

Queensland Auditor Handbook for Contaminated Land

Module 5: Auditor's functions

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1 Introduction

The Queensland government has established a scheme for giving approval to auditors to undertake certain functions on behalf of the government related to the regulation of contaminated land. This is because the investigation and management of contaminated land is a complex and highly specialised field in which only a relatively small number of people have sufficient expertise. In Australia, more people with sufficient expertise work in private industry than for government agencies. Consequently, it is both efficient and practical for the Queensland government to rely on the independent advice of recognised experts in the contaminated land industry when regulating sites that are, or may be, contaminated.

This module of the auditor handbook describes the functions an auditor for contaminated land performs under s. 568(b) of the *Environmental Protection Act 1994* (EP Act). It also outlines the interactions between an auditor and their client, the consultant(s) who undertake site investigations, and the regulatory authority. Furthermore, it provides some background information to the community about how contaminated land may be investigated, managed, and regulated.

2 The regulation of contaminated land in Queensland

The regulation of contaminated land in Queensland includes the listing of parcels of land on either the environmental management register (EMR) or the contaminated land register (CLR). The Department of Environment and Science (DES) would initially list a parcel of land on the EMR if it has been used for a *notifiable activity* and/or it is contaminated. If the department finds that land has contamination that should be remediated to prevent serious environmental harm, or the land is *prescribed contaminated land*, it may list the land on the CLR.

The listing of parcels of land on the EMR or CLR serves a purpose when someone wants to develop the land for a new use or activity—the legal term is a *material change of use*. The Planning Regulation 2017 (Schedule 10, Part 4, Div. 1, s. 6) states a material change of use of premises is assessable development if:

- a site is on the EMR or CLR; and
- the premises are not being used for a *sensitive land use*; and
- the material change of use involves a sensitive land use or a commercial use involving an accessible underground facility, including for example a basement carpark, workshop or office; and
- neither the CLR nor the EMR state that the premises are suitable for the proposed use in accordance with a *site suitability statement* for the premises.

If the land is listed on either the EMR or the CLR and a material change of uses proposes a sensitive land use then the site must be assessed by a *suitably qualified person* (SQP) and a site suitability statement prepared for the proposed use.

A site suitability statement must be included in all *contaminated land investigation documents* submitted for the land. A contaminated land investigation document may be a *site investigation report*, *validation report* or a *draft site management plan* (SMP). Refer to Module 6 of the *Queensland auditor handbook for contaminated land* for the content requirements of a contaminated land investigation document. The site suitability statement must state what land use the land is suitable for. To support a 'suitable for unrestricted land use' statement the report must demonstrate that an appropriate assessment of site contamination has been conducted using current best practice, and that the land is not being used for a notifiable activity, is not affected by a hazardous contaminant and is not prescribed contaminated land. For example, a site may be suitable for unrestricted land use because an investigation has found that the previous uses or activities at the site did not cause contamination, or because the site has been successfully remediated. Only when a site suitability statement says the land is not contaminated land and is suitable for unrestricted land use may the particulars be removed from the relevant land register.

Alternatively, the particulars on the relevant land register can be amended rather than removed. One way for that to happen is if the department receives a site investigation report or validation report for the land, and the accompanying site suitability statement says the land is suitable for certain uses or activities subject to management measures described in an SMP. An SMP details how the environmental harm that might be caused by a hazardous contaminant may be managed or monitored by applying conditions to the use or development of, or activities carried out on, the land. If the department approves the site management plan, the details of the plan will be included with the particulars of the land on the EMR or CLR. All such reports, plans and statements that are submitted to the department must be accompanied by a written certification by an auditor.

The particulars in a relevant register may also be updated following notification of a notifiable activity being, or having been, carried out on the land or the presence of a hazardous contaminant.

