



Western Australia

Contaminated Sites Regulations 2006

Compare between:

[17 Jun 2022, 00-f0-00] and [01 Jul 2022, 00-g0-00]

Contaminated Sites Regulations 2006

Part 1 — Preliminary

1. Citation

These regulations are the *Contaminated Sites Regulations 2006*.

2. Commencement

These regulations come into operation on the day on which the *Contaminated Sites Act 2003* comes into operation.

3. ~~Interpretation~~ Terms used

In these regulations —

audit, in relation to a site, means to carry out a review of the investigation or remediation of a site to determine one or more of the following —

- (a) the nature and extent of any contamination of the site;
- (b) the nature and extent of the investigation or remediation of the site;
- (c) whether any restrictions on the use of the site are required;
- (d) the suitability of the land for a specific use, or a specific range of uses;
- (e) whether any further investigation of the site is required, recommended or necessary;

- (f) whether any further remediation of the site is required, recommended or necessary so that the site is suitable for all uses, or for a specific use, or a specific range of uses;
- (g) the suitability or appropriateness of a management plan;

[auditor insurance](#) means insurance referred to in regulation 59A;

basic summary of records means a summary of the information and documents from the records referred to in regulation 9;

detailed summary of records means a summary, or copies, of the information and documents from the records referred to in regulation 10;

Form, followed by a number, means the form so numbered in Schedule 1;

panel of names means a panel of names referred to in regulation 13(2)(a);

summary of records means a basic summary of records or a detailed summary of records;

[supporting expert](#) means a person with theoretical and practical knowledge and skills that enable the person to assist an auditor to carry out the functions of an auditor;

[supporting expert insurance](#) means insurance referred to in in regulation 59B.

[\[Regulation 3 amended: SL 2022/99 r. 4.\]](#)

4. Fees

In these regulations fee amounts are expressed in units or fractions of a unit, one unit being equivalent to \$15.

5. Land, water and sites that are not contaminated — section 4(2)

- (1) Surface water that is affected by eutrophication is not contaminated only because of the eutrophication.

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- (2) Land, water or a site is not contaminated where the only substance that is present in or on that land, water or site at above background concentrations that presents, or has the potential to present, a risk of harm to human health, the environment or any environmental value is —
- (a) part of a building or other structure; or
 - (b) wholly contained within a building; or
 - (c) sewage, effluent or liquid waste that is being treated, or has been treated, by a domestic sewage apparatus operated in compliance with regulations 15 to 19 of the *Health (Treatment of Sewage and Disposal of Effluent and Liquid Waste) Regulations 1974*; or
 - (d) total soluble salts, present in a diffuse manner, as a result of salinisation, whether natural, anthropogenic or both; or
 - (e) an explosive substance contained within an unexploded ordnance; or
 - (f) a substance that is present as a direct result of the correct application of a fertiliser, herbicide or pesticide to land, subject to subregulation (3).
- (3) Subregulation (2)(f) does not apply in respect of land, water or a site if there has been a change to the use to which the land is put since the application of the fertiliser, herbicide or pesticide.
- (4) In this regulation —
- correct application**, in relation to a fertiliser, herbicide or pesticide means application in accordance with —
- (a) any written law regarding the application of the fertiliser, herbicide or pesticide which was in force at the time of the application; or
 - (b) if no such written law was in force at that time, any relevant recommendation of the manufacturer or distributor of the fertiliser, herbicide or pesticide;

domestic sewage apparatus means an apparatus for the treatment of sewage (within the meaning of the *Health (Miscellaneous Provisions) Act 1911* section 3) that treats less than 540 litres of sewage per day.

[Regulation 5 amended: Gazette 10 Jan 2017 p. 193.]

**Part 2 — Reporting of known, or suspected,
contaminated sites**

6. Report of known, or suspected, contaminated site — Form 1

A report, under the Act section 11, of a site that a person knows, or suspects, is contaminated is to be made in the form of Form 1.

Part 3 — Public access to information and documents

7. Interpretation

In this Part, unless the contrary intention appears —

land includes —

- (a) underground water under that land; and
- (b) surface water on that land.

8. Request for access to a summary of records — Form 2

- (1) For the purposes of the Act section 21(1), a request for access to a summary of records is to —
 - (a) be made to the CEO in the form of Form 2; and
 - (b) specify whether a basic or a detailed summary of records is requested; and
 - (c) be accompanied by —
 - (i) if the request is for a basic summary of records, the fee set out in Schedule 2 item 1; and
 - (ii) if the request is for a detailed summary of records, the fee set out in Schedule 2 item 2.
- (2) The CEO may reduce, waive or refund, in whole or in part, the fee referred to in subregulation (1)(c)(ii) if it considers it appropriate to do so in the circumstances of the case.
- (3) The fee applicable under subregulation (1)(c) where the land does not comprise all, or part, of a site that is classified, is the fee applicable to a request for access to a basic summary of records, regardless of whether the application made was for access to a basic or a detailed summary of records.

9. Basic summary of records

- (1) For the purposes of the Act section 21(2), a basic summary of records in respect of the land specified in a request for access to

a summary of records is a summary of the following information and documents —

- (a) the category of classification of any site that comprises all, or part, of the land at the date the summary is compiled;
 - (b) any notice given under the Act Part 4 that applies in respect of the land.
- (2) A basic summary of records in respect of land is to be accompanied by a summary of —
- (a) the nature and extent of the known contamination, and any restrictions on the use, of any site classified as —
 - (i) *contaminated — restricted use*; or
 - (ii) *remediated for restricted use*; or
 - (iii) *contaminated — remediation required*,that comprises all, or part, of the land that the summary is given in respect of; and
 - (b) the reasons for the classification of any site that comprises all, or part, of the land that the summary is given in respect of, with reference to any guidelines, standards and other information taken into account under the Act section 13(4).

10. Detailed summary of records

- (1) For the purposes of the Act section 21(2), a detailed summary of records in respect of the land specified in a request for access to a summary of records is a summary, or copies, of the following information and documents —
- (a) the category of classification of any site that comprises all, or part, of the land at the date the summary is compiled;
 - (b) any notice given under the Act Part 4 that applies in respect of the land;

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- (c) any certificate of contamination audit given in respect of the land;
 - (d) the author, date and title of the following records, if any, about the land —
 - (i) management plans submitted to the CEO;
 - (ii) sampling and analysis programmes given to the CEO under the Act section 49(4)(d);
 - (e) any other information or documents from the records that the CEO considers appropriate.
- (2) A detailed summary of records in respect of land is to be accompanied by a summary of —
- (a) the nature and extent of the known contamination, and any restrictions on the use, of any site classified as —
 - (i) *contaminated — restricted use*; or
 - (ii) *remediated for restricted use*; or
 - (iii) *contaminated — remediation required*,that comprises all, or part, of the land that the summary is given in respect of; and
 - (b) the reasons for the classification of any site that comprises all, or part, of the land that the summary is given in respect of, with reference to any guidelines, standards and other information taken into account under the Act section 13(4).

11. Inspection of records referred to in detailed summary of records

The CEO is to ensure that, where copies of records referred to in a detailed summary of records are not provided as part of that summary of records, the person given the summary of records is given the opportunity to inspect those records at a mutually convenient time.

12. Land not part of classified site

If a person requests a summary of records in respect of land that does not comprise all, or part, of a site that is classified then the person is to be advised of that fact in writing.

Part 4 — Contaminated Sites Committee

13. Establishment of committee or replacement of member

- (1) The Minister, when —
- (a) establishing a committee under the Act section 33(1); or
 - (b) wishing to appoint a member to the committee to fill a vacancy arising due to —
 - (i) the death, resignation or removal of a member of the committee; or
 - (ii) any other reason,

is to request the CEO to submit to the Minister a panel of names.

- (2) As soon as is practicable after being requested to do so by the Minister, the CEO is to submit to the Minister in writing —
- (a) a panel of names, chosen in accordance with regulation 16, from which the committee may be selected, or from which a member may be appointed to the committee, as is relevant; and
 - (b) any recommendation the CEO has as to membership of the committee or appointment of a member.

14. Term of office of members of the committee

- (1) A member of the committee holds office for such period, not exceeding 3 years, as is specified in the instrument of his or her appointment.
- (2) A member of the committee is eligible for re-appointment.
- (3) A member of the committee, unless he or she sooner resigns or is removed from office, continues in office until his or her successor comes into office, even if the period for which he or she was appointed has expired.

[15. Deleted: SL 2022/37 r. 4.]

