



Notification of waste discharges

*Reporting requirements and responsibilities for notifications
under the Environmental Protection Act 1986*

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Department of Environment Regulation
8 Davidson Terrace, Joondalup Western Australia

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Enquiries

Phone: +61 8 6364 7000
Fax: +61 8 6364 7001
Email: info@der.wa.gov.au
Web: www.der.wa.gov.au

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Questions regarding this report should be directed to:

Department of Environment Regulation
Locked Bag 10
JOONDALUP WA 6919
Phone: +61 8 6364 7000
Email: info@der.wa.gov.au

Accessibility

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Purpose

This guideline outlines the notification requirements of the occupier of a premises on or from which a discharge of waste to the environment has occurred.

Introduction

Requirement to notify

Section 72(1) of the *Environmental Protection Act 1986* (EP Act) states:-

....if a discharge of waste —

- (a) occurs as a result of an emergency, accident or malfunction; or
- (b) occurs otherwise than in accordance with a works approval or licence or with a requirement contained in an environmental protection notice; or
- (c) is of a prescribed kind or a kind notified in writing to the occupier concerned,

and has caused or is likely to cause pollution, material environmental harm or serious environmental harm, the occupier of the premises on or from which that discharge took place who does not, as soon as practicable after that discharge, give the CEO oral or electronic notification followed by written notification of the prescribed details of that discharge commits an offence.

Once a notification report is received by the Department of Environment Regulation (DER) it allows DER to:

- determine the level of response required, including the need for on-scene attendance;
- ensure that appropriate environmental protection actions are being undertaken;
- determine if additional action or community notifications are necessary;
- liaise with other agencies where necessary; and
- respond effectively to community concerns or media enquiries.

Definitions

The following definitions are provided in s 3 and 3A of the EP Act:

discharge means in relation to waste or other matter includes deposit it or allow it to escape, or cause or permit it to be, or fail to prevent it from being, discharged, deposited or allowed to escape.

emission means —

- (a) discharge of waste; or
- (b) emission of noise, odour or electromagnetic radiation; or
- (c) transmission of electromagnetic radiation.

equipment means any apparatus, appliance, boiler, chimney, crane, device, dredge, engine, facility, fireplace, furnace, generator, incinerator, instrument (including musical instrument), kiln, machine, mechanism, oven, plant, railway locomotive, retort, structure, tool, vehicle or vessel or any other equipment of any kind whatsoever.

material environmental harm means environmental harm that —

- (a) is neither trivial nor negligible; or
- (b) results in actual or potential loss, property damage or damage costs of an amount, or amounts in aggregate, exceeding the threshold amount (Part.1. S3A(3)). This is currently \$20,000.

premises means residential, industrial or other premises of any kind whatsoever and includes land, water and equipment.

pollution means direct or indirect alteration of the environment —

- (a) to its detriment or degradation;
- (b) to the detriment of an environmental value; or of a prescribed kind, that involves an emission.

Practicable means reasonably practicable having regard to, among other things, local conditions and circumstances (including costs) and to the current state of knowledge.

serious environmental harm means environmental harm that —

- (a) is irreversible, of a high impact or on a wide scale;
- (b) is significant or in an area of high conservation value or special significance; or
- (c) results in actual or potential loss, property damage or damage costs of an amount, or amounts in aggregate, exceeding five times the threshold amount.

waste includes matter —

- (a) whether liquid, solid, gaseous or radioactive and whether useful or useless, which is discharged into the environment; or
- (b) prescribed to be waste.

Notification categories

1. Statutory notification under section 72(1) of the *Environmental Protection Act 1986*

It is a legal requirement that discharges of waste to the environment that have caused or are likely to cause pollution, material environmental harm or serious environmental harm must be reported as soon as practicable to the Chief Executive Officer (CEO) of DER.

Section 72(1) of the EP Act provides that an occupier of the premises (which may include vehicles, vessels and other equipment) on or from which a discharge of waste has taken place, has a duty to notify the CEO of DER of the discharge of waste that has caused or is likely to cause pollution, material environmental harm, or serious environmental harm.

Discharges of waste may be a consequence of an emergency, accident or malfunction, or alternatively, may be of a prescribed kind, or occur otherwise than in accordance with a works approval, licence or requirement of an environmental protection notice.

It is a requirement that the CEO is notified as soon as practicable by either verbal or electronic means, followed by written notification as soon as practicable after the discharge of waste has occurred, setting out the details prescribed in regulation 5K of the *Environmental Protection Regulations 1987* (EP Regulations).

2. Non-statutory (voluntary) notification

Non statutory (voluntary) notifications are not legally required. It is preferable that DER is advised of any discharges that could result in community concern.

DER often receives calls from concerned members of the public and if not aware of the incident, DER is unable to address community concern.

3. Licence Conditions

Some existing licences issued under Part V of the EP Act may include conditions requiring the reporting of discharges of waste. These conditions are being progressively removed from licences in order to remove duplication. If a licence condition requires a notification of a discharge of waste, DER will accept a notification under s 72 as fulfilling the requirement of the relevant condition.

Notification process

1. First step—initial preliminary verbal or electronic reporting

The occupier is required to make preliminary notification of the discharge as soon as practicable to the CEO of DER by calling:

POLLUTION WATCH HOTLINE 1300 784 782

If calling after hours, select the 'Emergency' option when prompted to ensure that the Duty Officer is notified at the time.

Note 1: Some EP Act works approvals, licences and environmental protection notices require written reports of discharges to be provided to DER within certain time frames. These are **additional** requirements and do not replace the requirements to report under s 72(1).