Additional information about the regulation of contaminated land is available from the Queensland Government's website at: <https://www.qld.gov.au/environment/pollution/management/contaminated-land/>

3 Who can be an auditor

Approval to be an auditor in Queensland is a legal status that can only be granted by the chief executive of the department administering the EP Act, which is currently DES. Without that approval, a person cannot act as an auditor. It is an offence to pretend to be an auditor. Approval as an auditor is only available to individuals, not to companies. This ensures that the government can be certain who performs, and has responsibility for, the auditor's functions for each particular project.

While the EP Act does not restrict who can apply to become an auditor, as previously mentioned, only a relatively small number of people have the necessary qualifications and experience in contaminated land management to meet the requirements for approval. *Module 2: Auditor application requirements* and *Module 3: Assessment of auditor applications* of the *Queensland auditor handbook for contaminated land* provide information about the expected qualifications and experience, how to apply, and the approval process.

4 What an auditor for contaminated land does

In Queensland, an auditor for contaminated land prepares 'an auditor's certification for a contaminated land investigation document under Chapter 7, Part 8 of the *Environmental Protection Act 1994* (EP Act). That wording is taken from s. 568(b) of the EP Act. The following information explains what that means in practice.

Typically, the owner or developer of a site that is, or may be, contaminated, employs one or more specialists in the contaminated land field to investigate the site and, if necessary, undertake remediation. The specialists will include a *suitably qualified person* (SQP) (see section 7 below).

A suitably qualified person will prepare a contaminated land investigation document about the site that achieves some, or all, of the following purposes:

- investigate previous uses and activities on the land, and identify potential sources of contamination
- describe and quantify the extent of contamination the site has experienced
- determine if the land is *prescribed contaminated land*
- propose remediation/validation, and/or describe any remediation/validation that has already been undertaken
- evaluate and describe suitable uses for the land (site suitability statement)
- present evidence about whether or not the site should be listed on, removed from, or the particulars amended on, the EMR or CLR.

Section 8 of this module provides more information about contaminated land investigation documents, while section 9 provides more information about site suitability statements.

Unlike the SQP, the auditor is not one of the specialists who conducts site investigation or remediation activities, or prepares the contaminated land investigation document(s). Rather, an auditor independently evaluates the contaminated land investigation document and its site suitability statement prepared by an SQP, and certifies that the document complies with the content requirements of ss. 389(2) or 389(3) of the EP Act. Section 5 of the EP Act requires the auditor to perform their function in the way that best achieves the object of the EP Act. The object of the EP Act is 'to protect Queensland's environment while allowing for development that improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends (*ecologically sustainable development*)'.

In effect, the auditor independently checks and certifies that the document adequately and accurately presents the facts about the contaminated land, its surrounding area, and the environmental harm that might be caused by the contamination if certain uses or activities occur. When the certification also relates to a draft SMP, the auditor also checks that the proposed objectives, methods and measures stated in the plan are appropriate for the proposed land use. The government then relies on the auditor's certification to determine whether or not the land should be listed on, or removed from, the EMR or CLR, and what would be suitable uses or activities on the land.

The auditor may, and indeed should, review the site investigations undertaken by the suitably qualified person as they progress. However, the auditor may only comment on the quality or suitability of the SQP's work. The auditor may not direct the work of the SQP (see also section 4.1 below).

DES has the power to undertake an auditor's functions in-house if it chooses. However, the department is not obliged to undertake the auditor's function, and may insist that an external auditor is used.

An auditor also prepares an audit report and provides it with the certification. In the audit report, the auditor explains and justifies how they arrived at their decision to certify the contaminated land investigation document and its site suitability statement. The auditor also explains and justifies the appropriateness of any draft site management plan.

The terms 'audit' and 'auditor' have a wide common usage outside the functions described in s. 568 of the EP Act, and a person may have the necessary qualifications and experience to carry out non-statutory audits or general environmental assessments. However, in those circumstances it is important for the person to make the distinction that the work they are doing is not an audit pursuant to s. 568 of the EP Act.