16. Panel of names — section 33(3)

- (1) From time to time, as the CEO considers necessary, the CEO is to cause to be published in a daily newspaper circulating throughout the State a notice calling for expressions of interest from persons interested in being selected to be a member of the committee.
- (2) In compiling a panel of names, the CEO is to consider any expressions of interest lodged in accordance with a notice published under subregulation (1) but may include a person's name on a panel whether or not the person has lodged an expression of interest if, in the opinion of the CEO, the person is suitable to be a member of the committee.
- (3) A panel of names is to include the names of at least 10 people of whom —
 - (a) at least 6 have expertise in contaminated site management or environmental management; and
 - (b) at least 2 are legal practitioners.

17. Provisions about panel of names

- (1) A person's name is to be removed from a panel of names after a period of 3 years, but may, in accordance with regulation 16, be re-included on a panel immediately.
- (2) A person's name is to be removed from a panel of names if the person —
 - (a) makes a written request to that effect to the CEO; or
 - (b) is not eligible to be appointed to the committee in accordance with regulation 19.
- (3) If a person's name is removed from the panel of names the CEO is to ensure that the person is informed in writing of that removal as soon as is practicable.

18. Chairperson of committee

The Minister is to appoint one of the members of the committee to be the chairperson of the committee.

19. Persons not eligible to be appointed to committee

A person is not eligible to be appointed to the committee if the person —

- (a) is an insolvent under administration within the meaning of that term in the *Corporations Act 2001* of the Commonwealth; or
- (b) has been convicted of an offence under this Act or the EP Act.

20. Removal or resignation of member from committee

- (1) A member of the committee may resign by written notice.
- (2) The Minister may remove from office a member of the committee if —
 - (a) the Minister is satisfied that regulation 19 paragraph (a) or (b) applies in relation to the member; or
 - (b) the member is persistently absent without leave or reasonable excuse from committee meetings of which the member has had notice; or
 - (c) the member ceases to hold the office or qualifications by virtue of which the member was appointed to the committee; or
 - (d) the member is suffering from a permanent physical or mental incapacity that impairs the performance of the member's functions; or
 - (e) the Minister is satisfied that extraordinary circumstances render inappropriate the continuation of the person's membership of the committee.

21. Conflict of interest

- (1) A member of the committee who has or acquires a conflict of interest in relation to a matter in respect of which the committee is to make a decision under the Act is to —
 - (a) resolve the conflict of interest in relation to the matter;
or
 - (b) disqualify himself or herself from taking any further part in the proceedings of the committee in relation to the matter.
- (2) A member of a committee to which subregulation (1)(a) applies is to inform the Minister in writing of the conflict and the resolution of the conflict, and if the conflict has not been resolved to the Minister's satisfaction, the Minister is to disqualify the member from taking any further part in the proceedings of the committee in relation to the matter.
- (3) For the purposes of this regulation, a member of a committee has a conflict of interest in relation to a matter if the person has any financial or other interest, either directly or indirectly, in the matter that conflicts or could conflict with the proper performance of the person's functions in relation to that matter.

Part 5 — Decisions as to responsibility for remediation

22. Interpretation

In this Part —

applicant means a person making a request referred to in regulation 24.

23. Interested person — section 36(3)

For the purposes of the Act section 36(3) the following are prescribed as interested persons in relation to a site —

- (a) a person who is an owner or occupier of land that comprises all, or part, of the site;
- (aa) if the site is a source site — a person who is, or was, an owner or occupier of land that comprises all, or part, of a site that is an affected site in relation to the source site;
- (ab) if the site is an affected site — a person who is, or was, an owner or occupier of land that comprises all, or part, of a site that is a source site in relation to the affected site;
- (b) a person who was an owner or occupier of land that comprises all, or part, of the site and in respect of whom there are reasonable grounds to suspect may have caused, or contributed to, the contamination of the site;
- (c) a person who is, or was, an owner or occupier of land adjoining land that comprises all, or part, of the site and in respect of whom there are grounds to suspect may have caused, or contributed to, the contamination of the site;
- (d) a person who is a mortgagee of land that comprises all, or part, of the site;
- (da) if the site is a source site — a person who is a mortgagee of land that comprises all, or part, of a site that is an affected site in relation to the source site;

- (db) if the site is an affected site — a person who is a mortgagee of land that comprises all, or part, of a site that is a source site in relation to the affected site;
- (e) a person given a notice under the Act section 42(1) in relation to the site;
- (f) the CEO.
- [(g) deleted]*

[Regulation 23 amended: SL 2022/37 r. 5.]

24. Request for decision as to responsibility for remediation

- (1) A request to the committee to make a decision as to responsibility for remediation of a site under the Act section 36(2)(a) is to be made in writing in a form approved by the committee.
- (2) A request referred to in subregulation (1) is to set out —
 - (a) the name and address of the applicant; and
 - (b) a description of the location and extent of the site sufficient to identify it; and
 - (c) a description of the applicant's interest in the site; and
 - (d) reasons why the applicant is of the opinion that he or she —
 - (i) is, or may be; or
 - (ii) is not, or may not be,responsible for remediation of the site; and
 - (e) any other information that the person believes may be relevant to responsibility for remediation of the site, or any part of the site, in the possession of, or available to, the applicant.

- (3) A request referred to in subregulation (1) is to be accompanied by —
 - (a) a certified copy of, the certificate, or certificates, of title for all of the land that comprises all, or part, of the site; and
 - (b) any documents or other information relevant to the information the applicant has provided in the request.

25. Requirement to provide information to committee

- (1) The committee may require an applicant to provide further information to the committee relevant to the decision as to responsibility for remediation of the site to which the application relates.
- (2) The committee may require a person who, in the opinion of the committee may —
 - (a) be responsible for remediation of a site; or
 - (b) have access to information relevant to the decision as to responsibility for remediation of a site,to provide further information to the committee relevant to the decision as to responsibility for remediation of the site.
- (3) A requirement under this regulation is to be in writing and is to specify —
 - (a) the person to whom the requirement applies; and
 - (b) the information to be provided by that person; and
 - (c) the period within which the person is to provide the information.
- (4) A requirement made under this regulation is to be given to the person to whom the requirement applies.
- (5) The period specified in a requirement under subregulation (3)(c) is not to be less than 14 days from the day the requirement was given to the person to whom it applies.

- (6) The person who provides information as a result of a requirement under this regulation is to bear the cost of doing so, whether the committee decides that the person is responsible for remediation or not.
- (7) A person who, without reasonable excuse, refuses or fails to comply with a requirement made under this regulation commits an offence.

Penalty: a fine of \$1 000.

26. Facts and circumstances to be taken into account by the committee in making a decision as to responsibility for remediation

The following facts and circumstances are, where relevant, to be taken into account by the committee in making a decision as to responsibility for remediation —

- (a) all available information on the nature and extent of known contamination of the site, currently and historically;
- (b) the use to which the site has been, and is being, put and the activities which have been carried out at the site which may have caused or contributed to the contamination;
- (c) information provided under regulation 24 or 25;
- (d) any previous decision made by the committee as to responsibility for remediation of the site, or any part of the site or any other site, or a part of any other site;
- (e) other facts and circumstances relevant to responsibility for remediation provided to the committee by an inspector, authorised person or analyst appointed under the EP Act for the purposes of the Act.

27. Time within which decision to be made

The committee is to make a decision as to responsibility for remediation of a site when requested to do so under the Act section 36(2)(a) —

- (a) within 6 months after the day on which the request is made; or
- (b) if, in the opinion of the committee, there are particular circumstances which make it difficult to make a decision as to responsibility for remediation within that time, such further time as the committee decides is necessary to make the decision.

28. Land owner's responsibility for remediation — section 27(3)

- (1) In making a decision under the Act section 27(3) the committee is to take into account the following matters —
 - (a) whether or not the contamination was caused, or contributed to, by an action of the owner;
 - (b) whether or not the owner failed to prevent the contamination of the land, as far as it was reasonably within the owner's control to prevent that contamination;
 - (c) whether or not the owner has derived a benefit or advantage from any act that caused, or contributed to, the contamination.
- (2) In this regulation —

owner means an owner within the meaning of the Act section 5(1)(b)(i) or (ii).

