



Aboriginal Affairs and Northern Development Canada

Internal Audit Report

Audit of Environmental and Contaminated Sites Management (South of 60°)

Prepared by:

Audit and Assurance Services Branch

Project # 10-39

June 2012

CIDM # 4061496

TABLE OF CONTENTS

ACRONYMS	ii
EXECUTIVE SUMMARY	1
1. BACKGROUND	4
2. AUDIT OBJECTIVES AND SCOPE	6
3. APPROACH AND METHODOLOGY	6
4. OBSERVATIONS AND RECOMMENDATIONS.....	7
4.1 Governance and Policy	8
4.2 Stewardship.....	12
4.3 Compliance.....	14
4.4 People	16
5. CONCLUSION.....	16
6. MANAGEMENT ACTION PLAN	17
Appendix A: Audit Criteria.....	26

ACRONYMS

AANDC	Aboriginal Affairs and Northern Development Canada
ADM	Assistant Deputy Minister
AEMS	Assets and Environmental Management Section
AASB	Audit and Assurance Services Branch
CEAA	Canadian Environmental Assessment Act
CSMP	Contaminated Sites Management Program
DG	Director General
DM	Deputy Minister
EA	Environmental Assessment
ESS	Environmental Stewardship Strategy
FCSAP	Federal Contaminated Sites Action Plan
FNITP	First Nations and Inuit Transfer Payment system
FNLMA	First Nation Land Management Act
HQ	Headquarters
IIA	Institute of Internal Auditors
IEMS	Integrated Environmental Management System
IOGC	Indian Oil and Gas Canada
LED	Lands and Economic Development
LEM	Lands and Environmental Management
OAG	Office of the Auditor General
RBAP	Risk-Based Audit Plan
RLEMP	Reserve Land and Environment Management Program
RPP	Report on Plans and Priorities
RPIMS	Real Property Information Management System
TBS	Treasury Board of Canada Secretariat

EXECUTIVE SUMMARY

Background

An Audit of Environmental Management and Contaminated Sites was included in the 2011-2012 to 2013-2014 Risk-based Audit Plan, recommended for approval by the Departmental Audit Committee on February 22, 2011, on the basis that the environmental management and contaminated sites programs are highly visible and are inherently high risk due to their complexity, magnitude of potential impacts, liability issues, and degree of recent change.

Audit Objective, Scope and Approach

The objective of this audit was to provide assurance over the adequacy and effectiveness of the management controls established in relation to the objectives of the Department in regard to environmental management and contaminated sites (south of the 60th parallel).

The audit objective was linked to audit criteria developed to address core controls associated with the management of the primary environmental and contaminated sites-related risks to the Department, as well as the recommendations of previous audit reports by the Audit and Assurance Services Branch (AASB) and the Office of the Auditor General (OAG).

The scope of this audit covered April 1, 2008 to March 31, 2011. The audit assessed the following:

- Management practices and controls designed and implemented to ensure compliance with relevant legislation, regulations, guidelines and policies;
- Progress made in addressing the Auditor General's 2009 report recommendations, with particular focus on governance and program reforms; and,
- Management controls for identifying and assessing contaminated sites on First Nation lands south of the 60th parallel.

Audit work was conducted at Headquarters (HQ) in Gatineau, Quebec and in the following regional offices: Ontario (Toronto) and British Columbia (Vancouver).

Observed Strengths

Through the audit fieldwork, the audit team observed examples of how controls are properly designed and are being applied effectively. This resulted in the following positive findings listed below:

Governance

- Environmental considerations that focus on the health and safety of First Nations communities are integrated into the Department's existing planning process;

Stewardship

- Guidelines and procedures for the transfer and control of payments to First Nations for contaminated site remediation and other environmental projects have been created at the regional level and are being followed;

Compliance

- A policy framework is in place to ensure the Department is in compliance with regulation and policies; and,

People

- Regional staff take initiative to develop strategic directions for key environmental areas and gaps requiring action.

Conclusion

Based on the results of the audit, AASB cannot provide assurance that the Department's internal controls over the adequacy and effectiveness of environmental and contaminated sites management were operating effectively. Taken together, the audit findings suggest there remain considerable gaps for management to address in order to provide assurance that governance and policy, stewardship, compliance and people frameworks are adequate and functioning appropriately.

Recommendations

The audit team identified weaknesses in the design and operation of internal controls, resulting in six recommendations in the areas of governance and policy, stewardship, compliance, and people.

The Audit and Evaluation Sector recommends the Assistant Deputy Minister, Lands and Economic Development should:

1. Establish a more rigorous and comprehensive governance and accountability framework that supports an integrated approach to environmental strategy, planning, budgeting, communication, performance measurement, and reporting. The framework should include a horizontal environmental oversight committee at the DG level to regularly review and discussing environmental objectives and performance – Sub-working groups should be established to address key issues – as well as a defined position on the roles, responsibilities/accountabilities for the clean-up of uncapped oil and gas wells on reserves.
2. Establish a regulatory gap management strategy that includes a single point of responsibility; policy and associated guidance/procedures, including those for Department owned assets; and identifies the internal resources required to implement the strategy, based on a needs assessment. In developing the strategy, the ADM, LED should work with Environment Canada to identify areas where new regulations may be developed to close gaps.

3. Develop a Contaminated Sites Management Program Liability Estimation Guide/Standard that is consistent with public sector accounting standards and TBS requirements and implement a communications and training strategy to ensure regional environmental officers under the distinction between cost estimates and liability estimates and have the skills and capacity to correctly calculate these figures.
4. Develop a requirement within FNITP for a First Nation to submit an environmental mitigation status report at project close-out in order to receive current and future project funding, similar to hold-backs on reports for financial statements.
5. Define a departmental position on the enforcement of lease, permit and other environmental regulatory requirements, identify mechanisms to enforce these requirements, and provide adequate levels of training and staffing to enable the Department to fulfill its enforcement roles and responsibilities.
6. Conduct a needs assessment exercise to determine the environmental management training needs of First Nations (inclusive of FNLMA and non-FNLMA First Nations) and align budget to identified needs.