4.1 What an auditor for contaminated land may not do

Sections 568(a) and 568(c) of the EP Act describe other functions that the law may allow an auditor to perform. However, if an auditor's approval is subject to terms or conditions that only allow them to perform functions under s. 568(b), then they must not undertake the functions described in s. 568(a) or s. 568(c). As previously mentioned above, the *Queensland Auditor Handbook for Contaminated Land* only addresses an auditor's functions under s. 568(b).

The code of professional conduct for contaminated land auditors (Module 4 of the *Queensland auditor handbook for contaminated land*) states that an auditor cannot audit or certify their own work, or work done by others under their direction.

An approved auditor may take on work separately as an SQP or general environmental practitioner. However, they cannot undertake both roles for the same project or in relation to the same land. For example, an auditor who has previously prepared investigations or reports about the contamination or land cannot audit a current contaminated land investigation document about the site.

5 Who engages and pays an auditor

While auditors are approved by the Queensland government, they are not employees of the government.

Auditors are typically consultants who may be self-employed or work for a private consultancy firm. Their services are engaged and paid for by the owner or occupier of a contaminated land site or someone who wishes to develop the site with the owner's permission.

The auditor must be engaged at the earliest possible stage of the site investigations.

The auditor works independently, notwithstanding that they are engaged by the owner, occupier or developer of a site. An auditor effectively represents the community by performing a function on behalf of the government. However, they are engaged by the owner, occupier or developer on the 'user pays' principle, so that the cost is not borne by the community. More information about the independence of auditors is provided in section 14 of this module.

If a person is engaged as an auditor for a project and finds that another person is already engaged as an auditor for the same project, then they must withdraw their services in favour of the first person.

6 Who prepares the documents that an auditor certifies?

The contaminated land investigation document(s) and site suitability statement must be prepared by an SQP.

7 Suitably qualified persons

Sections 564 to 566 of the EP Act regulate who can be a SQP. To be suitably qualified, the essential requirements of the EP Act are that the person has qualifications and experience relevant to performing the function, and is a member of an organisation prescribed in Schedule 14 of the Environmental Protection Regulation 2019. The SQP must appropriately show how they meet the requirements to competently perform the role of an SQP and that their prior experience performing the function is relevant and recent. The department's guideline *Assessing a suitably qualified person* (ESR/2016/1938) provides advice on who may be an SQP.

With regard to contaminated land, the functions of a SQP are conducting a site investigation and preparing the contaminated land investigation document(s) and site suitability statement.

The auditor should verify the SQP's qualifications, experience, and membership of a prescribed organisation at the outset of the project, as a document that is not produced by a SQP cannot be certified by an auditor.

8 What is a contaminated land investigation document?

Contaminated land investigation document is a collective term for a *site investigation report*, *validation report*, or *draft site management plan* (see ss. 370 and 387 of the EP Act).

A *site investigation report* is a report about an investigation of the relevant land to scientifically assess whether it is contaminated land, and if so, the extent to which the land is contaminated.

A *validation report* is a report about work carried out to remediate, and validate the current status of, the contaminated land.

A *site management plan* is a plan for managing the environmental harm that may be caused by the hazardous contaminant(s) on the relevant land. The environmental harm may be managed by applying conditions (i.e. limits or requirements) to the use or development of the land, or to the activities carried out on the land.

A *contaminated land investigation document* must also include a *site suitability statement* (see the next section).

When an SQP prepares a contaminated land investigation document, s. 566 of the EP Act requires that they must also provide a declaration stating all of the following—

- a) the person's qualifications and experience relevant to the function
- b) that the person has not knowingly included false, misleading or incomplete information in the document
- c) that the person has not knowingly failed to reveal any relevant information or document to the administering authority
- d) the document addresses the relevant matters for the function and is factually correct
- e) the opinions expressed in the document are honestly and reasonably held.

Also, s. 390 of the EP Act requires that the person submitting the document to the administering authority must provide a declaration stating:

- a) they have not knowingly given any false or misleading information to the auditor who certified the document; and
- b) they have given all relevant information to the auditor; and
- c) if the person is not the land's owner— they have given a copy of the document to the owner.