Part 6 — Certificates of contamination audit

29. Request for certificate of contamination audit — Form 3

- (1) For the purposes of the Act section 62(1), a request for a certificate of contamination audit is to be made in the form of Form 3.
- (2) For the purposes of the Act section 62(3), a request for a certificate of contamination audit in respect of land is to be accompanied by —
 - (a) a certified copy of the certificate, or certificates, of title for the land; and
 - (b) any reports or other documents on investigations or assessments regarding the nature or extent of any contamination of the land in the possession of, or available to, the person who made the request; and
 - (c) details of any remediation of the land, including any reports or documents on that remediation in the possession of, or available to, the person who made the request; and
 - (d) a mandatory auditor's report on the land; and
 - (e) any reports or findings as to the effectiveness of any remediation of the land in the possession of, or available to, the person who made the request; and
 - (f) the fee set out in Schedule 2 item 3.

30. Certificate of contamination audit — Form 4

For the purposes of the Act section 63, a certificate of contamination audit is to be in the form of Form 4.

Part 7 — Mandatory auditor's reports

31. When mandatory auditor's reports are required

- (1) A mandatory auditor's report is to be provided to the CEO —
 - (a) in accordance with regulation 29(2)(d), when a request for a certificate of contamination audit is made in respect of land; or
 - (b) with every report provided to the CEO containing information as to, or which will be relevant to, the investigation, assessment, monitoring or remediation of a source site; or
 - (c) with every report containing information as to, or which will be relevant to, the investigation, assessment, monitoring or remediation of a site provided to the CEO for the purpose of —
 - (i) complying, or attempting to comply, with another written law; or
 - (ii) a requirement or condition (by whatever name called) imposed under another written law, or taking a necessary step towards doing so; or
 - (d) at the written request of the CEO, in respect of a site —
 - (i) which, in the opinion of the CEO, presents particularly complex technical issues; or
 - (ii) in respect of which, in the opinion of the CEO, inadequate information or reports have been provided; or
 - (iii) in respect of which, in the opinion of the CEO, a mandatory auditor's report is required to enable the site to be properly dealt with for the purposes of the Act.
- (2) Despite subregulation (1), the CEO may waive a requirement to provide a mandatory auditor's report (other than under

subregulation (1)(a)) during the period of 6 months after the commencement of the Act in respect of —

- (a) a particular report; or
- (b) reports of a particular class or type; or
- (c) reports regarding sites of a particular class or type.

32. Mandatory auditor's report — section 73

- (1) A mandatory auditor's report is to —
 - (a) report on the audit of a site undertaken by the auditor;
and
 - (b) report the findings of the auditor's critical review of the site investigation, remediation, management or monitoring, as is relevant; and
 - (c) state the conclusions made by the auditor and give reasons for the conclusions; and
 - (d) where relevant, make —
 - (i) a recommendation as to the classification of the site; and
 - (ii) where the classification recommended is *contaminated — restricted use, remediated for restricted use* or *contaminated — remediation required*, make a recommendation as to the restrictions on the use of the site;and
 - (e) contain any other information that the auditor considers relevant, taking into account any relevant guidelines.
- (2) Where part of a mandatory auditor's report has been prepared, and is based on work undertaken by a person other than the auditor, or a person employed by the auditor, the report is to be accompanied by a statement identifying, and signed by, that

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person to the effect that that part of the report is accurate and that the person —

- (a) has not provided information in that part of the report that the person knows is false or misleading in a material particular; and
- (b) has not provided information in that part of the report with reckless disregard as to whether or not the information is false or misleading in a material particular; and
- (c) has disclosed in that part of the report all information that the person knows is materially relevant to that part of the report.

32A. Auditor must give supplementary information

(1) If the CEO is given a mandatory auditor's report under the Act in respect of a site, the CEO may, by written notice, require the auditor who prepared the report to give any other information to the CEO that, in the opinion of the CEO, is relevant to the audit of the site.

(2) The written notice must state —

(a) the required information; and

(b) that the required information must be given —

(i) by the day (the *due date*) specified in the notice, which must not be less than 14 days after the day on which the notice is given to the auditor; or

(ii) if a later day is set by the CEO on request under subregulation (3) — by the later day;

and

(c) that a failure to comply with the notice may constitute an offence.

(3) The CEO may, on request, set by written notice a day after the due date as the day by which the required information must be given.

(4) The auditor must give the required information to the CEO —

(a) by the due date; or

(b) if a later day is set under subregulation (3) — by the
later day.

Penalty for this subregulation: a fine of \$1 000.

[Regulation 32A inserted: SL 2022/99 r. 5.]

Part 8 — Disclosure statements

33. Disclosure statement under section 64 — Form 5

- (1) For the purposes of the Act section 64, a disclosure statement is to be in the form of Form 5.
- (2) A disclosure statement is to be accompanied by —
 - (a) a certified copy of the certificate, or certificates, of title for the owner's land; and
 - (b) a report, prepared in accordance with the relevant guidelines, regarding the nature and extent of contamination of the owner's land; and
 - (c) all available information in the possession of, or available to, the person who made the statement that the person believes may be relevant to —
 - (i) the nature and extent of known contamination of the owner's land, currently and historically; or
 - (ii) the use to which the owner's land has been, and is being, put and the activities which have been carried out on that land which may have caused or contributed to the contamination;and
 - (d) relevant details of the transaction, or transactions, which resulted in the owner of the land becoming an owner of the owner's land, including the reason why the person became an owner of the land; and
 - (e) any documents in the possession of, or available to, the person who made the statement supporting the reasons set out in the statement as to why the person believes that he or she is entitled to an exemption certificate.
- (3) If the disclosure statement is also made in respect of the contamination of land that comprises all, or part of an affected site on which contamination is caused, or contributed to —
 - (a) by contamination; or

- (b) by a substance,
which has migrated to that land from the owner's land (as referred to in the Act section 64(5)) then the disclosure statement is also to be accompanied by —
- (c) a certified copy of the certificate, or certificates, of title for the land; and
 - (d) a report, prepared in accordance with the relevant guidelines, regarding the nature and extent of contamination of the land; and
 - (e) all available information in the possession of, or available to, the person who made the statement that the person believes may be relevant to —
 - (i) the nature and extent of known contamination of that land, currently and historically; or
 - (ii) the use to which that land has been, and is being, put and the activities which have been carried out on that land which may have caused or contributed to the contamination;
- and
- (f) any documents in the possession of, or available to, the person who made the statement supporting the reasons set out in the statement as to why the person believes that he or she is entitled to an exemption certificate.
- (4) In determining whether the grounds set out in the Act section 65(1)(a) or (d) are satisfied for the purpose of giving an exemption certificate, the committee is to seek, and take into account, the advice of the CEO as to the contamination of the land.
- (5) In this regulation —
owner's land, in respect of a disclosure statement, means the land described in the disclosure statement under the heading "The Owner's Land".

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34. Disclosure to potential owners — Form 6

For the purposes of the Act section 68, a written disclosure is to be in the form of Form 6.

Part 9 — Auditors

Division 1 — Accreditation of auditors

35. ~~CEO to call~~ Call for applications

- (1) The CEO ~~is to~~may call for applications from persons seeking accreditation as contaminated sites auditors ~~from time to time as the CEO considers necessary.~~
- (2) The CEO ~~is to~~must call for applications by advertising in such manner as the CEO considers appropriate.
- (3) The CEO must specify in the call for applications the period during which an application must be made.

[Regulation 35 amended: SL 2022/99 r. 6.]

36. Application for accreditation as ~~a~~ contaminated sites auditor

(1A) In this regulation —
former auditor —

(a) means a person whose accreditation under section 69 of the Act has ceased; but

(b) does not include a person —

(i) whose application for renewal of accreditation as an auditor is refused under regulation 45(2)(a), (b) or (c); or

(ii) whose accreditation as an auditor is cancelled.

(1) An application for accreditation as an auditor ~~is to~~must —

(aa) if the applicant is not a former auditor — be made during a period specified under regulation 35(3); and

(a) be made in writing in a form approved by the CEO; and

(b) be accompanied by such information and documents in support of the application as are requested in the form referred to in paragraph (a); and

- (c) be accompanied by the application fee set out in Schedule 2 item 4, ~~unless regulation 37 applies.~~
- (2) An applicant ~~is to~~must provide the CEO with any further information the CEO requests, by written notice given to the applicant, to properly consider the application.
- (3) An application fee is not refundable regardless of whether the application is successful or unsuccessful.