1. BACKGROUND

The Minister of Aboriginal Affairs and Northern Development has responsibility under the *Indian Act* for land and environmental management on reserve. First Nations that operate under the *First Nations Land Management Act* (FNLMA), treaty and self-government initiatives are responsible for their own land and environmental management on reserve. As of the end of 2010, 33¹ First Nations have ratified the Framework Agreement on First Nations Land Management and are now governing reserve lands and resources under their own Land Codes. However, federal environmental laws continue to apply.

Aboriginal Affairs and Northern Development Canada (hereon referred to as “AANDC” or “the Department”) and Environment Canada, in partnership with First Nations, are responsible for discharging the statutory obligations and the fiduciary duties of the Federal Crown in the areas of land and environmental management. This responsibility is guided by AANDC’s Environmental Stewardship Strategy (ESS) and its approach to sustainable development. The ESS facilitates the implementation of an integrated approach to environmental and natural resource management for reserve lands, while promoting economic and social development opportunities for First Nations communities.

In the 2010-11 Report on Plans and Priorities, AANDC identified two major planning highlights to support its Responsible Federal Stewardship program activity: the Reserve Land and Environment Management Program (RLEMP) and the remediation of contaminated sites. Taken together, these activities are designed to promote the health and safety of First Nations communities through the remediation of legacy contaminated sites and by promoting sustainable and environmental sound land-based economic development.

The RLEMP is designed to further develop First Nations capacity to improve communities’ readiness to capitalize on land-based economic development opportunities on reserves. Under the program, most First Nations undertake environmental management on behalf of the Minister (excluding the sign off of environmental assessments). In other cases, the First Nations co-manage the activities with the Department. It should be noted that not all environmental responsibilities are undertaken by the First Nations under RLEMP, as environmental assessments must be signed off by the Department.

Remediation of contaminated sites is a key component of AANDC’s Responsible Federal Stewardship program activity. Contaminated sites are sites that pose, or are likely to pose, an immediate or long-term hazard to human health and/or the environment and are often a legacy of past practices. If not managed properly, these sites, particularly those identified as having a higher risk to human health and safety, may have a significant impact on the ability for First Nations communities to capitalize on land-based economic development opportunities.

¹ On January 23, 2012, it was announced that an additional 18 First Nations will be added as signatories to the framework agreement. With these new signatories, there will be more than 50 First Nations governing reserve lands and resources under their own Land Codes.

AANDC currently has two established programs dealing with contaminated sites: the Northern Contaminated Sites Program (NCSP) with responsibilities for liabilities associated with contaminated sites north of 60°, and the Contaminated Sites Management Program (CSMP) with responsibilities for liabilities associated with contaminated sites on-reserve land south of 60°. The management of contaminated sites for NCSP, which mostly relates to abandoned mine sites and military sites, is more complex and involves longer time frames than what is required for the sites in CSMP, which are mostly related to abandoned dump sites and fuel spills. Given their size and complexity, contaminated site activities north of 60° were excluded from the scope of this audit in favour of a future, standalone audit.

Under the Federal Contaminated Sites Action Plan (FCSAP or “the Action Plan”) implemented by the federal government in 2004, a long-term commitment was made to remediate and manage high-risk federal contaminated sites. To support remediation efforts and the overall goal to remediate all known liabilities, a \$3.5 billion fiscal framework to be distributed over 10 years was created in the 2004 Budget (the program duration was subsequently revised to 15 years in 2005). Funding commenced in fiscal 2005-06 and the program was scheduled to end in 2019-2020².

FCSAP fiscal framework operates as a cost-share model with FCSAP providing 80% of the funding to assess, manage and remediate a contaminated site, while the custodial department is to provide the remaining 20%. In 2009, following the announcement of Canada’s Economic Action Plan, the Government of Canada committed to providing additional funds (to cover the custodial department portion of the costs) to help accelerate site assessment and remediation. With the conclusion of Canada’s Economic Action Plan, custodial departments are back to funding 20% of contaminated site program costs covered under FCSAP.

FCSAP is administered jointly by Environment Canada, which houses the FCSAP Secretariat, and the Treasury Board Secretariat of Canada, which ensures consistency with Treasury Board policies on the management of federal real property.

According to AANDC’s Integrated Environmental Management System (IEMS) – a system used to track contaminated sites across Canada – as of January 2012 the Department has identified more than 3,766 known contaminated sites south of 60, of these 2,876 are suspected and active. The remaining 890 sites have been closed. 29% of the open sites have received an initial environmental site assessment (ESA). To date FCSAP has provided \$155 million to the CSM Program (south of the 60th parallel), and plans to spend an additional \$51.5 million in the fiscal years from 2010-11 through 2014-15.

² Subsequent to the commencement of the audit, FCSAP abandoned the goal to remediate all known liabilities by 2020 and no new end date has been set.

2. AUDIT OBJECTIVES AND SCOPE

2.1 *Audit Objective*

The objective of this audit was to provide assurance over the adequacy and effectiveness of the management controls established in relation to the objectives of the Department in regard to environmental management and contaminated sites (south of the 60th parallel).

The audit objective was linked to audit criteria developed to address core controls associated with the management of the primary risks regarding environmental and contaminated sites to the Department, as well as the recommendations of previous audit reports by the Audit and Assurance Services Branch (AASB) and the Office of the Auditor General (OAG).