With regard to the last point, the person submitting the document must obtain the owner's consent.

As previously mentioned, a contaminated land investigation document must be accompanied by a written certification (an *auditor's certification*)—see section 11 of this module for more information about an auditor's certification.

Module 6: Content requirements for contaminated land investigation documents, certifications and audit reports of the Queensland auditor handbook for contaminated land provides additional guidance on what a contaminated land investigation document must contain.

9 What is a site suitability statement?

A site suitability statement is prepared by an SQP, and accompanies a contaminated land investigation document. It states the uses or activities for which the land is suitable. It can also state that the land is not contaminated (e.g. because it has been remediated) and is suitable for any use, in which case the particulars of the land would be removed from the EMR or CLR. However, if the land is still contaminated, but the site suitability statement says the land is suitable for certain uses, then the suitable uses will be recorded on the EMR or CLR.

A site suitability statement cannot be submitted to DES unless it is certified by an auditor.

If a project site comprises multiple parcels of land, it is essential that every separate parcel of land has its own individual site suitability statement.

Further advice regarding format and content of site suitability statements is provided in Module 6 of the *Queensland auditor handbook for contaminated land*.

10 Role of the contaminated land NEPM

The National Environment Protection (Assessment of Site Contamination) Measure 1999 (which is known as the contaminated land NEPM) states that its purpose and desired environmental outcomes are as follows:

- (1) The purpose of the Measure is to establish a nationally consistent approach to the assessment of site contamination to ensure sound environmental management practices by the community

which includes regulators, site assessors, environmental auditors, land owners, developers and industry.

- (2) The desired environmental outcome for this Measure is to provide adequate protection of human health and the environment, where site contamination has occurred, through the development of an efficient and effective national approach to the assessment of site contamination.

The contaminated land NEPM is a primary guideline to be used throughout Australia. The NEPM prescribes risk-based methodologies for investigating, assessing and regulating contaminated land. A thorough understanding of the contaminated land NEPM is a prerequisite for anyone operating as an SQP or a contaminated land auditor.

All potentially relevant schedules and parts of the contaminated land NEPM must be used by an SQP when they prepare a contaminated land investigation document. The *Contaminated land investigation document – approved form* outlines the minimum requirements of the NEPM that must be included for a site investigation report, validation report or draft SMP to be in the approved form. The auditor must verify and provide evidence in their auditor's report that demonstrates that the contaminated land investigation document has adequately addressed the requirements of the approved form. The auditor must consider all potentially relevant schedules and parts of the contaminated land NEPM when they audit a contaminated land investigation document to ensure that the contaminated land NEPM has been fully and appropriately used.

The contaminated land NEPM does not take precedence over Queensland's legislation and regulatory requirements. Indeed, Schedule B2 of the contaminated land NEPM states: 'Site-specific management measures must ensure compliance with environmental management and protection legislation applying in each jurisdiction.' In practice, that means the contaminated land NEPM's risk-based process cannot be used to disregard or reduce the significance of applicable environmental values or environmental protection policies.

11 What is an auditor's certification?

A contaminated land investigation document must be accompanied by a written certification (an *auditor's certification*) that is in the approved form and verifies that the document complies with subsections (2) or (3) of section 389 of the EP Act. An auditor must not issue a certification until: (a) they have verified that the content of the contaminated land investigation document and the approved form meets the requirements of the EP Act; and (b) they are convinced that the contaminated land investigation document and the site suitability statement present an accurate description of the site and the uses to which it may be put.

An auditor cannot change the contaminated land investigation document or the site suitability statement, nor can they issue a certification that expresses a view about suitable uses that is in any way different from the site suitability statement. If the auditor disagrees or is dissatisfied with any substantial part of the contaminated land investigation document or site suitability statement, they must refer the matter to the SQP who produced the document or statement.

When certifying a contaminated land investigation document, the auditor must also sign a declaration stating the matters listed in s. 574C(2) of the EP Act.