~~**37. No application fee for person entitled to accreditation under the *Mutual Recognition (Western Australia) Act 2001***~~

~~The application fee referred to in regulation 36(1)(c) is not payable in respect of a person entitled under the *Mutual Recognition Act 1992* of the Commonwealth, as adopted by the *Mutual Recognition (Western Australia) Act 2001*, to be registered (as defined in that Commonwealth Act) in this State as an auditor.~~

~~*[Regulation 36 amended: SL 2022/99 r. 7.]*~~

~~*[37. Deleted: SL 2022/99 r. 8.]*~~

38. Auditors to be individuals

A person cannot be accredited as an auditor unless the person is an individual.

39. Accreditation

- (1) The CEO may accredit a person as an auditor if satisfied that the person —
 - (a) has adequate theoretical and practical knowledge and adequate skills, to carry out the functions of an auditor; and
 - (b) ~~where necessary,~~ has access to ~~persons with complementary theoretical and practical knowledge and skills which~~supporting experts whose assistance would

~~assist~~be necessary for the person to competently carry out the functions of an auditor; and

- (c) has an adequate knowledge and understanding of relevant laws and currently accepted industrial standards including —
- (i) the Act; and
 - (ii) these regulations; and
 - (iii) the guidelines; and
 - (iv) any relevant national policies or guidelines approved in writing by the CEO for the purpose of this subparagraph; and
 - (v) the EP Act and any relevant regulations under that Act;

and

~~(d) holds a policy of professional indemnity insurance considered appropriate by the CEO, or the CEO is satisfied that such a policy is held in respect of that person; and~~

(d) is covered by auditor insurance; and

(e) is otherwise a fit and proper person to carry out the functions of an auditor; and

(f) has paid to the CEO the fee set out in Schedule 2 item 5 for the term of the accreditation.

(2) If the CEO accredits a person as an auditor, the CEO must set the term of the accreditation, which must not be longer than 5 years.

(3) The CEO must give to the auditor written notice specifying the term set by the CEO.

[Regulation 39 amended: SL 2022/99 r. 9.]

**40. Accreditation fee ~~to be paid before a person can be for~~
persons accredited as an auditor under Mutual Recognition
Act 1992 (Commonwealth) Part 3**

(1) A person ~~may not be~~ accredited under the Mutual Recognition Act 1992 (Commonwealth) Part 3 as an auditor must not carry out a function as an auditor unless the person has paid to the ~~relevant~~CEO the fee set out in Schedule 2 item 5 ~~to~~for the ~~CEO~~term of the accreditation.

(2) If the person withdraws the notice given under the Mutual Recognition Act 1992 (Commonwealth) section 19 or is refused accreditation under section 23(1) of that Act, the CEO may refund to the person all or part of a fee paid under subregulation (1).

[Regulation 30 inserted: SL 2022/99 r. 10.]

41. Selection panel

- (1) To assist in the assessment of persons who have applied for accreditation as an auditor, the CEO may establish a selection panel comprising of at least 2 persons chosen by the CEO.
- (2) The CEO may seek advice from such other sources as the CEO considers relevant and may invite such other persons as the CEO thinks fit to assist in making a decision on the person or persons suitable for accreditation as an auditor, and any person so invited may sit on the selection panel when it is examining applicants and may take part in the deliberations of the CEO on the matter.

42. Conditions on accreditation

The CEO may, by notice in writing given to an auditor from time to time, vary the specifications in the authority given to the auditor under the Act section 70(1).

~~43. Term of accreditation or renewal~~

~~Subject to regulations 47 and 48, the accreditation of a person as an auditor, or the renewal of that accreditation, is to be for such term, not exceeding 5 years, as is specified in the authority given to the auditor under the Act section 70(1).~~

~~[43. Deleted: SL 2022/99 r. 11.]~~

44. Application for renewal of accreditation

- (1) ~~An application for renewal of accreditation is~~ In this regulation —
expiry day, in relation to ~~be made by~~ an auditor ~~between 35 and 70 days before,~~ means the day on which the auditor's term of accreditation expires;

renewal period, in relation to an auditor, means the period of 70 days ending on expiry day.

(1A) An auditor may apply to the CEO for renewal of accreditation during the renewal period.

- (2) An application for renewal of accreditation ~~is to~~ must —
- (a) be made in writing in a form approved by the CEO; and
 - (b) be accompanied by such information and documents in support of the application as are requested in the form referred to in paragraph (a); and
 - (c) specify the term of renewal sought, which must not be longer than 5 years; and
 - (d) if the application for renewal is made less than 35 days before expiry day — be accompanied by the late renewal application fee set out in Schedule 2 item 5A.

- (3) An applicant for renewal must provide the CEO with any further information the CEO requests, by written notice given to the applicant, to properly consider the application.

~~45. Accreditation fee to be paid before accreditation can be renewed~~

~~The~~ (4) If an auditor applies under subregulation (1A) before expiry day but the CEO does not give the auditor notice of the CEO's decision on the application on or before expiry day, the term of the auditor's accreditation continues from expiry day until the day on which the application is resolved.

(5) A fee paid under subregulation (2)(d) is not refundable regardless of whether the application is successful or unsuccessful.

[Regulation 44 amended: SL 2022/99 r. 12.]

~~45. Renewal of accreditation of an auditor is not to be renewed unless the applicant~~

(1) In this regulation —

corresponding person means a person under the law of another Australian jurisdiction with functions that correspond or substantially correspond to the CEO's functions under the Act;

corresponding report means a report prepared under the law of another Australian jurisdiction that corresponds or substantially corresponds to a mandatory auditor's report.

(2) If an auditor applies for renewal of accreditation under regulation 44, the CEO must renew the accreditation if —

(a) the CEO is satisfied that the auditor complies with the requirements set out in regulation 39(1)(a) to (e); and

(b) the auditor has not been convicted of an offence under section 11(3), 70(3), 71 or 74(2) of the Act; and

(c) the CEO does not consider it appropriate to refuse to renew the accreditation because —

(i) a ground set out in regulation 48(2)(a) to (da) is made out in respect of the auditor; or

(ii) the auditor has not provided a mandatory auditor's report to the CEO, or a corresponding report to a corresponding person, during the auditor's most recent term of accreditation;

and

(d) the auditor has paid to the relevant CEO the fee set out in Schedule 2 item 5 to for the CEO term of the accreditation.

~~46. Refusal to renew accreditation in certain circumstances~~

~~(1) The CEO must refuse to renew the accreditation of an applicant~~

~~(a) if the CEO is no longer satisfied that the applicant complies with the requirements of regulation 39; or~~

~~(b) if the applicant been convicted of an offence under the Act section 11(3), 70, 71 or 74(2).~~

~~(2) The CEO may refuse to renew~~ (3) If the CEO renews the accreditation of an applicant ~~if the applicant has failed to produce at least one report which~~ auditor under subregulation (2), the CEO must set a new term of accreditation, which must not be longer than 5 years.

~~(a) is a mandatory auditor's report or a report undertaken in another jurisdiction which is of a similar status in that jurisdiction to a mandatory auditor's report; and~~

~~(b) has been completed and submitted under the Act, or the relevant legislation of the other jurisdiction, since the auditor was accredited, or the accreditation was last renewed, whichever is the later in time.~~

~~(3) Nothing in this regulation limits or otherwise affects the exercise of the discretion of the CEO to refuse to renew the accreditation of an auditor on other grounds.~~

~~(4) This regulation is subject to regulation 49 and 50.~~

(4) The term set by the CEO begins on the day after the day on which the auditor's most recent term of accreditation expires.

(5) The CEO must give to the auditor written notice specifying the term set by the CEO.

[Regulation 45 inserted: SL 2022/99 r. 13.]

46. Identity card must be returned if person ceases to be accredited

(1) A person who ceases to be accredited as an auditor must return to the CEO the written authority given under section 70(1) of the Act.

Penalty for this subregulation: a fine of \$1 000.

(2) However, subregulation (1) does not apply to a person who is taken not to be accredited as an auditor under regulation 51(1).

[Regulation 46 inserted: SL 2022/99 r. 13.]

Division 1A — Disciplinary matters

[Heading inserted: SL 2022/99 r. 14.]

47. Cancellation of accreditation ~~in certain circumstances~~ on conviction for offence

(1) The CEO must cancel the accreditation of an auditor if the auditor has been convicted of an offence under the Act section 11(3), 70,~~(3)~~, 71 or 74(2).