2.2 *Audit Scope*

The scope of this audit covered April 1, 2008 to March 31, 2011. It included the areas of:

- Management practices and controls designed and implemented to ensure compliance with relevant legislation, regulations, guidelines and policies;
- Progress made in addressing the Auditor General's 2009 report recommendations, with particular focus on governance and program reforms; and,
- Management controls for identifying and assessing contaminated sites on First Nation lands south of the 60th parallel.

The audit fieldwork was carried out July 19, 2011 to December 16, 2011 and included onsite visits to the Ontario (Toronto) and British Columbia (Vancouver) regional headquarters during the period of September 13-15, 2011 and September 19-22, 2011, respectively.

The audit scope did not include an assessment of the contaminated sites activities north of 60° nor did it include an assessment of contingent environmental liabilities.

3. APPROACH AND METHODOLOGY

The Audit of the Environment and Contaminated Sites Management was planned and conducted to be in accordance with the International Standards for the Professional Practice of Internal Auditing as per the Institute of Internal Auditors (IIA).

Sufficient and appropriate audit procedures have been conducted and evidence gathered to support the audit conclusion provided and contained in this report.

The principal audit techniques used included:

- Interviews with key AANDC HQ and regional management/staff with direct responsibility for environmental and contaminated sites management, other areas of AANDC with

environmental management and contaminated site responsibilities (e.g. Chief Financial Officer [CFO] Sector and regional operations) and other government department representatives with legislated authority over environmental management and contaminated sites (e.g. Environment Canada);

- Review of appropriate documentation related to:
 - Financial Liability: AANDC policies, processes, databases, manuals, and guidance relating to the management and assessment of contaminated sites liabilities;
 - Legal Liability: opinions on legal liability and responsibility for First Nations training, capacity building, monitoring and clean-up on new liabilities provided from various stakeholders;
 - AANDC Governance and Horizontal Coordination: Environmental frameworks, strategies, plans, directives regarding environmental stewardship. Sector business plans and internal / bi-lateral Memorandums of Understanding on cross-cutting environmental issues. Terms of reference, agendas, and meeting minutes of horizontal working groups; and,
 - Information Management and Reporting: IEMS responsiveness of system design to user needs as well as approval and sign-off processes.
- Testing of environmental management actions to ensure compliance with legislation, departmental policies and procedures. The samples include environmental assessment files, departmental communications and contaminated sites management actions.

The approach used to address the audit objectives included the development of audit criteria against which observations, assessments and conclusions were drawn. The audit criteria developed for this audit are included in Appendix A.

For the purposes of the examination of environmental assessment, departmental communications and contaminated sites management actions documentation, a control-based sample was selected covering the period of audit scope of April 1, 2008 to March 31, 2011. The sampling strategy considered the following factors: coverage across fiscal years; identified risks; and the frequency and type of controls to be tested.

4. OBSERVATIONS AND RECOMMENDATIONS

Based on a combination of the evidence gathered through the examination of documentation, analysis and interviews, each audit criterion was assessed by the audit team and a conclusion for each audit criterion was determined. Where a significant difference between the audit criterion and the observed practice was found, the risk of the gap was evaluated and used to develop a conclusion for each audit criterion and to document recommendations for future improvement initiatives.

The audit team identified a number of weaknesses in the design and operation of internal controls, resulting in six recommendations. The findings and recommendations of the audit are organized according to the following four areas:

- Governance and policy;
- Stewardship;
- Compliance; and,
- People.

4.1 Governance and Policy

4.1.1 Authority, Accountability, Responsibility and Effective Oversight of Environmental Management

To ensure that environmental requirements and obligations are well managed, it is important that authorities, accountabilities and responsibilities for environmental management across the Department are defined and well-understood. As well, within the federal government context, it is expected that effective oversight bodies for environmental and contaminated sites management are established and integrated into the strategic decision-making of the organization.

The audit found that an organizational structure is in place with defined environmental functions, accountabilities and responsibilities within the Lands and Economic Development (LED) Sector at HQ and at the regional level. During the audit scope period (September 2008), an organizational realignment at the Department created the LED Sector. The objective of the re-organization was to integrate AANDC's Land and Economy strategic outcome priorities to facilitate a more co-ordinated and strategic approach to promoting economic opportunities.

Indian and Inuit Affairs Business Line (IIABL) Assistant Deputy Ministers (ADM's) and Regional Directors General (RDG's) are responsible and accountable for any environmental implications resulting from decisions made within their respective mandates. Regional Operations is also responsible for environmental management during capital projects (such as environmental assessments that are undertaken prior to construction) and jointly manage the CSM Program within the regions. Additional environmental functions reside with the Material and Assets Management Division of the CFO Sector which assumes accountability and responsibility for environmental management of AANDC-owned real assets.

Within AANDC, the departmental environmental policy framework defines the approach to decision-making on environmental issues. The ADM LED Sector and the DG LEM have overall responsibility for the development of plans and strategies in this area. Environmental plans are developed at the Director level, and integrated into the LED Strategic Plan and the Department's Report on Plans and Priorities (RPP). Monthly senior HQ/LED management meetings and regular monthly and quarterly administrative reports are issued to senior management to report progress against plans.

Through interviews with HQ and regional staff in Ontario and British Columbia, it was found that authorities, accountabilities and responsibilities for environmental management across the Department are defined; however, given the complexity of the AANDC's environmental management activities and the number of internal stakeholders, interviewees viewed the current structure to be suboptimal with 'mandate silos'³ affecting the Department's ability to manage environmental issues horizontally. In addition, while environmental considerations are integrated into the existing planning process, no horizontal body exists to provide strategic oversight of environmental management issues across the Department.

Despite the existence of administrative reporting as noted above, the audit team found that south of 60° environmental issues are not a standing item for senior management discussions, and there is no formal process to regularly report on the status of environmental issues to senior management. It is important to note that north of 60° contaminated sites, which are substantially larger and a more complex and costly to remediate, are regularly discussed at the senior management level.