Additional advice about the content requirements of an auditor's certification is provided in section 4 of *Module 6: Contaminated land investigation documents* of the *Queensland auditor handbook for contaminated land*.

12 When is a certified contaminated land investigation document needed?

12.1 Voluntary

The owner, occupier or developer of a parcel of land might want to develop the site for a new use, or the owner might want to sell the land as suitable for a new use. As mentioned in section 2 above, a site suitability statement is required if the site is on the EMR or CLR and a more sensitive land use is proposed. In that case, the owner (or the occupier or developer with the owner's consent) may engage an SQP to voluntarily prepare and submit a contaminated land investigation document in the approved form, with its mandatory site suitability statement and accompanying auditor's certification. In fact, the department encourages voluntary action whenever potentially contaminated land is being investigated.

When the documents are submitted, the department determines whether the listing should be changed in accordance with the EP Act (see ss. 380–386 inclusive).

Depending on the circumstances, the contaminated land investigation document and site suitability statement could say that the particulars of the land should be removed from the EMR or CLR, or that the listing should record that the intended new use is suitable on that parcel of land. In order for the listing to be changed, the contaminated land investigation document would have to clearly demonstrate that the intended new use would be suitable; for example, because a notifiable activity that formerly occurred there did not contaminate the land, or because the land has been suitably remediated.

If the submitted document(s) included a draft site management plan, and DES approved the site management plan, then details of the plan would be recorded on the relevant land register, and compliance with the plan would become mandatory for anyone using the site.

12.2 Mandatory

The department may require a *prescribed responsible person for the land* to conduct or commission an *environmental investigation* and prepare a site investigation report under s. 326BA of the EP Act if all of the following matters apply to the land:

- the land is listed on the EMR or CLR
- the administering authority is satisfied, or suspects on reasonable grounds, the hazardous contaminant contaminating the land has the potential to cause serious environmental harm or material environmental harm
- the administering authority is satisfied a person, animal or another part of the environment may be exposed to the hazardous contaminant, whether on the land or not.

However, the department cannot make that requirement if the land is subject to a site management plan for the contamination and the conditions of the plan are being complied with.

The department may issue a *clean-up notice* to a person whom the department reasonably believes to be a prescribed person for a contamination incident, and among other things, the clean-up notice may require the person to provide reports or other documents, including a contaminated land investigation document. The provisions relating to clean-up notices are in the EP Act, Chapter 7, Part 5B, starting at s. 363F.

Also, the department may require a *prescribed responsible person for the land* to prepare a draft site management plan under s. 391 of the EP Act if the land is contaminated land and the contamination may be managed by applying conditions to the use or development of, or activities carried out on, the land.

13 Submitting a contaminated land investigation document

Section 6 of Module 6 of the *Queensland auditor handbook for contaminated land* provides advice about submitting a contaminated land investigation document.

14 The independence of auditors, and conflicts of interest

An auditor's independence is ensured by a legal condition on their approval to operate that requires them to abide by a code of professional conduct. That code is provided in *Module 4: Code of professional conduct* of the *Queensland auditor handbook for contaminated land*.

The code of professional conduct has several provisions that require the auditor to act independently and avoid conflicts of interest. They are also required to do nothing in relation to a contaminated site investigation that could be seen as effectively auditing their own work, including work done by others under their direction.

Furthermore, it is an offence under section 574A(2) of the EP Act for an auditor to have a direct or indirect financial interest in a matter or thing relevant to the exercise of their function other than a fee paid for their service.

15 The auditor's expert support team

Each auditor must be able to call on other people to provide expert support and advice when they, the auditor, are not an expert in any of the competencies or proficiencies listed in sections 3.1.5 and 3.1.6 of *Module 2: Auditor application requirements* of the *Queensland Auditor handbook for contaminated land*. Each member of the expert support team must meet the requirements set out in section 6.4 of Schedule B9 of the contaminated land NEPM. All members of the support team must act independently and avoid conflicts of interest when providing advice to an auditor. Members of the support team must inform themselves of any prescribed requirements or environmental objectives under the EP Act and environmental protection policies relevant to the advice they are providing.