~~(2) The CEO may cancel the accreditation of an auditor if —~~

~~(a) the terms of the professional indemnity insurance policy in respect of which the CEO was satisfied under regulation 39(d) has been changed in a material particular; or~~

~~(b) the auditor no longer holds a professional indemnity insurance policy that the CEO considers appropriate, or such a policy is no longer held in respect of the auditor.~~

~~(3) Nothing in this regulation limits or otherwise affects the exercise of discretion of the CEO to cancel the accreditation of an auditor on other grounds.~~

~~(4) This regulation is subject to regulation 49 and 50.~~

~~[(2)-(4) deleted]~~

~~[Regulation 47 amended: SL 2022/99 r. 15.]~~

48. Accreditation may be cancelled, or suspended ~~or not renewed~~ in other circumstances

(1) The CEO may by written notice, on a ground set out in subregulation (2) —

- (a) suspend the accreditation of an auditor for a fixed period specified in the notice; or
- (b) cancel the accreditation of an auditor; ~~or~~

~~(c) refuse to renew the accreditation of an auditor,~~
~~if any of the grounds for doing so referred to in subregulation (2) applies in respect of the auditor.~~

(2) The grounds referred to in subregulation (1) are as follows —

- (a) the auditor has contravened the Act or these regulations, including regulation 32A(4), 57, 59A or 59B;
- (b) the auditor has contravened a condition, or failed to act in accordance with a limitation, specified in the authority given to the auditor under the Act section 70(1);
- (c) the auditor has contravened the EP Act or any regulations made under that Act;
- (d) the auditor has failed to take into account any relevant guideline;

(da) the auditor has failed to competently carry out their functions as an auditor, including by failing to obtain assistance from a supporting expert in circumstances in which obtaining the assistance was necessary;

(db) the auditor is not covered by auditor insurance;

(e) the CEO is no longer satisfied that the auditor ~~meets~~complies with the requirements ~~of~~set out in regulation 39-~~(1)~~.

~~(3) Nothing in this regulation limits or otherwise affects the exercise of the discretion of the CEO to suspend, cancel or refuse to renew the accreditation of an auditor on other grounds.~~

~~(4) This regulation is subject to regulations 49 and 50.~~

[(3), (4) deleted]

[Regulation 48 amended: SL 2022/99 r. 16.]

49. Notice of proposed cancellation, suspension or refusal to renew accreditation

(1) Before the CEO cancels, suspends or refuses to renew the accreditation of an auditor under regulation ~~46, 45(2)(a), (b) or (c)~~, 47 or 48, the CEO must give the auditor written notice informing the auditor of the proposed action.

(2) Notice under subregulation (1) must —

(a) specify the ground, or grounds, for the proposed action; and

(b) invite the auditor to make submissions in relation to the proposed action; and

(c) specify that representation concerning the proposed action may be made in writing to the CEO within 14 days after the notice is given; and

(d) specify the address where submissions are to be lodged.

(3) The CEO ~~is~~must not ~~to~~ cancel, suspend or refuse to renew the accreditation of an auditor under regulation ~~46, 45(2)(a), (b) or (c)~~, 47 or 48 without considering any representations received within the period referred to in subregulation (2)(c).

- (4) If the CEO cancels, suspends or refuses to renew the accreditation of an auditor the CEO must give notice in writing of that decision to the auditor.

~~(5) This regulation is subject to regulation 50.~~

~~[(5) deleted]~~

~~[Regulation 49 amended: SL 2022/99 r. 17.]~~

50. Suspension of accreditation while decision is made

- (1) When giving notice to an auditor under regulation 49(1) of a proposal to cancel or refuse to renew the accreditation of an auditor, the CEO may by that notice, suspend the auditor's accreditation for a period not exceeding 14 days after the day on which the notice is given while a decision on the proposal is being made.

- (2) Accreditation may be suspended under subregulation (1) only ~~where~~if —

(a) the auditor has been convicted of an offence under the Act section 11(3), 70,~~(3)~~, 71 or 74(2); or

~~(b) the terms of the professional indemnity insurance policy in respect of which the CEO was satisfied under regulation 39(d) has been changed in a material particular; or~~

~~(c) the auditor no longer holds a professional indemnity insurance policy that the CEO considers appropriate, or such a policy is no longer held in respect of the auditor; or~~

~~[(b), (c) deleted]~~

(d) the CEO is of the opinion that the reason for the cancellation or the refusal to renew the accreditation is of such a serious nature that immediate suspension of the accreditation is necessary.

~~[Regulation 50 amended: SL 2022/99 r. 18.]~~

51. Effect of suspension

- (1) A person whose accreditation is suspended is to be taken not to be accredited as an auditor during the period of the suspension.
- (2) If the CEO is satisfied that the grounds for the suspension do not or no longer exist, the CEO must lift the suspension immediately by giving written notice to the auditor.

52. ~~Application~~No application for re-accreditation ~~not to be made until after for 3 years from following refusal to renew or cancellation or refusal of renewal~~

A person ~~whose~~who is refused renewal of accreditation as an auditor—

- ~~_____ (a) is not renewed~~ under regulation ~~46(1-45(2)(b);)~~ or
- ~~_____ (b) whose accreditation~~ is cancelled under regulation ~~47(1);~~
- ~~_____)~~ cannot apply for accreditation for 3 years after the ~~accreditation was cancelled~~refusal or ~~not renewed~~cancellation.

~~53. Identity card to be returned if person ceases to be accredited~~

~~_____ On ceasing to be accredited as an auditor, the person is to return to the CEO the authority given under the Act section 70(1).~~

~~_____ Penalty: a fine of \$1 000.~~

~~_____ [Regulation 52 inserted: SL 2022/99 r. 19.]~~

~~[53. Deleted: SL 2022/99 r. 19.]~~

54. No refund of accreditation fee on cancellation or suspension

An accreditation fee, referred to in Schedule 2 item 5, is not refundable if the accreditation is cancelled or suspended.

Division 1B — Notification requirements

[Heading inserted: SL 2022/99 r. 20.]

55. Auditor ~~is to~~ must notify CEO in certain circumstances

- (1) An auditor ~~is to~~ must notify the CEO in writing within 7 days —
- (a) of any change in circumstance which may affect the auditor's eligibility for accreditation as set out in regulation 39~~;(1)~~; or
 - (b) if any substantially similar accreditation held by the auditor under a written law of another State or Territory about the contamination of land is cancelled, suspended or not renewed; or
 - (c) if the auditor becomes —
 - (i) unemployed; or
 - (ii) self-employed; or
 - (iii) employed by an employer other than the employer that the auditor was employed by when the auditor became accredited;
- or
- (d) in the case of an auditor who satisfies the CEO that the auditor has access to a supporting expert — if the auditor no longer has access to ~~persons with complementary theoretical and practical knowledge and skills which would assist the person to carry out the functions of an auditor,~~
~~within 7 days after the day on which the change occurs~~expert.

Penalty for this subregulation: a fine of \$1 000.

- (2) An auditor ~~is to~~ must notify the CEO if the auditor becomes aware of any information that is materially relevant to the person's accreditation as an auditor that the person has not

disclosed to the CEO, within 7 days after the day on which the auditor became so aware.

Penalty for this subregulation: a fine of \$1 000.

- (3) An auditor ~~is to notify the CEO in writing~~must, within 7 days after the day on which the auditor is engaged to provide a mandatory auditor's report, ~~give to the CEO a written notice —~~

~~(4) Notification under subregulation (3) is to contain —~~

~~(a) —~~ (a) stating that the auditor has been engaged to provide a report; and

(b) containing a description of the location and extent of the site in respect of which the auditor has been engaged to provide a~~the~~ report, sufficient to identify it; and

~~(b) —~~ (c) containing the name of the person who engaged the auditor to provide the report.

Penalty for this subregulation: a fine of \$1 000.

[(4) deleted]

[Regulation 55 amended: SL 2022/99 r. 21.]

56. Auditor ~~to~~must notify CEO if ~~professional indemnity insurance not maintained~~

- (1) ~~An~~If an auditor ~~is~~ceases to ~~give written notice to the CEO if —~~

~~(a) — any term of the professional indemnity~~be covered by auditor insurance ~~policy in respect of which the CEO was satisfied under regulation 39(d) is changed in a material particular; or~~

~~(b) — the auditor no longer holds that policy, or such a policy is no longer held in respect of,~~ the auditor;

~~—~~ must, as soon as ~~is~~ possible after the auditor becomes aware that ~~the situation has occurred,~~they have ceased to be covered by the insurance, give written notice to the CEO stating —

(a) that the auditor is no longer covered by the insurance; and

(b) the day on which the auditor ceased to be covered by the insurance.

Penalty for this subregulation: a fine of \$1 000.