Region-specific approaches to address environmental policy gaps are used where HQ policy leadership is not provided. A review of various documents including the Deputy Minister's Memorandum on Environmental Stewardship (2003) and the 2009-10 Report on Plans and Priorities revealed that departmental plans and priorities for environmental management are focused on contaminated sites remediation, water/wastewater and the strengthening of First Nations abilities to manage environmental responsibilities on reserve; however, departmental performance indicators have only been developed for a few of these priorities.

Through interviews with Indian Oil and Gas Canada (IOGC)⁴ and Contaminated Sites Management Program (CSMP)⁵ staff and IOGC's 2011-12 to 2016-17 Performance Management Strategy, it was found that AANDC has not defined a position on the IOGC's clean-up responsibilities and budget for uncapped oil and gas well remediation on reserve. While it was noted that uncapped oil and gas well remediation on reserve was being conducted by provincial authorities in provinces with considerable oil and gas exploration activities, this is not the case for all areas south of 60°.

Undefined authorities, accountabilities and responsibilities for environmental management across the Department could result in inefficiencies or gaps in addressing contaminated sites, impairment of First Nations and other community member health, and pose risks to the department's reputation for environmental stewardship.

³ "Mandate silos" refers to a lack or absence of co-ordination of information and issues across organizational units/functional areas.

⁴ Indian Oil and Gas Canada (IOGC) is an organization committed to managing and regulating oil and gas resources on First Nation reserve lands. It is a special operating agency within Aboriginal Affairs and Northern Development Canada (AANDC).

⁵ The Contaminated Sites Management Program (CSMP) is an AANDC program that provides financial assistance to assess and remediate environmentally contaminated sites on reserve lands and other lands under its custodial responsibility since 1992.

Recommendation:

It is recommended that the Assistant Deputy Minister of Lands and Economic Development:

1. Establish a more rigorous and comprehensive governance and accountability framework that supports an integrated approach to environmental strategy, planning, budgeting, communication, performance measurement, and reporting. The framework should include a horizontal environmental oversight committee at the DG level to regularly review and discussing environmental objectives and performance – Sub-working groups should be established to address key issues – as well as a defined position on the roles, responsibilities/accountabilities for the clean-up of uncapped oil and gas wells on reserves.

4.1.2 Strategy or Action Plan to Address the “Regulatory Gap”

In 2009, the OAG performed an audit on Land Management and Environmental Protection on Reserves (Fall 2009, Chapter 6) within AANDC and Environment Canada. The objectives of the audit were to determine whether AANDC and Environment Canada: (i) developed legislative options, programs and policies in support of First Nations land management and environmental protection; and, (ii) met key responsibilities for implementing federal acts, regulations, programs, and/or policies in support of First Nations land management and provided essential environmental protection of First Nations reserves. One of the key recommendations from the report was for AANDC to collaborate with Environment Canada and First Nations to develop and implement a strategy to identify and address residual environmental regulatory gaps on reserves.

Through interviews with HQ and regional staff, it was found that there is no overall departmental strategy and policy response, and that there is no single point of responsibility or accountability within the Department for addressing the regulatory gap identified by the OAG. The audit noted that AANDC is reliant on Environment Canada for developing and implementing regulations to address regulatory gaps, under the *Canadian Environmental Protection Act*, which defines the environmental lawmaking authority on reserve. In the 2011-2012 fiscal year, the Land and Environment Operational Policy Unit of the Lands and Environment Management Branch has been tasked with developing a strategy to address the regulatory gap.

The audit also noted that the regulatory gap has expanded over the years through additions to reserve lands⁶ and as the intended use of reserve lands has shifted to new forms of economic activity. Through discussion with HQ and regional staff, and a review of documentation, the audit found that various policy efforts are underway to address particular dimensions of the regulatory gap as they pertain to specific issues, such as solid waste/landfills and abandoned oil and gas wells on reserves; however, these policy efforts do not provide a regulatory solution to the regulatory gap on reserve.

⁶ According to the National Additions to Reserves Tracking System (NATS), the number of surface acres of reserve land increased by 147,366.644 acres in FY 10/11. This figure includes both additions to existing reserves (12,301.62 acres) and the creation of new reserve lands (135,065.02 acres).

Additionally, there are gaps which continue to exist in the Department's environmental policy framework, with specific reference to the monitoring and enforcement of environmental compliance and tracking the environmental condition of AANDC-owned real property, which, if in place, would allow the Department to develop a more comprehensive understanding of the assets and liabilities for which it is responsible.

The management of AANDC-owned sites is governed by the AANDC Real Property Management Policy. A review of the policy confirmed that it does not address the issue of contaminated sites. It is also unclear as to whether AANDC owned sites could be addressed through the Contaminates Sites Management Policy.

Through discussion with the Assets and Environmental Management Section (AEMS) of the CFO Sector, it was noted that AANDC HQ serves as the Department's corporate authority on Department-owned real property. As the corporate authority, AEMS liaises with the Treasury Board of Canada Secretariat (TBS), reports to central agencies on behalf of AANDC, and maintains AANDC's real property information management system.

Through discussions with CFO staff and review of the Real Property Information Management System (RPIMS) tracking sheet, the audit found that the Department's real property information management system does not identify and allocate responsibility for potential contamination within AANDC-owned capital assets nor does it track the status of clean-up activities.

Informal processes exist to track the environmental condition of known AANDC-owned real property. Through review of the Real Property Portfolio in RPIMS, the audit noted that the environmental condition of AANDC-owned assets is recorded within a 'Comments' column, but that there is no formal space for capturing environmental site information. As noted above, current monitoring and reporting processes do not provide a complete understanding of the environmental condition of real assets.