Note 2: DER acknowledges that the initial report may not include full details of the discharge and that information is subject to change as more information comes to hand. Do not delay reporting while waiting for additional information.

Note 3: The requirement to report as soon as practicable to DER applies regardless of DER being notified of a discharge via alternative parties (e.g. media or complaint from public).

2. Second step—written report

Under s 72(1), an initial preliminary verbal or electronic notification alone does not fulfil the statutory requirements of the EP Act.

After a verbal or electronic notification has been given, the occupier of the premises is required to provide written notice of the incident to the CEO of DER as soon as reasonably practicable.

This requires the sending of a written notification of the prescribed details of the discharge of waste. The written notification may be given by fax, email or ordinary mail.

Required details

Regulation 5K of the EP Regulations prescribes the details of the discharge and its impact that are required to be reported to the CEO of DER.

According to r 5K, the prescribed details of a discharge of waste are:

- (a) the time and the address of the premises on or from which the discharge occurred and a map of the premises showing the location of the discharge; and
- (b) if the discharge of the waste was a result of the operation of equipment or otherwise, the name of the person operating the equipment or otherwise responsible for the discharge of the waste; and
- (c) the composition of the waste; and
- (d) the quantity of the waste discharged; and
- (e) whether or not the discharge caused pollution and, if so, the nature and extent of the pollution; and
- (f) the action taken by the occupier of the premises to minimise the effect on the environment of the discharge of waste; and
- (g) whether or not the waste involved in the discharge has been removed, dispersed, destroyed, disposed of or otherwise dealt with, and if so, the manner in which the waste was removed, dispersed, destroyed, disposed of or otherwise dealt with.

How to provide written notification

Written notification may be sent to the CEO of DER either in a letter setting out each of the prescribed details contained in r 5K, or by completing the [s 72\(1\) waste discharge notification form](#).

Submission contact details

Section 72(1) written notification to the CEO of DER containing prescribed information as required in r 5K may be emailed or faxed to Pollution Watch, marked URGENT and to the attention of 'Chief Executive Officer'.

Email to:

pollutionwatch@der.wa.gov.au; or

Fax to:

(08) 6364 7001; or

Post to:

Chief Executive Officer
Department of Environment Regulation
Locked Bag 10
JOONDALUP WA 6919

Penalty

Section 72(1)

In accordance with s 72(1) of the EP Act, failure of an occupier to notify the CEO of DER of a discharge of waste that has caused or is likely to cause pollution or environmental harm is a Tier 2 offence under Schedule 1, Part 2, Division 3, Item 5 of the EP Act.

The maximum penalty upon conviction is \$50,000 for an individual or body corporate. A daily penalty of up to \$10,000 also applies.

Frequently asked questions

1. What amounts of waste discharged have to be reported under s 72?

It depends on the likelihood of pollution or environmental harm. A very small amount of some chemicals can cause harm to a sensitive environment. If in doubt, it is best to report.

2. I have had a spill into a sealed and bunded area on my premises. There is no chance of it getting into the environment. Do I have to notify the CEO of DER under s 72?

If there has been no discharge to the environment (including odours) then you do not have to report under s 72.

3. We have had a fire and smoke is blowing off site. Does this need to be reported?

If the smoke is likely to cause impacts to people or the environment, then it should be reported under s 72, as it could be classed as pollution. Even if there is unlikely to be pollution, there may be community concerns, complaints or media enquiries. In this case, you should provide a voluntary notification. If in doubt, it is best to notify.

4. We have had an incident and are discharging significant smoke (e.g. from a flare stack), but this is permitted under our Environmental Protection Act licence. Do I have to report?

Yes. Section 72(1)(a) requires notification if there is a discharge of waste as a result of an emergency, accident or malfunction that is likely to cause pollution.

5. We have had a discharge but I am not sure if it is likely to cause pollution or environmental harm. Should I report?

Yes, you should notify DER as soon as practicable. If it is later found that pollution or environmental harm did occur, you could be charged with failing to notify DER and contravening s 72(1) of the EP Act. If in doubt, it is best to report.

6. If I voluntarily notify DER of a discharge that I don't think will cause pollution, could this information be used by DER against the company in any legal proceedings?

The voluntary provision of this information is not intended to be used against any company in legal proceedings. However, should an alleged breach be identified, this information will be used for the purpose of the investigation commenced to establish the facts concerning the alleged breach. There are defence provisions under s 74 of the EP Act that, if to be applicable, include a requirement to notify the CEO of DER as soon as reasonably practicable.

7. What happens when I notify DER?

A DER officer will assess the information and determine if any additional action is required. This may include having officers attend the scene, or seeking further information such as photographs or monitoring results via electronic communications. DER may also contact other agencies.

8. We are having an emergency incident and there is a discharge. When do I have to report?

As soon as practicable, which means as soon as the notification can be successfully carried out. Generally, this means straight after the initial emergency response actions are implemented (e.g. fire-fighting and rescue) or within 30 minutes of becoming aware of the discharge. DER works closely with the Department of Fire and Emergency Services during emergencies to determine risks to public health and the environment.

9. If I notify DER, do I have to notify other agencies?

Yes. In an emergency where there is a risk to life, human health, property or the environment, you should contact Fire and Emergency Services on 000 prior to notifying DER. There may be other legislative requirements to report to other agencies.

10. If I report under s 72, and I have a licence condition requiring a notification of a discharge of waste, do I need to do both?

You must report under s 72 and, if this is done correctly and completely, DER will accept this as complying with the relevant licence condition.

11. Why should I notify if I could be investigated for causing pollution?

Under ss 74 and 74A of the EP Act, there are defences to certain offences that are in part, only available if the CEO of DER has been notified as soon as reasonably practicable after the emission.