- (2) If an auditor carries out a function as an auditor in reliance on assistance provided by a supporting expert and the auditor becomes aware that ~~a situation referred to in subregulation (1)(a) or (b)~~ the expert is likely to occur ~~not covered by supporting expert insurance,~~ the auditor ~~is to~~ must give written notice to the CEO.

~~(3) Notice to the CEO under this regulation is to give details, as is relevant, of —~~

~~(a) the change, or as soon as possible change, to the policy; or~~

~~(b) the date from which the policy ceased, or will cease, to have effect and details of any new policy of professional indemnity insurance held by the auditor.~~

Penalty for this subregulation: a fine of \$1 000.

[Regulation 56 inserted: SL 2022/99 r. 22.]

Division 2 — Functions of auditors

57. Mandatory auditor's reports to be provided to CEO

An auditor is to give a copy of each mandatory auditor's report produced by the auditor to the CEO not later than 7 days after the auditor gives the report to the person who engaged the auditor to produce the report.

Penalty: a fine of \$1 000.

58. Functions of auditors

The functions of an auditor are to produce —

- (a) mandatory auditor's reports; or

(b) other reports on audits of sites,

and carrying out, or coordinating, any work for, or related to, those reports.

59. Title of auditor ~~to~~ must be used only when carrying out functions of ~~an~~ auditor

An auditor ~~may~~ must not use —

- (a) the title “contaminated sites auditor”; or
- (b) the title “accredited contaminated sites auditor”; or
- (c) any other phrase tending to import the meaning that the person is accredited as an auditor under the Act,

other than in relation to carrying out a function of an auditor.

Penalty: a fine of \$1 000.

[Regulation 59 amended: SL 2022/99 r. 23.]

59A. Auditor must have insurance

An auditor must not carry out a function as an auditor unless the auditor is covered by insurance —

- (a) for the auditor’s civil liability for anything done or omitted in relation to carrying out the function; and
 - (b) against which a claim is able to be made —
 - (i) while the person is an auditor; and
 - (ii) for at least 7 years after the person ceases to be an auditor;
- and
- (c) that provides cover of not less than \$5 000 000 for a claim.

Penalty: a fine of \$1 000.

[Regulation 59A inserted: SL 2022/99 r. 24.]

59B. Supporting expert must have insurance

An auditor must not carry out a function as an auditor in reliance on assistance from a supporting expert unless the supporting expert is covered by insurance —

- (a) that is in effect in respect of the expert's civil liability for anything done or omitted in relation to providing the assistance; and
- (b) that provides cover of not less than \$5 000 000 for a claim.

Penalty: a fine of \$1 000.

[Regulation 59B inserted: SL 2022/99 r. 24.]

59C. Auditor must submit annual reports

(1) Before the end of February each year, an auditor must submit a written report in a form approved by the CEO setting out the following information in relation to the previous calendar year —

- (a) details of each audit carried out by the auditor, regardless of whether the audit was completed;
- (b) details of each supporting expert that provided assistance to the auditor and the assistance provided;
- (c) details of the auditor's auditor insurance;
- (d) any other information relevant to establishing the risk to public health and the environment from the functions carried out by the auditor.

Penalty for this subregulation: a fine of \$1 000.

(2) The report must be accompanied by a certificate of currency for the auditor's auditor insurance.

Penalty for this subregulation: a fine of \$1 000.

[Regulation 59C inserted: SL 2022/99 r. 24.]

60. Auditors to take guidelines into account

An auditor is to take into account the guidelines when carrying out any function of an auditor.

61. Code of conduct — Schedule 3

When carrying out any function as an auditor, an auditor is to comply with the code of conduct set out in Schedule 3.

62. Conflict of interest

- (1) If, when carrying out any function as an auditor, a potential or actual conflict of interest, whether or not in a situation set out in subregulation (2) or the code of conduct, comes to the auditor's knowledge, the auditor is to notify the CEO, and each person who has engaged the auditor to perform the function, as soon as is practicable after the conflict, or potential conflict, comes to the auditor's knowledge.

Penalty: a fine of \$1 000.

- (2) In assessing if a conflict of interest has arisen, an auditor is to take into account, amongst other things, the likelihood that a person employed or engaged by the auditor has a particular interest and could be influenced, or might appear to be influenced, in performing the work the person is employed or engaged to perform.

Part 10 — Miscellaneous

62A. Approved forms must be published on website

The CEO must ensure that —

- (a) a form approved by the CEO under regulation 36(1)(a), 44(2)(a) or 59C(1) is published on a website maintained by or on behalf of the Department; and
- (b) a form approved by the committee under regulation 24(1) is published on a website maintained by or on behalf of the committee.

[Regulation 62A inserted: SL 2022/99 r. 25.]

63. Transfer of responsibility for remediation to the State — section 30(1)(b)

For the purposes of the Act section 30(1)(b), the circumstances prescribed under which a person responsible for remediation of a site may transfer responsibility for remediation to the State are that —

- (a) land comprising all, or part, of the relevant site is to be transferred to the State, or a public authority nominated by the Minister; and
- (b) the person who is responsible for remediation is the owner of the land that is to be transferred under paragraph (a).

64. Prescribed rates of interest — sections 54(3), 55(1) and (2) and 56(1)

The rate of interest for the purposes of the Act sections 54(3), 55(1) and (2) and 56(1) is —

- (a) the rate of interest prescribed under the *Civil Judgments Enforcement Act 2004* section 8(1)(a); or
- (b) 6% per annum,

whichever is the higher rate.

65. Appeal to the committee referred to in section 79(1)

- (1) A person lodging written notice of an appeal referred to in the Act section 79(1) is to pay to the committee the fee set out in Schedule 2 item 6.
- (2) The committee may reduce, waive or refund, in whole or in part, the fee referred to in subregulation (1) if it considers it appropriate to do so in the circumstances of the case.
- (3) A person who has lodged an appeal referred to in the Act section 79(1) may withdraw the appeal by giving written notice to that effect to the committee.

**66. Publication of decision of appeal under the Act
Part 8 — section 83(2)**

For the purposes of the Act section 83(2), details of a decision by the committee under the Act Part 8 must be published on a website maintained by or on behalf of the committee.

[Regulation 66 inserted: SL 2022/37 r. 6.]

[67. Deleted: SL 2022/37 r. 6.]

Schedule 1 — Forms

Form 1

[r. 6]

Contaminated Sites Act 2003, section 11

REPORT OF A KNOWN OR SUSPECTED CONTAMINATED SITE

PERSON REPORTING THE SITE

Name

Address Postcode

Phone Fax

Are you* —

- (a) an owner of the site;
- (b) an occupier of the site;
- (c) an auditor of the site;
- (d) a person who knows, or suspects, that he or she has caused, or contributed to, the contamination of the site.

If not, specify your relationship with the site

(*Delete as appropriate.)

DETAILS ABOUT THE SITE

Lot No.and/or Street No. Street name

Suburb Postcode

Local Government

Description of land (including copy of certificate of title¹)

.....

Complete **either** Part A **or** Part B:

PART A:

SUSPECTED CONTAMINATION

Date on which you first suspected that the site was contaminated

Type of contamination you suspect

.....
.....

Suspected source of contamination

.....
.....

Where is the suspected contamination? (i.e. soil, groundwater, surface water)

.....
.....

Reasons why contamination is suspected

.....
.....

Previous activity, or activities and/or land use, or uses (if known)

.....
.....

Current activity, or activities and/or land use, or uses (if known)

.....
.....

Future activity, or activities and/or land use, or uses (if known)

.....
.....

Is a licence under the *Environmental Protection Act 1986* Part V in force, or ever been in force, in respect of any part of the site?

OR

PART B:

KNOWN CONTAMINATION

Known contaminants

Date on which you first knew that the site was contaminated

Suspected source of contamination

.....
.....

Where is the contamination? (i.e. soil, groundwater, surface water)

.....
.....
Previous activity, or activities and/or land use, or uses (if known)
.....

Current activity, or activities and/or land use, or uses (if known)
.....

Future activity, or activities and/or land use, or uses (if known)
.....

Is a licence under the *Environmental Protection Act 1986* Part V in force, or ever been in force, in respect of any part of the site?