Without a full understanding of the assets and liabilities for which it is responsible and with regulatory and policy framework gaps, there is an increased risk to First Nations and the Department in the form of increased clean-up costs, continued environmental impairment and negative impacts to First Nations and other communities' health and safety.

Recommendation:

It is recommended that the Assistant Deputy Minister of Lands and Economic Development:

2. Establish a regulatory gap management strategy that includes a single point of responsibility; policy and associated guidance/procedures, including those for Department owned assets; and identifies the internal resources required to implement the strategy, based on a needs assessment. In developing the strategy, the ADM, LED should work with Environment Canada to identify areas where new regulations may be developed to close gaps.

4.2 Stewardship

4.2.1 Contaminated Sites Liabilities Estimates

Contaminated Sites Liabilities on Reserve Lands

In order to ensure compliance with the public sector accounting standards for contaminated sites liabilities per the Canadian Institute of Chartered Accountants Handbook (PS 3260), processes to calculate and report financial cost and liabilities associated with contaminated sites clean-up should be in place and well-understood by staff.

From 1992 to 2003, AANDC undertook the Environmental Issues Inventory and Remediation Plan (EIIRP), a country-wide initiative that included site assessments on all known contaminated sites in order to estimate the costs associated with remediating these sites. A cost estimation guide was issued at that time, but has not been updated since its introduction.

All cost estimates obtained from this initiative were documented in the Environmental Stewardship Strategy Information Management System (ESSIMS) – an AANDC system designed to track the Department's contaminated sites as well as fuel storage tanks and solid waste sites. In 2009-10, IEMS was developed (and continues to be used) to track and report contaminated sites as mandated by Treasury Board. ESSIMS was retained by the Department and used by AANDC's regions to track solid waste, environmental issues and LEAF projects. Environment Canada monitors fuel storage tanks.

Using the information available to the Department, sites are classified using the Canadian Council of Ministers of the Environment National Classification System (NCS) for Contaminated Sites - using NCS classification is a requirement under TBS and FCSAP⁷. A three year remediation schedule is then created by the Department based on the assigned classifications, with priority given to higher risk sites. In 2011, the LED Sector developed a National Priority Ranking System for Contaminated Sites tool which was approved by the departmental Director General Implementation and Operations Committee (DGIOC). Since then, AANDC has used this tool, which rates sites by their level of significance for prioritizing sites for assessment and remediation. Given the cost associated with assessing and remediating sites, the development of the prioritization tool will help ensure that the Department makes effective decisions when allocating its limited funding for contaminated sites remediation.

Where a contaminated site is scheduled to be remediated, the First Nation undertakes a tendering process prior to hiring a contractor and the IEMS is updated with the cost estimate calculated by the contractor and provided to AANDC by way of the First Nation. The contaminated site cost estimate is a key component of the environmental liability for each contaminated site, and the overall environmental liability figure recorded in the Department's financial statements. As new contaminated sites are identified, they are assessed in a similar manner and entered into IEMS.

⁷ In 2008, the NCS guidance document was revised and has since been adopted by all departments, including AANDC CSMP South of 60.

Through discussions with HQ and regional staff, and review of the IEMS, it was found that departmental liability estimates for contaminated sites are not robust. The reason for the lack of robustness is due to the lack of understanding between a cost estimate (all costs associated with the remediation of the site – used by the Department to budget for contaminated site assessment, remediation and management) and a liability estimate (costs that are directly attributable to the actual remediation but not costs to maintain or monitor the site before or after remediation – used by the Department for financial reporting purposes) is not well understood by regional staff, and no departmental standard or protocol exists to ensure consistent application of liability calculation and reporting. It was noted that the Department adhered to TBS liability guidelines in lieu of a departmental standard.

During the course of the audit it was noted that, subsequent to the timeframe of our assessment, a draft Environmental Liabilities Control Framework was being developed by the Department as a means to improve the management of environmental liability identification, estimation, tracking, monitoring and reporting.

Without a departmental standard or protocols to ensure consistent application of liability calculation and reporting, there is strong likelihood that the environmental liability amount in the financial statements is misstated.

Recommendation:

It is recommended that the Assistant Deputy Minister of Lands and Economic Development in collaboration with the Chief Financial Officer:

3. Develop a Contaminated Sites Management Program Liability Estimation Guide/Standard that is consistent with public sector accounting standards and TBS requirements and implement a communications and training strategy to ensure regional environmental officers under the distinction between cost estimates and liability estimates and have the skills and capacity to correctly calculate these figures.

4.2.2 Transfer and Control of Payments to First Nations

Guidelines and procedures for the transfer and control of payments to First Nations for contaminated site and other environmental projects should be in place and followed consistently by all AANDC regional staff.

It was found that project governance and management practices are used by AANDC regional staff to exert control over the execution of contaminated site remediation projects. However, as national guidance does not exist, regional offices were observed to be providing their own guidance and templates to First Nations to ensure federally-funded projects are well-managed and are in compliance with the *Canadian Environmental Assessment Act* (CEAA). A lack of national guidelines and procedures for the governance and management of contaminated sites remediation projects increases the risk that appropriate controls will not be in place when transferring payments to First Nations.

Through discussions with regional staff in Ontario and British Columbia, it was found that processes are in place through the First Nations and Inuit Transfer Payment (FNITP) System to control funding so that it is not provided until the remediation proposal has been reviewed by Technical Services to ensure the option is appropriate and reasonably priced, and that an environmental assessment (EA) has been performed. The audit noted, however, that once funds have been provided to a First Nation, AANDC has no control over how the funds are spent. The only recourse is to cease any further payments for the remediation project. In order to exercise control over the progress of the remediation, the next phase of funding will typically be withheld until a progress report or equivalent confirmation of milestone achievement has been reviewed by AANDC. Through discussion with regional staff, it was confirmed that due to project challenges and the short field season, there have been instances of funds being advanced before a report has been received.

