



Environmental Protection (Unauthorised Discharges) Regulations 2004

What are the unauthorised discharges regulations (UDRs)?

Under Western Australia's *Environmental Protection (Unauthorised Discharges) Regulations 2004* (UDRs), it is an offence to cause or allow certain materials to enter the environment in connection with a commercial or business activity.

The purpose of the UDRs is to cover discharges into the environment from business or commercial activities; which individually are not serious enough to cause *pollution* and breach the provisions of the *Environmental Protection Act 1986* (EP Act), but cumulatively can cause harm.

The UDRs are intended to ensure that all people engaged in a commercial activity take responsibility for preventing the escape of contaminants from their business into the environment.

The UDRs are enforced by authorised officers of the Department of Water and Environmental Regulation (DWER) and local governments.

The environment

Section 3 of the EP Act defines the environment as "living things, their physical, biological and social surroundings, and interactions between all of these". For the purposes of these regulations, this includes:

- Soil (including on the premises where a discharge occurs), surface water, groundwater and air;
- All stormwater drains, vessels or receptacles which are connected to the environment (for example soakwells or drains with a connection leading offsite); and
- Any other place that has direct connectivity to the environment (for example road surfaces, forecourts, carparks or hardstands).

Offences under the regulations

Offence 1 - Discharging certain materials into the environment.

Under regulation 3(1):

A person who, in the course of or in connection with a business or a commercial activity, causes or allows a material listed in Schedule 1 to be discharged into the environment commits an offence.

Penalty: \$5000.





Schedule 1 - Materials that must not be discharged into the environment:

- Acid with a pH less than 4
- Alkali with pH more than 10
- Animal waste¹
- Animal oil, fat or grease
- Compounds or solutions of cyanide, mercury, chromium, lead, arsenic, nickel, zinc or copper
- Degreaser
- Detergent
- Dust produced by a mechanical process including cutting, grinding, sawing, sanding, or polishing a material
- Dye²
- Engine coolant or engine corrosion inhibitor
- Food waste
- Laundry waste
- Mineral oil
- Organic solvents
- Paint
- Petrol, diesel or other hydrocarbon
- Pesticide
- Sediment³
- Sewage
- Vegetable oil, fat or grease

Offence 2 - Burning certain materials and discharging visible smoke.

Regulation 4(1) states:

A person who, in the course of or in connection with a business or a commercial activity, burns or allows a material listed in Schedule 2 to be burnt so as to cause or allow visible smoke to be discharged into the environment commits an offence.

Penalty: \$5000.

Schedule 2 - Materials that must not be burnt so as to discharge visible smoke⁴ into the environment:

- Carpet
- Electrical cables
- Fabrics or textiles
- Organic solvent
- Paint
- Plastic, including polystyrene and the like
- Waste oil, fats or grease
- Printed circuit boards
- Printing waste
- Rubber
- Timber that has been treated with preservatives
- Tyres
- Vehicles or vessels and their parts

Note: There may be local government laws that also prohibit burning. Contact your local government before carrying out any burning activity.

¹ DWER interprets the term “animal waste” to include accumulation or concentration of animal carcasses, body parts, body fluids, faeces or urine.

² DWER interprets the word “dye” to not include nontoxic tracer dye used by a government agency.

³ DWER interprets the word “sediment” to mean visible suspended solids in water.

⁴ DWER interprets the term “visible smoke” to mean smoke that is visible to the naked eye.





Offence 3 - Discharging dark smoke.

Regulation 4(2) states:

A person who, in the course of or in connection with a business or a commercial activity, burns or allows any material to be burnt so as to cause or allow dark smoke to be discharged into the environment for more than 4 minutes in any hour commits an offence.

Penalty: \$5000.

Dark smoke is defined as smoke that appears darker than shade 1 on the Australian Miniature Smoke Chart (AS3543: 2014).

Are there any defences?

It is a defence to show that the discharge:

- Occurred in accordance with an authorisation given in the exercise of a power under another written law⁵;
- Occurred as a result of an emergency, accident or malfunction caused otherwise than by the negligence of that person; or
- Occurred for the purpose of preventing danger to human life or health or irreversible damage to a significant portion of the environment.

What are the penalties?

Authorised officers employed by state and local government authorities may issue infringements or instigate legal action against any person or company who breaches the UDRs.

Infringement penalties of \$250 (first infringement notice) and \$500 (subsequent infringement notices) apply.

If dealt with in a court of law, the maximum penalty for an individual is \$5000 and \$25,000 for a body corporate.

Businesses found to have breached the UDRs will be required to undertake action to ensure compliance.

A discharge of Schedule 1 material to the environment will be requested to be recovered.

Premises found to be burning Schedule 2 material will be requested to cease the burning activities and recover burnt material.

Failure to comply with a DWER request may result in enforcement action being taken or the premises being reported under the *Contaminated Sites Act 2003*.

⁵ For example a licence issued under section 57 of the *Environmental Protection Act 1986*.





If a discharge causes *pollution* or *environmental harm*, this may breach the provisions of the EP Act and incur higher penalties.

More information

For advice on improving environmental practices at your premises or related matters, please contact your [local government](#).

For advice on environmental regulations or related matters, please contact DWER on 6364 7000.

This document is available in alternative formats and other languages on request.

Related documents

Additional publications about environmental regulation are available online from www.dwer.wa.gov.au, or can be requested by phoning 6364 7000.

Legislation

This document is provided for guidance only. It should not be relied upon to address every aspect of relevant legislation.

Local government legislation

Please refer to local government websites for copies of relevant local government legislation.

State government legislation

Please refer to the State Law Publisher (SLP) for copies of relevant environmental legislation, available electronically from the SLP website at <http://www.legislation.wa.gov.au/>.

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