Details of investigations undertaken to confirm the presence of contamination (where investigations have been reported, list report title, author and date, and attach copies to this form)

.....
.....
.....
Details of any remediation undertaken or planned

Note:

Under the Contaminated Sites Act 2003, it is an offence to —

- *report a site maliciously and without reasonable grounds to believe or suspect that the site is contaminated (section 11(9)); or*
- *make a statement in making this report which you know is false or misleading in a material particular (section 94); or*
- *make a statement in making this report which is false or misleading in a material particular, with reckless disregard as to whether the statement is false or misleading in a material particular (section 94); or*
- *provide, or cause to be provided, in making this report information that you know is false or misleading in a material particular (section 94); or*
- *provide, or cause to be provided, in making this report information that is false or misleading in a material particular, with reckless disregard as to whether or not the information is false or misleading in a material particular (section 94); or*
- *fail to disclose, or cause a failure to disclose, all information which you know is materially relevant in making this report (section 94).*

If this report is being made by an individual:

Signature of person making the report Date

Full name and title

Address and phone numbers

If this report is being made by a body corporate, it may be signed on behalf of the body corporate by an authorised officer and need not be made under its seal:

I,,

(name) (position)

am authorised by [*insert name of body corporate*] to make this report on behalf of that body corporate.

Signature of person Date

Full name and title

Address and phone numbers

Footnote:

¹ *Not required unless this form is submitted by a person under a duty to report the site under the Contaminated Sites Act 2003 section 11(4).*

Form 2

[r. 8]

Contaminated Sites Act 2003, section 21

REQUEST FOR A SUMMARY OF RECORDS IN RESPECT OF LAND
PERSON REQUESTING SUMMARY OF RECORDS

Full name

Address Postcode

Phone Fax

Email

DESCRIPTION OF LAND TO WHICH THE REQUEST RELATES

Lot No. *and/or* Street No. Street name

Suburb Postcode

Description of land (including the certificate of title reference number)

.....

Local Government

Type of facility currently occupying site

.....

Name by which site is known locally

.....

TYPE OF SUMMARY OF RECORDS REQUESTED

Basic summary of records (r. 9)

Includes —

- the classification and reasons for the classification;
- any restrictions on the use of a site that comprises all, or part of the land; and
- details of notices given under the Act Part 4.

Detailed summary of records (r. 10)

Includes —

- basic summary of records;
- copies of any current certificate of contamination audit; and
- titles, authors and dates of any reports.

Form 3

[r. 29]

Contaminated Sites Act 2003, section 62

REQUEST FOR A CERTIFICATE OF CONTAMINATION AUDIT

PERSON REQUESTING CERTIFICATE OF CONTAMINATION AUDIT

Person's full name ABN

Address Postcode

Phone Fax

Email

Contact person's name and position (if the person making the request is not a natural person)

Is the person making this request —

- the owner of the land;

- the occupier of the land;
- a person responsible for remediation of a site of which the land comprises all, or part;
- a person on whom a notice under the *Contaminated Sites Act 2003* Part 4 in respect of the land is binding.*

(* Delete as appropriate.)

Note:

If the person making this request for a certificate of contamination audit is not the owner of the land to which the request relates then that person is to give a copy of this form to the owner (or owners) within 14 days after making the request (Contaminated Sites Act 2003 section 62(2)).

OWNER

Owner's full name ABN
Address Postcode
Phone Fax
Email
Contact person's name and position (if owner is not a natural person)
.....

OCCUPIER

Occupier's full name ABN
Address Postcode
Phone Fax
Email
Contact person's name and position (if occupier is not a natural person)
.....

DESCRIPTION OF LAND TO WHICH THE REQUEST RELATES

Lot No. and/or Street No. Street name
Suburb Postcode
Description of land (including copy of certificate of title)
.....
.....
Local Government
Land co-ordinates
Current zoning under a written law

Department of Environment reference number (if known)

ASSESSMENT OF LAND

Contaminants of concern

Extent of contamination

Details of reports on investigations undertaken on the land

(List report title, author and date, and attach copies to this form, unless copies have been provided previously)

Details of remediation works undertaken (List report title, author and date, and attach copies to this form, unless copies have been provided previously)

OTHER RELEVANT INFORMATION

List any additional information or documents attached to this form

Note:

Under the Contaminated Sites Act 2003 section 94, it is an offence to —

- *make a statement in connection with this request which you know is false or misleading in a material particular; or*
- *make a statement in connection with this request which is false or misleading in a material particular, with reckless disregard as to whether the statement is false or misleading in a material particular; or*
- *provide, or cause to be provided, in connection with this request information that you know is false or misleading in a material particular; or*
- *provide, or cause to be provided, in connection with this request information that is false or misleading in a material particular, with reckless disregard as to whether or not the information is false or misleading in a material particular; or*
- *fail to disclose, or cause a failure to disclose, all information which you know is materially relevant in connection with this request.*

If this request is being made by an individual:

Signature of person making the request Date

Full name and title

Address and phone numbers

If this request is being made by a body corporate, it may be signed on behalf of the body corporate by an authorised officer and need not be made under its seal:

I,,

(name) (position)

am authorised by [*insert name of body corporate*] to make this request on behalf of that body corporate.

Signature of person Date

Full name and title

Address and phone numbers

Form 4

[r. 30]

Contaminated Sites Act 2003, section 63(5)

CERTIFICATE OF CONTAMINATION AUDIT

PERSON WHO HOLDS THIS CERTIFICATE

This certificate of contamination audit is given to
(name of person who requested certificate)

of
(address of person who requested certificate)

on the day of 20..... .

LAND THIS CERTIFICATE IS GIVEN IN RESPECT OF

The certificate is given in respect of the following land —
.....

The classification of the site(s), in accordance with the *Contaminated Sites Act 2003* section 15(3), of which the land comprises all, or part, is as follows —

.....
and the reasons for such classification(s) are as follows —

.....

The nature and extent of all identified contamination of the land is as follows —

.....

If a classification specified in this certificate is —

- (a) *contaminated — remediation required*; or
- (b) *contaminated — restricted use*; or
- (c) *remediated for restricted use*,

then the restrictions on the use of the site are as follows —

.....

.....

.....

Chief Executive Officer

Note:

- *A copy of this certificate of contamination audit will be provided to each owner of the land, and may also be provided to an occupier of the land (Contaminated Sites Act 2003 section 63(6)).*
- *This certificate of contamination audit supersedes any earlier certificate of contamination audit given in respect of the same land (Contaminated Sites Act 2003 section 63(8)).*
- *Note that where the classification applying to the land is —*
 - (a) *contaminated — remediation required*; or
 - (b) *contaminated — restricted use*; or
 - (c) *remediated for restricted use*,

or where a notice under the Contaminated Sites Act 2003 Part 4, has been given, and a memorial lodged, in respect of the land then a disclosure in the form of Form 6 is to be given by each owner of the land to a person at least 14 days before the completion of a transaction which would result in the person becoming an owner, mortgagee or lessee of the land described in this form and a copy of this disclosure is to be given to the Chief Executive Officer (Contaminated Sites Act 2003 section 68).

Form 5

[r. 33]

Contaminated Sites Act 2003, section 64

DISCLOSURE STATEMENT

OWNER

Owner's full name ABN
Address Postcode
Phone Fax

THE OWNER'S LAND

Lot No. and/or Street No. Street name
Suburb Postcode
Local Government
Description of land (including copy of certificate of title)
.....
.....

LAND THAT COMPRISES ALL OR PART OF AN AFFECTED SITE (WHERE THE OWNER'S LAND IS A SOURCE SITE)

Lot No. and/or Street No. Street name
Suburb Postcode
Local Government
Description of land (including copy of certificate of title)
.....

CONTAMINATION OF LAND

Has a report under the *Contaminated Sites Act 2003* section 11 been made in respect of the land? Yes/No

If a report under section 11 has been made, when was the report made?

Is the site to be identified and reported under a programme for the identification and reporting of sites approved under the *Contaminated Sites Act 2003* section 12? Yes/No

If so, on what date was the programme approved by the Chief Executive Officer?

Contaminants of concern

Previous activity, or activities and/or land use, or uses (if known)
.....

Current activity, or activities and/or land use, or uses (if known)
.....

Extent of contamination

Details of reports on investigations undertaken on the land. (List report title, author and date, and attach copies to this form, unless copies have been provided previously.)
.....
.....

CONTAMINATION FOR WHICH EXEMPTION IS SOUGHT

Contamination for which an exemption is sought

(Provide details of the contamination for which you seek an exemption certificate under the Contaminated Sites Act 2003 section 65 — this may be some or all of the contamination described above under “Contamination of land”.)

Extent of contamination

Reasons why you believe that you are entitled to an exemption certificate under the *Contaminated Sites Act 2003* section 65 in respect of the contamination

.....

List any documents attached to this statement in support of the reasons set out on this statement.