CEAA requires that projects have an EA performed and that mitigation measures identified in the EA are implemented. Through discussions with regional staff in Ontario and British Columbia and document review, it was noted that while EAs are reviewed by AANDC prior to the approval/commencement of any project (e.g. a remediation plan or the issuance of a lease/permit) as required by CEAA, the Department's ability to ensure that mitigation measures are implemented by the First Nation while carrying out the project, is limited. No tracking or invoice approval mechanisms are currently in place to ensure projects are implementing approved mitigation measures.

Given AANDC's limited control over how First Nations use funds or manage contaminated sites remediation projects and the lack of mechanisms available to the Department to ensure that funds are used to implement environmental mitigation measures as required by Terms and Conditions of funding agreements, there is no guarantee that funding provided to First Nations will be spent for the purpose provided.

Recommendation:

It is recommended that the Assistant Deputy Minister of Lands and Economic Development in collaboration with the Chief Financial Officer:

4. Develop a requirement within FNITP for a First Nation to submit an environmental mitigation status report at project close-out in order to receive current and future project funding, similar to hold-backs on reports for financial statements.

4.3 Compliance

4.3.1 Compliance Framework

A policy framework should be in place to ensure that a department is in compliance with the regulations and policy requirements that govern their activities.

Through discussions with HQ and regional staff, we noted that while a policy framework has been established, there are gaps with reference to the Department's position on the monitoring and enforcing of environmental clauses in leases, permits and funding agreements.

The Minister of Aboriginal Affairs and Northern Development is responsible for the issuance of permits and leases on reserve land under the *Indian Act*. First Nations that operate under the *First Nations Land Management Act* (FNLMA) have their own land management regime and may issue permits and leases on their own accord.

A permit, which must be approved by the First Nation (before it is issued by the Minister), gives the holder the right to use reserve lands in a limited, specified way for a defined period of time (e.g. to remove gravel from a parcel of land). Leases are issued to non-band members on behalf of the First Nation or individual holding Certificates of Possession and must comply with all federal laws and First Nation by-laws. Unlike a permit, which may be issued over the same parcel of land provided that the uses are compatible, a lease grants exclusive possession of the land.

Before the issuance of a lease or a permit, an environmental assessment must be conducted according to the requirements of the CEAA. Once completed, the environmental assessment will be used to prepare the environmental provisions of the lease or permit, including any required mitigation measures. S20(1) of CEAA requires the Department, as a Responsible Authority (for the provision of project funding, the issuance of *Indian Act* permits or land tenure [i.e. leases]) to ensure that mitigation measures are appropriate and considered during the screening process; S20(2) of the CEAA requires the Department to be satisfied that mitigation measures identified during an Environmental Assessment are implemented.

Consequently, assessment, monitoring, reporting and enforcement processes should be in place to ensure departmentally-funded projects as well as permits and leases that have the potential to impair the environmental condition of reserve lands are monitored for compliance with clauses related to environmental management. This is especially important to ensure reserve lands continue to remain productive for communities pursuing economic development opportunities and for individuals who depend on the land for a living.

Through discussions with HQ and regional staff in Ontario and British Columbia, it was found that a consistent and effective mechanism for ensuring that environmental conditions associated with leases and permits are being implemented does not exist. There is no departmental policy or position on enforcement of environmental requirements, no associated training of regional staff, and insufficient staffing levels to take on enforcement functions and responsibilities.

Recommendation:

It is recommended that the Assistant Deputy Minister of Lands and Economic Development:

5. Define a departmental position on the enforcement of lease, permit and other environmental regulatory requirements, identify mechanisms to these enforce requirements, and provide adequate levels of training and staffing to enable staff to fulfill enforcement roles and responsibilities.

4.4 People

4.4.1 External Training

To promote the achievement of the Department's environmental objectives, HQ and regional budgets should reflect the training and capacity building needs of First Nations and provide funding to enable the training of First Nations in the skills required to effectively undertake land and environmental management responsibilities.

The Land Environmental Action Fund (LEAF) provides funding to support environmental management and compliance activities both internally and to First Nations. Some LEAF funds are used for awareness building activities with First Nations. Through discussion with regional staff, the audit found that a needs assessment is not performed to determine the level or extent of First Nation capacity needs. There is also no systematic process for aligning the LEAF budget with the capacity building needs of First Nations.

The audit noted that while the RLEMP is intended to give First Nations the tools to manage the broadening scope and complexity of land and environmental management, it does not contain modules related to environmental management. The audit also found no evidence that the Department has addressed the OAG's findings with respect to First Nations environmental management capacity.

Further, funding levels for external training are perceived by AANDC staff to be insufficient to meet the environmental management training requirements of First Nations. By not meeting these needs, there is an increased risk that First Nations will not have the capacity required to effectively discharge land and environmental management responsibilities.

Recommendation:

It is recommended that the Assistant Deputy Minister of Lands and Economic Development:

6. Conduct a needs assessment exercise to determine the environmental management training needs of First Nations (inclusive of FNLMA and non-FNLMA First Nations) and align budget to identified needs.

5. CONCLUSION

Based on the results of the audit, AASB cannot provide assurance that the Department's internal controls over the adequacy and effectiveness of environmental and contaminated sites management were operating effectively. Taken together, the audit findings suggest there remain gaps for management to address in order to provide assurance that governance and policy, stewardship, compliance, and people frameworks are adequate and functioning appropriately.