When an auditor engages an expert they must take responsibility for the validity of the opinion and take all necessary steps to verify the evidence on which the opinion is based.

Auditors are required to provide, with their annual return, details of their current expert support team, and any recent changes to the team.

16 Annual return

By 31 July each calendar year, auditors must submit an annual return to the administering authority that includes the following information for the previous financial year (which ends on 30 June):

- details of all work completed as an auditor
- details of all work-in-progress being undertaken as an auditor at the end of the financial year
- details of the expert support team used by the auditor, including their qualifications, experience and competencies, and their scope of works
- evidence of the professional indemnity insurance held in relation to work as an auditor
- evidence of continuing professional accreditation with at least one of the recognised bodies in the contaminated land field
- a log of all relevant professional development activities completed in the previous financial year.

17 Duty to notify—an auditor's responsibilities

An auditor is required to notify the department in writing within 24 hours (or in some cases, 20 business days) about *affected land* if, while performing their auditor's functions, they become aware that certain events have happened, are happening, or are likely to happen to affected land. The circumstances that would trigger their duty to notify, and the required reporting periods, are detailed in the EP Act, Chapter 7, Division 2. It is an offence for an auditor not to notify when necessary. In particular, an auditor must notify the department within 24 hours if they become aware of:

- i) the presence of, or happening of an event involving, a hazardous contaminant on the land that is causing, or is reasonably likely to cause, serious or material environmental harm; or
- ii) if the land is contaminated land—a change in the condition of the land that is causing, or is reasonably likely to cause, serious or material environmental harm

An auditor must notify the department within 20 business days if they become aware of a notifiable activity having been carried out, or being carried out, on the contaminated land.

18 Change of an auditor's circumstances

Auditors must notify the administering authority within 10 business days if any of the following matters occur:

- any change to their contact details
- an engagement to undertake work involving an auditor's functions
- the cessation of work on a project before completing the auditor's functions
- any charge or conviction for an offence under environmental legislation, or involving misleading or fraudulent conduct, in Queensland or another state or territory
- any suspension or cancellation of their equivalent approval as an auditor held in another state, including the reasons for the suspension or cancellation
- any dismissal or resignation from employment in response to allegations of misconduct.

19 Managing auditors' performance

The department evaluates the performance of each auditor via their certifications, audit reports and annual returns.

An auditor's performance is judged against the code of professional conduct provided in Module 4, the conditions on their auditor's approval, and the other statutory grounds for amending, suspending or cancelling an auditor's approval. Section 574D of the EP Act states that each of the following is a ground for amending, suspending or cancelling an auditor's approval—

- (a) the auditor has contravened a condition of the approval
- (b) the auditor has not complied with a code of conduct for auditors made by the chief executive and prescribed under a regulation
- (c) the auditor has been convicted of an offence under this Act [the EP Act]
- (d) the auditor has been convicted of an offence under another Act involving misleading or fraudulent conduct
- (e) the auditor does not have the necessary expertise or experience to perform the auditor's functions
- (f) the audits conducted by the auditor have not been conducted honestly, fairly or diligently.

If the chief executive of the department believes grounds exist to amend, suspend or cancel the approval, the chief executive must give the auditor a written notice called a *show cause notice* (see s. 574E(1) of the EP Act). Subsection 574E(2) of the EP Act requires that the show cause notice must state the following—

- (a) the action the chief executive proposes taking under this division (the proposed action)
- (b) the grounds for the proposed action
- (c) an outline of the facts and circumstances forming the basis for the grounds
- (d) if the proposed action is suspension of the approval—the proposed suspension period
- (e) that the auditor may, within a stated period (the show cause period), make written representations to the chief executive to show why the proposed action should not be taken.

Subsection 574E(3) of the EP Act requires that the show cause period must end at least 15 business days after the auditor is given the show cause notice.

