage they haven't been adopted. The priority at present is publishing the Guidelines for Consultants Reporting in Contaminated Sites and Guidelines for the Assessment and Management of Sites Impacted by Hazardous Ground Gases. But it is a project on the list and will be considered.

10. Waste Branch

Helen Prifti, NSW EPA

An overview of the EPA's research into Mixed Waste Organic Outputs (MWOO) was discussed and the EPA's position, that it does not intend to grant any general exemptions or issue any related orders allowing MWOO to be used as a soil amendment due to potential risks to human health and the environment. It was noted public consultation is open on the future use of general household waste including MWOO and on a proposed transition package. The EPA would appreciate any feedback from the auditors on this.

Responses were then discussed to several of the waste questions which were submitted to the auditor mailbox prior to the meeting. It was noted that some of the questions provided could not be answered during the meeting as they were still being considered and a response would be provided at a later date.

- A question was received on pH and acidity in waste classification.
 - To clarify the pH10 is an absolute value, although it may be argued legally, it is not acceptable to use 10.1. With regards to acidity for it to be VENM, there should not be any sulphonic ores or sulphides, but if due to organic acids, then it's ok. For best practice use the National Acid Sulfate Soils Guidance (lab methods and sampling), Australian Government Department of Agriculture and Water Resources 2019 guidance.
- There were several questions on record keeping for audits and auditing waste dockets.
 - There can be some flexibility when auditing volumes versus tonnages, but if the records are missing half the tonnage, this should be flagged. There can be use of professional judgement.
 - The EPA have no particular tips, but if there is concern over waste dockets and they look suspicious, they may have been altered, it's recommended that you report this. You could confirm with the landfill, they can check if the dockets are legitimate.
 - Waste locate can be used to track asbestos and waste tyres.

The floor was then opened up to general questions.

Discussion

- A query was raised about the progress on sampling density for waste classification, as previous responses received are that it is very complicated so no advice can be provided, yet that is what you're asking auditors to do.
 - Some work has been done with the auditors about waste soil. In terms of waste classification, it is hard to design a one size fits all approach. If the material is very consistent you might want to sample less, but if you are working with variable material then it really needs to be looked at more often.
- There was considerable discussion about the disposal of above-ground hazardous building materials that occurs as part of a development and whether there is any guidance from the EPA determining at what point auditors should start looking at the disposal of this material.
 - The EPA advised there is a lot of grey area. We will have to take on notice and come back to you.
 - An auditor commented that contaminated land management is involving the land. It is not contaminated land building management. If someone deposits asbestos on land, as an auditor I'm onboard, but if it's a building that has been demolished, that's another thing.
 - It was requested the EPA look into this query and work out whether it is in scope or out of scope of an audit.
 - It was noted demolition can pose a contamination risk to a site. So, auditors get called in because the demolition created contamination. The demolition contractors that they use can be poor and they're the ones that cause the contamination. There's always the question of "where did all that demolition waste end up?" It's not a single answer but it certainly is a potential contaminant source that us auditors need to consider.

- An auditor noted the question was in the context of the auditor's obligation to track demolition waste. I accept there is a responsibility for tracking contamination, but to also track every single piece of roofing panel we run the risk of making auditors responsible for everything, when really what our job is contaminated land, it is not an auditor's responsibility to be tracking waste from demolition.
- An auditor commented the question could have even been in relation to construction waste in the development of new buildings as long as it's going off site. If it is staying onsite then yes, an auditor needs to know about it. But if it disappears in a truck off-site, an auditor certainly shouldn't have the obligation to try and track that.
- The EPA advised that's where we need guidance. It's not as black and white for the EPA, it must fit a lot of scenarios and that's why it needs to be taken on notice.
- There was a query regarding ENM (excavated natural material) and the presence of asbestos. Is there any advice on what adequate evidence is required to demonstrate a material is free of asbestos?
 - In terms of what is adequate, this has been covered in presentations in the past. It is a multiple lines of evidence approach and until such time as it's prescribed in an order, then sampling would be useful and important to provide evidence, but also history and visual inspections will assist with helping to identify if there is asbestos there. It is something we would like to address to provide some clarity on asbestos testing next year. We are finding that it is tricky not to have it in there, we've had some recent court cases on the issue so it is tricky, and we will be looking at fixing that in the future.
- There was a query as to whether top soil is classifiable as VENM (virgin excavated natural material)?
 - Potentially yes, if it meets the criteria then it could be.
- There was discussion on what is the basis for the lead paint waste pre-classification when it comes from a residential premises or educational facilities, such as a child care institution, and how it is intended to be applied. Is it a risk-based recommendation or is it to facilitate ease of disposal of the materials? Is it related to the original source of that material or is it related to the current land use?
 - It's all those things. That pre-classification goes back as far as 1999 – it was a mechanism put in place to encourage householders to remove small amounts of lead-based waste safely and dispose of it properly and make sure that it's not treated as hazardous waste in small quantities. The concentration is often lower than industrial sites and it was a way to ensure the waste was being disposed away from the community and into landfill. It does become tricky because we've had recent projects where the residential houses have been used for commercial purposes. So, then we need to consider if it is a residential property or commercial.

We have also received feedback from industry that, the fact that having lead paint waste on an industrial site is classified as hazardous waste that needs to be stripped and removed but can that material just go to landfill as is? Some older buildings contain a high concentration of lead paint waste, so we need to investigate how we can measure it and clarify between private and commercial sites to work out how much lead paint waste there is before it is determined as hazardous waste. We would like to work on that more so we can provide more clarity, particularly in relation to the Sydney areas and the construction that's happening. When it comes to metal structures though, it is a little bit easier because the metal recyclers are licenced to take scrap metal with lead, but it does get complex when you've got bricks and other construction material. We just want to make sure that it ends up in the right place.

Questions taken on notice:

- There was a query on whether the EPA still want auditors to report on the proximity principle.
- A request was made for some reassurance regarding notices and lawfulness for containment cells containing asbestos, because it is quite complicated now when it comes to regulation.

11. Contaminated Site Assessment & Remediation course at UTS Alex Pulkownik, UTS

Refer to presentation attached.

No discussion.

12. Other business

Jo Graham, NSW EPA

Auditors were asked to consider if there are any gaps in guidance currently available, noting that the EPA does have resource constraints. We would like auditors to flag anything they think the EPA should be prioritising. A question will be added to the feedback survey sent out after the meeting for auditors to identify anything.

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 27 March 2020**, venue TBC.