6. MANAGEMENT ACTION PLAN

Recommendations	Management Response / Actions	Responsible Manager (Title)	Planned Implementation Date
<p>1. The Audit and Evaluation Sector recommends the Assistant Deputy Minister, Lands and Economic Development should establish a more rigorous and comprehensive governance and accountability framework that supports an integrated approach to environmental strategy, planning, budgeting, communication, performance measurement, and reporting. The framework should include a horizontal environmental oversight committee at the DG level to regularly review and discussing environmental objectives and performance – Sub-working groups should be established to address key issues – as well as a defined position on the roles, responsibilities/accountabilities for the clean-up of uncapped oil and gas wells on reserves.</p>	<p>In December 2011, the AANDC Executive Operations Committee approved a proposal to develop a departmental Environmental Management System (EMS). Development and implementation of the EMS will improve governance and accountability by modernizing the department's environmental policy framework. It will integrate environmental strategy, planning, reporting, budgeting, communication and performance into the department's Expenditure Management System (RPP, DPR) and Management, Resources and Results Structure (MRRS).</p> <p>Development and implementation of the EMS will follow a phased approach beginning in fiscal year 2012-2013:</p> <ul style="list-style-type: none"> • Phase 1 "Planning/Environmental Review" – Develop EMS engagement framework and DG-level steering committee terms of reference; define environmental aspects; conduct gap analysis; and outline scope of EMS. • Phase 2 "Policy Modernization and Systems Integration" – Modernize existing policies, procedures and tools; 	<p>Assistant Deputy Minister, Lands and Economic Development</p>	<p>October 2014</p> <p>March 2013</p> <p>March 2014</p>

Recommendations	Management Response / Actions	Responsible Manager (Title)	Planned Implementation Date
	<p>management and make recommendations to Senior Management on plan of action.</p> <p>A revised action plan, with milestones leading up to the planned implementation date of March 2013, will be presented to Audit Committee once it has been reviewed and agreed on by LED and IOGC.</p>		March 2014
<p>2. The Audit and Evaluation Sector recommends the Assistant Deputy Minister, Lands and Economic Development should establish a regulatory gap management strategy that includes a single point of responsibility; policy and associated guidance/procedures, including those for Department owned assets; and identifies the internal resources required to implement the strategy, based on a needs assessment. In developing the strategy, the ADM, LED should work with Environment Canada to identify areas where new regulations may be developed to close gaps.</p>	<p>Aboriginal Affairs and Northern Development Canada (AANDC) and Environment Canada (EC) have identified the extent of the regulatory gap on reserve and are in the process of conducting a risk assessment and prioritizing which aspects of the gap to address first. Once the risk assessment and prioritization are complete, AANDC and EC will develop several options to closing the gap and present them to senior management for further direction.</p> <p>This recommendation will be addressed through the EMS development process and modernization of AANDC's environmental policy framework.</p> <p>A preliminary assessment of internal resource requirements will be undertaken when options to close the regulatory gap are presented to senior management.</p>	<p>Assistant Deputy Minister, Lands and Economic Development</p> <p>Chief Financial Officer</p>	<p>October 2012</p> <p>October 2013</p> <p>October 2012</p>

Recommendations	Management Response / Actions	Responsible Manager (Title)	Planned Implementation Date
<p>3. The Audit and Evaluation Sector recommends the Assistant Deputy Minister, Lands and Economic Development should develop a Contaminated Sites Management Program Liability Estimation Guide/Standard that is consistent with public sector accounting standards and TBS requirements and implement a communications and training strategy to ensure regional environmental officers understand the distinction between cost estimates and liability estimates and have the skills and capacity to correctly calculate these figures.</p>	<p>The Lands and Environmental Management Branch will be developing a Contaminated Sites Management Program (CSMP) Liability Estimation Guide/Standard. The CFO sector will provide financial expertise in the development of the guide as required.</p> <p>The Lands and Environmental Management Branch will be preparing a communications and training strategy to ensure the regional environmental officers understand their roles and responsibilities related to environmental liabilities and have the skills and capacity to correctly calculate environmental site liabilities. The CFO sector will provide assistance with the development of the training as required.</p>	<p>Assistant Deputy Minister, Lands and Economic Development</p> <p>Chief Financial Officer</p>	<p>March 2013</p>
<p>4. The Audit and Evaluation Sector recommends the Assistant Deputy Minister, Lands and Economic Development should develop a requirement within FNITP for a First Nation to submit an environmental mitigation status report at project close-out in order to receive current and future project funding, similar to hold-backs on reports for financial statements.</p>	<p>For Contaminated Sites, First Nations report to regions through Data Collection Instruments (DCI) reporting requirements on a quarterly basis or at 6 month intervals and at the end of the fiscal year reporting. The DCI is only a FNITP requirement; the more important deliverable for Contaminated Sites is the report, which comes through on the Funding Amendment as the approved scope of work. However, if DCI's and appropriate documents are not</p>	<p>ADM, Lands and Economic Development</p> <p>Chief Financial Officer</p>	<p>March 2013</p>

Recommendations	Management Response / Actions	Responsible Manager (Title)	Planned Implementation Date
	<p>submitted then funding will be held back.</p> <p>There are currently no DCI's for mitigation reports related to Environmental Assessments. It is up to the department to ensure that an environmental assessment is completed as per the requirements of the <i>Canadian Environmental Assessment Act</i>. The department is also responsible for ensuring mitigation measures are identified within the EA report and included in the Terms & Conditions of approvals (e.g. project funding agreements, and land permits). Parliament is currently reviewing Bill C-38 an omnibus bill entitled the "<i>Jobs, Growth and Long-Term Prosperity Act</i>", which was introduced in the House of Commons on April 26, 2012. The Responsible Resource Development initiative under Bill C-38 includes specific legislative changes to the <i>Canadian Environmental Assessment Act</i>. This could change the approach required for assessing environmental impacts of projects and activities on reserve. LED is leading a Task Team to create a new regime to ensure mitigation of environmental impacts will occur.</p> <p>Monitoring and enforcing the Terms and Conditions of an approval is up to the departmental authority responsible for the</p>		