Section 574F of the EP Act says the auditor may make written representations about the show cause notice to the chief executive in the show cause period, and the chief executive must consider all representations.

After considering any representations, s. 574G of the EP Act says the chief executive may—

- (a) if the proposed action was to amend the approval—amend the approval in the proposed way, including, for example, amending a condition to which the approval is subject or adding another condition to the approval; or
- (b) if the proposed action was to suspend the approval—suspend the approval for not longer than the proposed suspension period; or
- (c) if the proposed action was to cancel the approval—cancel the approval or suspend it for a period.

Section 574G also says that if the chief executive decides to take action, the chief executive must give an information notice about the decision to the auditor.

An auditor can appeal against a decision to amend, suspend or cancel their auditor's approval. Section 21 of this module provides information about how an appeal can be made.

20 Complaints against an auditor

20.1 Who may make a complaint, and why

Section 574H of the EP Act says: 'A person may make a complaint to the chief executive that a ground exists under section 574D for amending, suspending or cancelling an auditor's approval.'

In practice, that means anyone can make a complaint to DES about an auditor if they believe any of the things listed in s. 574D has occurred (see the previous section of this module for a copy of the list).

Section 574H of the EP Act requires that the complaint must:

- (a) be in writing; and
- (b) state the complainant's name, address and contact details; and
- (c) contain particulars of the allegations on which the complaint is founded; and
- (d) be verified by a declaration that the information provided in the complaint is true and accurate.

20.2 What DES does when a complaint is made

The chief executive may require the complainant to give further particulars of the complaint within a stated reasonable period.

The chief executive may decide to not take action on the complaint under division 4 if—

- (a) the chief executive has asked for further particulars under subsection (3) and the further particulars are—
 - (i) not given; or
 - (ii) not verified by a declaration that the further information provided is true and accurate; or
- (b) the chief executive is satisfied the complaint—
 - (i) is frivolous or vexatious; or
 - (ii) lacks substance or credibility.

If DES decides the complaint is justified, the department may take action to amend, suspend or cancel the auditor's approval in accordance with division 4 of the EP Act. Otherwise, the department may decide to take no action to amend, suspend or cancel the auditor's approval.

In either case, DES will write to the complainant within 10 business days of deciding what action to take.

If the decision is not to take action to amend, suspend or cancel the auditor's approval, the letter to the complainant will state the reasons why that decision was made.

If the complainant is dissatisfied with the decision, there is a procedure that can be followed to have the decision reviewed and, if needed, appealed. That is because the decision not to take action under s. 574I(2)(b) of the EP Act is listed in Schedule 2 of the EP Act as being an *original decision* that can be appealed in the Planning and Environmental Court. Firstly, the dissatisfied person should apply for a review of the original decision under s. 521 of the EP Act. That section of the Act describes how the application for a review must be made.

If the person is still dissatisfied after the review, they can appeal against the decision to the Planning and Environmental Court. The EP Act, ss.531–539, describes how to appeal the decision.

21 Appeals against amendment, cancellation or suspension of an auditor's approval

If an auditor's approval is amended, suspended or cancelled, and the auditor is dissatisfied, there is a procedure that can be followed to have the decision reviewed and, if needed, appealed. That is because the decision to amend, suspend or cancel an auditor's approval under s. 574G(1) of the EP Act is an *original decision* that is listed in Part 2 of Schedule 2 of the EP Act, and an original decision listed in that part can be appealed in the Planning and Environmental Court.

Firstly, the auditor should apply for a review of the original decision under s. 521 of the EP Act. That section of the Act describes how the application for a review must be made.

If the auditor is still dissatisfied after the review, they can appeal against the decision to the Planning and Environmental Court. The EP Act, ss.531–539, describes how to appeal the decision.

22 Definitions

Affected land means land on which an event has caused or threatens serious or material environmental harm.

Clean-up notice—for provisions related to clean-up notices, see Part 5B of Chapter 7 of the EP Act, starting at section 363F.

Contaminated land means land contaminated by a hazardous contaminant.