Note:

Under the Contaminated Sites Act 2003 section 94, it is an offence to —

- *make a statement in making this disclosure statement which you know is false or misleading in a material particular; or*
- *make a statement in making this disclosure statement which is false or misleading in a material particular, with reckless disregard as to whether the statement is false or misleading in a material particular; or*
- *provide, or cause to be provided, in making this disclosure statement information that you know is false or misleading in a material particular; or*

- *provide, or cause to be provided, in making this disclosure statement information that is false or misleading in a material particular, with reckless disregard as to whether or not the information is false or misleading in a material particular; or*
- *fail to disclose, or cause a failure to disclose, all information which you know is materially relevant to this disclosure statement.*

If this disclosure statement is being made by an individual:

I declare that —

- I,, the person described in this statement, am the owner of the land described in this statement under the heading “The Owner’s Land” (and referred to in this declaration as “my land”) and was the owner of that land on the [insert date, once known]; and
- the contamination for which I am seeking an exemption certificate was not caused, or contributed to, by an action of mine; and
- I did not fail to prevent the contamination of my land, as far as it was reasonably within my control to prevent that contamination; and
- my land was contaminated at the time I became an owner of the land and, at that time, I did not know, or suspect, and could not reasonably have known or suspected, that the land was contaminated.

Signature of person making the statement Date

Full name and title

Address and phone numbers

OR If this disclosure statement is being made by an owner which is not an individual, the declaration may be made on behalf of the owner by an individual authorised to do so. If the owner is a body corporate, it need not be made under its seal:

I declare that —

- the body corporate [or *insert name of other owner if appropriate*] described in this statement is the owner of the land described in this statement under the heading “The Owner’s Land” (and referred to in this declaration as the body’s land) and was the owner of that land on the [insert date, once known]; and
- the contamination for which an exemption certificate is sought was not caused, or contributed to, by an action of the body described in this statement; and

- that body did not fail to prevent the contamination of the body's land, as far as it was reasonably within its control to prevent that contamination; and
- the body's land was contaminated at the time the body became an owner of the land and, at that time, it did not know, or suspect, and could not reasonably have known or suspected, that the land was contaminated.

I,,

(name)

(position)

am authorised by [*insert name of body corporate or other owner*] to make this disclosure statement on behalf of that owner.

Signature of person Date

Full name and title

Address and phone numbers

Form 6

[r. 34]

Contaminated Sites Act 2003, section 68

LAND OWNER'S DISCLOSURE BEFORE COMPLETION OF LAND TRANSACTION

Note:

Under the Contaminated Sites Act 2003 section 68 this disclosure is to be given to a person at least 14 days before the completion of a transaction which would result in the person becoming an owner, mortgagee or lessee of the land described in this form and a copy of this disclosure is to be given to the Chief Executive Officer.

OWNER

Owner's full name ABN

Address Postcode

Phone Fax

LAND

Lot No. and/or Street No. Street name

Suburb Postcode

Local Government

Description of land (including copy of certificate of title)

CLASSIFICATION AND/OR NOTICE UNDER THE ACT PART 4

As at, 20....., the land described in this form comprised all, or part, of a site classified under the *Contaminated Sites Act 2003* as —

- (a) *contaminated — remediation required;*
- (b) *contaminated — restricted use;*
- (c) *remediated for restricted use.**

(* Delete as appropriate.)

AND/OR

As at, 20....., a notice under the *Contaminated Sites Act 2003* Part 4 has been given, and a memorial lodged, in respect of the land described in this form. The notice is —

- (a) an investigation notice;
- (b) a clean up notice;
- (c) a hazard abatement notice.*

(* Delete as appropriate.)

CONTAMINATION

The nature and extent of all identified contamination of the land described in this form is as follows —

.....
If, at the date set out in this form the land described in this form comprised all, or part, of a site classified under the *Contaminated Sites Act 2003* as —

- (a) *contaminated — remediation required; or*
- (b) *contaminated — restricted use; or*
- (c) *remediated for restricted use,*

then the restrictions on the use of the site are as follows —

Note:

Under the Contaminated Sites Act 2003 section 94 it is an offence to —

- *make a statement in making this disclosure which you know is false or misleading in a material particular; or*

- *make a statement in making this disclosure which is false or misleading in a material particular, with reckless disregard as to whether the statement is false or misleading in a material particular; or*
- *provide, or cause to be provided, in making this disclosure information that you know is false or misleading in a material particular; or*
- *provide, or cause to be provided, in making this disclosure information that is false or misleading in a material particular, with reckless disregard as to whether or not the information is false or misleading in a material particular; or*
- *fail to disclose, or cause a failure to disclose, all information which you know is materially relevant to this disclosure.*

If this disclosure is being made by an individual:

Signature of person making the disclosure Date

Full name and title

Address and phone numbers

OR if this disclosure is being made by an owner which is not an individual, it may be signed on behalf of the owner by an individual authorised to do so. If the owner is a body corporate, it need not be made under its seal:

I,,
(name) (position)

am authorised by [*insert name of body corporate or other owner*] to make this disclosure on behalf of that owner.

Signature of person Date

Full name and title

Address and phone numbers

Schedule 2 — Fees

Item	Fee	Provision	Amount (fee units)
1.	Basic summary of records	r. 8(1)(c)(i)	2
2.	Detailed summary of records	r. 8(1)(c)(ii)	20
3.	Certificate of contamination audit	r. 29(2)(f)	275
4.	Application fee for auditor (other than auditor accredited under r. 37)	r. 36(1)(c)	20
5.	Accreditation fee for auditor	r. 39(1)(f) , 40(1) and r. 45(2)(d)	250, per year of accreditation
<u>5A.</u>	<u>Late renewal application fee</u>	<u>r. 44(2)(d)</u>	<u>10</u>
6.	Fee to lodge appeal	r. 65	3

[Schedule 2 amended: SL 2022/99 r. 26.]

Schedule 3 — Code of conduct for auditors

[r. 61]

1. Conflict of interest

- (1) An auditor must not hold any financial or other interest, either directly or indirectly, and must not give any undertaking, that could directly or indirectly compromise the performance by the auditor of his or her duties under this Act or the EP Act.
- (2) An auditor must ensure that anyone engaged by the auditor does not hold any financial or other interest, either directly or indirectly, and does not give any undertaking, that could directly or indirectly compromise the performance by the auditor of his or her duties under this Act or the EP Act.

2. Auditor who has worked on a site is not to audit it

An auditor is not to audit a site or to produce a report on an audit of a site, or undertake to do so, if the auditor is or has been —

- (a) involved in investigating, managing or remediating that site;
or
- (b) a person responsible for remediation of that site; or
- (c) an owner or occupier of that site,

or is employed by a person who or which is, or has been, involved in investigating, managing or remediating that site.

3. Acceptance of gifts or benefits

An auditor must not accept a gift, donation or benefit, or allow any person employed or engaged by the auditor to do so, if by doing so it may appear as intended or likely to cause the auditor, or a person employed or engaged by the auditor, to undertake his or her duties in a particular way, or deviate from a proper course of action.

4. Personal and professional behaviour

An auditor must perform any duties associated with his or her position diligently, impartially and conscientiously, to the best of the auditor's ability.

Notes

This is a compilation of the *Contaminated Sites Regulations 2006* and includes amendments made by other written laws. For provisions that have come into operation see the compilation table. ~~For provisions that have not yet come into operation see the uncommenced provisions table.~~

Compilation table

Citation	Published	Commencement
<i>Contaminated Sites Regulations 2006</i>	8 Aug 2006 p. 2913-74	1 Dec 2006 (see r. 2 and <i>Gazette</i> 8 Aug 2006 p. 2899)
<i>Environment Regulations Amendment (Public Health) Regulations 2016 Pt. 3</i>	10 Jan 2017 p. 191-7	24 Jan 2017 (see r. 2(b) and <i>Gazette</i> 10 Jan 2017 p. 165)
<i>Contaminated Sites Amendment Regulations 2022</i>	SL 2022/37 15 Mar 2022	r. 1 and 2: 15 Mar 2022 (see r. 2(a)); Regulations other than r. 1 and 2: 16 Mar 2022 (see r. 2(b))

Uncommenced provisions table

~~To view the text of the uncommenced provisions see *Subsidiary legislation as made on the WA Legislation website*.~~

Citation	Published	Commencement
<i>Contaminated Sites Amendment Regulations (No. 2) 2022</i> r. 3-26	SL 2022/99 17 Jun 2022	r. 1 and 2: 17 Jun 2022 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Jul 2022 (see r. 2(b))