Recommendations	Management Response / Actions	Responsible Manager (Title)	Planned Implementation Date
	<p>approval (e.g. Lands/Aboriginal Business Development Program/IOGC/etc.). Projects often involve one time funding, which will make a FNITP tracking approach difficult. The department is exploring options for managing information in relation to mitigation measures in order to satisfy the reporting requirement identified in the <i>Canadian Environmental Assessment Act 2012</i> coming into effect. The enforcement of mitigation measures is often difficult due to the limitations within the <i>Indian Act</i>. Serious violations may be subject to environmental legislative penalties found under other federal legislation such as <i>Species at Risk Act</i> (SARA), <i>Canadian Environmental Protection Act</i> (CEPA), and <i>Fisheries Act</i>.</p> <p>CFO, TPCOE will work with LED to understand recommend the best approach and who should be involved to achieve their objective(s) for this action.</p>		
<p>5. The Audit and Evaluation Sector recommends the Assistant Deputy Minister, Lands and Economic Development should define a departmental position on the enforcement of lease, permit and other environmental</p>	<p>Through the EMS process, the department will scope out its environmental responsibilities with respect to leases, permits and regulatory requirements and will modernize its environmental policy</p>	<p>Assistant Deputy Minister, Lands and Economic Development</p>	<p>October 2013</p>

Recommendations	Management Response / Actions	Responsible Manager (Title)	Planned Implementation Date
regulatory requirements, identify mechanisms to enforce these requirements, and provide adequate levels of training and staffing to enable the Department to fulfill its enforcement roles and responsibilities.	<p>framework accordingly. Further instruction on applying corrective measures to ensure lease and permit provisions are followed may be developed through directives or procedures. An analysis of training requirements associated with the above will be undertaken.</p> <p>A revised action plan, with milestones leading up to the planned implementation date of October 2013, will be presented to Audit Committee once it has been reviewed and approved by the national EMS working group.</p>		
6. The Audit and Evaluation Sector recommends the Assistant Deputy Minister, Lands and Economic Development should conduct a needs assessment exercise to determine the environmental management training needs of First Nations (inclusive of FNLMA and non-FNLMA First Nations) and align budget to identified needs.	<p>LEMB and Community Opportunities Branch will work jointly to develop a needs assessment strategy for environmental management, monitoring and compliance of FNLMA and non-FNLMA First Nations under a departmental Environmental Management System in order to align identified budget needs.</p> <p>Currently, training in relation to environmental management is provided to First Nations participating under the Reserve Land and Environment Management Program. Two environmental</p>	Assistant Deputy Minister, Lands and Economic Development	March 2013

Recommendations	Management Response / Actions	Responsible Manager (Title)	Planned Implementation Date
	<p>courses are provided by the University of Saskatchewan and environmental components in relation to specific land management instruments are included in the technical training delivered by the National Aboriginal Lands Managers Association. Training support provided by external service providers such as the National Aboriginal Lands Managers Association and the University of Saskatchewan will be reviewed and adjusted based on evolving needs of First Nation communities.</p> <p>As part of the new FNLM funding formula, each First Nation is funded at least \$200,000/year plus an additional \$75,000/year for two years to develop and manage their land/environment. In addition, FNLM funds the Lands Advisory Board Resource Centre, who, in addition to other responsibilities, is funded to provide capacity training and assistance to FNLM First Nations. This Board is responsible to undertake training and assistance for First Nations in the FNLM Regime. This training includes specialized courses on decision-making, governance and control over</p>		

Recommendations	Management Response / Actions	Responsible Manager (Title)	Planned Implementation Date
	<p>reserve lands and resources required under a Land Code. This on-line training is expected to be launched FY 2012-13.</p> <p>LEAF's current funding allocation provides a base amount (\$25K) and the remaining balance to each region is based on population. It funds projects based on the eligibility criteria such as awareness sessions on environmental regulatory compliance, pollution prevention and environmental management of land and community assets. The new strategic direction of LEAF to align with the development of the EMS will provide the same base amount of funding and as of April 2012, projects will be funded based on incentives that are top priorities in both the OAG and the Environmental Tracker. This re-focus will link LEAF and EMS, and will provide awareness sessions on an on-going basis.</p>		

Appendix A: Audit Criteria

The audit objective is linked to audit criteria developed to address specific risks identified in the planning phase.

Audit Criteria	
Governance and Policy	
1.1	Authority, accountability and responsibility for environmental management across the Department are defined and well-understood.
1.2	Effective oversight bodies for environmental and contaminated sites management are established within the Department.
1.3	A Departmental strategy and policy framework to address the 'regulatory gap' on reserve is established and applied.
Stewardship	
2.1	Processes to calculate and report financial cost and liabilities associated with contaminated sites clean-up are in place and well-understood by staff.
2.2	Guidelines and procedures for the transfer and control of payments to First Nations for contaminated site and other environmental projects are in place and are being followed.
Compliance	
3.1	A policy framework is in place to ensure the department is in compliance with environmental regulations and policy requirements.
3.2	Assessment, monitoring, reporting and enforcement processes are in place to ensure environmental compliance of departmentally-funded projects, as well as permits, leases and other economic activities that have the potential to impair reserve environmental condition.
3.3	Assessment, monitoring, reporting and enforcement processes are in place to track the status of environmental condition on reserve and for AANDC-owned capital assets.
People	
4.1	HQ and regional offices have identified the capacity required to support the achievement of Departmental environmental objectives and targets and have dedicated funding to meet capacity requirements.
4.2	HQ and regional budgets reflect the training and capacity building needs of First Nations and provide funding to enable the training of First Nations in the skills required to effectively discharge land and environmental management responsibilities.
4.3	Mechanisms are in place to ensure appropriate communication practices to support departmental decision-making and the achievement of environmental objectives.