Contaminated land investigation document—see section 8 of this module, and ss. 387–404 of the EP Act.

Contaminated land NEPM means the National Environment Protection (Assessment of Site Contamination) Measure 1999, made by the National Environment Protection Council under the *National Environment Protection Council Act 1994* (Cwlth).

Dissatisfied person has the meaning given in s. 520 of the EP Act.

Environmental harm has the meaning given in s. 14 of the EP Act.

Environmental investigation means an investigation into one of the following matters:

- (a) an event that has happened causing environmental harm while an activity was being carried out
- (b) an activity or proposed activity that is causing, or is likely to cause environmental harm
- (c) the hazardous contaminant contaminating the land has the potential to cause serious environmental harm or material environmental harm;
- (d) a person, animal or another part of the environment may be exposed to the hazardous contaminant, whether on the land or not.

[This definition is adapted from ss. 326B and 326BA of the EP Act]

Hazardous contaminant means a contaminant, other than an item of explosive ordnance, that, if improperly treated, stored, disposed of or otherwise managed, is likely to cause serious or material environmental harm because of—

- (a) its quantity, concentration, acute or chronic toxic effects, carcinogenicity, teratogenicity, mutagenicity, corrosiveness, explosiveness, radioactivity or flammability; or
- (b) its physical, chemical or infectious characteristics.

[This definition is from Schedule 4 of the EP Act]

Investigation notice means a written notice, issued by the administering authority, to someone requiring them to undertake an environmental investigation [see ss. 326B and 326BA of the EP Act]. It is an offence not to comply with an investigation notice [see s. 326D of the EP Act].

Material change of use, of premises, means any of the following that a regulation made under s. 284(2)(a) of the *Planning Act 2016* does not prescribe to be minor change of use—

- (a) the start of a new use of the premises;
- (b) the re-establishment on the premises of a use that has been abandoned;
- (c) a material increase in the intensity or scale of the use of the premises.

[This definition is taken from Schedule 2 of the *Planning Act 2016*.]

Notifiable activity is an activity that has the potential to leave residual contamination on the site where it occurs and which is required by law to be reported to DES. The full list of notifiable activities is provided in Schedule 3 of the EP Act. Examples of notifiable activities include fertiliser manufacture, metal foundry operations, and landfills.

Original decision: An original decision in this context is one of several statutory decisions that are given power by the EP Act and which can be appealed in either the Land Court or the Planning and Environment Court. Original decisions that are relevant to contaminated land and an auditor's functions are included in Schedule 2 of the EP Act.

Prescribed contaminated land is defined in s. 389(5) of the EP Act as land contaminated in a way that is a risk of causing environmental harm to—

- (a) land other than the relevant land; or
- (b) human health; or
- (c) another part of the environment.

This should be interpreted to mean that land is prescribed contaminated land if the land is contaminated and there is a risk that the contamination may cause serious or material harm to:

- (a) another property; or
- (b) human health on the contaminated property or another property; or
- (c) environmental values on the contaminated property or another property.

Prescribed responsible person for the land is defined in Schedule 4 of the EP Act.

Prohibited development is development for which a development application may not be made (see s. 44(2) of the *Planning Act 2016*; and the Planning Regulation 2017, Schedule 10, Part 4, Division 1, r. 6 with regard to prohibited development on contaminated land).

Relevant land means land for which particulars are recorded in a relevant land register.

Relevant land register means the environmental management register (EMR) or contaminated land register (CLR).

Sensitive land use—as defined in Schedule 24 of the Planning Regulation 2017.

Site investigation report—see section 8 of this module, and s. 370 of the EP Act.

Site management plan—see section 8 of this module, and s. 370 of the EP Act.

Site suitability statement—see section 8 of this module, and ss. 389(2)(b) and 389(3)(b) of the EP Act.

Suitably qualified person—see section 7 of this module, and ss. 564–566 of the EP Act.

Validation report—see section 8 of this module, and s. 370 of the EP Act.