



Environment Compliance Report

Requirements for Publishing Pollution Monitoring Data

More information

For technical information on the matters discussed in this paper contact Compliance and Assurance Section on (02) 9995 5000.

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ISBN 978 1 74359 596 1

EPA 2014/0296

April 2013

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Executive summary

The *Protection of the Environment Operations Act 1997* (the POEO Act) requires holders of an Environment Protection Licence (EPL) to make any pollution monitoring data obtained in compliance with any monitoring conditions attached to their EPL publicly available in a timely manner. The Environment Protection Authority (EPA) has completed audits to determine if licensees are publishing pollution monitoring data, as required by section 66(6) of the POEO Act. The EPA conducted an audit of 200 EPL holders, who are required to undertake monitoring.

The purpose of the audits was to examine the websites of licensees to determine if they had published the required pollution monitoring data on their websites. In addition, the auditors examined the data published to determine if the data had been published in accordance with section 66(6) of the POEO Act and in accordance with the *Requirements for publishing pollution monitoring data* (EPA 2012) (the EPA Requirements).

The objectives of the audits were to assess the level of licensees' compliance with the requirements to publish monitoring data on their websites and to provide information to inform the review of the EPA Requirements.

About this report

This report summarises the findings of 200 compliance audits undertaken by the EPA. The audits targeted 200 randomly selected licences from a total of 1139 EPLs that include conditions requiring pollution monitoring. The audits were completed between 1 July 2012 and 30 September 2012.

Key findings

The audits identified that 60 of the 200 licensees audited were not required to publish monitoring data as they did not maintain websites that related to the activities authorised by the EPL (section 66(6)b of the POEO Act), or the requirement to monitor for pollutants was outside the temporal scope of the audit. It is noted that in accordance with the POEO Act, licensees who do not maintain a website must provide a copy of the monitoring data that relates to pollution at no charge to any person who requests a copy of the data.

Of the remaining 140 licensees audited, 98 operated websites that related to the activities authorised by the EPL and had published monitoring data on their websites. A review of the websites found that:

- 7 licensees complied fully with the EPA Requirements
- 91 licensees did not comply with some of the EPA Requirements.

Forty-two licensees had not published monitoring data on their websites.

Overall, while there were a number of non-compliances identified in relation to the data published, it is considered that the publication of the data has contributed significantly to the general public's access to information about the environmental performance of the licensees.

A follow-up by EPA officers has identified that all 91 licensees have addressed the non-compliances identified and that the 42 licensees who did not publish pollution monitoring data have now published the data on their websites.

In addition to reporting licensees' level of compliance with the requirements relating to the publishing of pollution monitoring data, this report informed the review of the EPA Requirements to enable the effective publication of pollution monitoring data by licensees, its assessment by the EPA, and its meaningfulness to the public.

The EPA will continue to monitor licensees' websites to ensure that pollution monitoring data is published in accordance with the POEO Act.

Related initiatives

Improving community access to information about industry performance

The EPA has recently completed a review of the *Requirements for publishing pollution monitoring data* and the revised document has been published.

The EPA has made the following information relating to environmental performance available to the public:

- any mandatory audit required to be undertaken from 31 March 2012 in relation to a licence (EPA only)
- each pollution study required by a condition of a licence undertaken from 31 March 2012 (EPA only)
- each pollution reduction program required by a condition of a licence undertaken from 31 March 2012 (EPA only)
- each penalty notice issued from 31 March 2012.

Review of the EPA's licensing framework

A comprehensive review of the environment protection licensing framework is being undertaken to ensure that the conditions of EPLs adequately reflect the level of harm to the environment or human health posed by the activity regulated by the licence.

Ongoing compliance and enforcement activities

The EPA will continue to proactively monitor licensees' compliance with legislative requirements, including the requirement to publish pollution monitoring data using a range of mechanisms such as site inspections, targeted compliance audits and campaigns, and investigation of complaints and incidents.

In addition, all licensees must report annually to the EPA on their level of compliance with licence conditions, including details of their compliance with the requirements to publish monitoring data.

Introduction

The NSW Government introduced an extensive reform package to strengthen environmental regulation. The reforms include provisions contained in the *Protection of the Environment Legislation Amendment Act 2011* that include:

- establishing the Environment Protection Authority (EPA) as an independent, accountable and modern environmental regulator
- strengthening the requirements for industry to report and respond to pollution incidents
- improving communication and information flow to the community about industry environmental performance and
- ensuring response agencies are well coordinated and have the necessary information to effectively manage and respond to pollution incidents.

The *Protection of the Environment Legislation Amendment Act 2011* Act introduced several changes to the *Protection of the Environment Operations Act 1997* (the POEO Act). The changes include new provisions under section 66(6) of the POEO Act that require all holders of an Environment Protection Licence (EPL) to make any pollution monitoring data obtained in compliance with any monitoring conditions attached to their EPL publicly available within 14 days of obtaining the data.

The EPA has completed a targeted audit program of 200 EPL holders who are required to undertake monitoring.

The purpose of the targeted audit program was to examine websites operated by licensees to determine if they were complying with the requirements of section 66(6) of the POEO Act relating to the publishing of monitoring data.

The objectives of the audits were to:

- assess the level of licensees' compliance with the requirements of section 66(6) of the POEO Act relating to the publishing of monitoring data on licensee's websites
- provide information to inform the review of the EPA Requirements document in order to enable the effective publication of pollution monitoring data by licensees, its assessment by the EPA, and its meaningfulness to the public.

The audits were conducted between 1 July 2012 and 30 September 2012.

Audit criteria: legislative requirements for publishing pollution monitoring data

The specific requirements that relate to publishing pollution monitoring data are set out in section 66(6) of the POEO Act and are as follows:

- a licence holder who maintains a website that relates to the business or activity authorised by the licensee must make the licensee's name and any monitoring data that relates to pollution publicly and prominently available on that website, in accordance with any requirements issued in writing by the EPA or
- a licence holder who does not maintain such a website must provide a copy of any of the monitoring data that relates to pollution, to any person who requests a copy of the data, at no charge and in accordance with any requirements issued in writing by the EPA.

The requirements issued in writing by the EPA (as referred to in section 66(6) of the POEO Act) are set out in the *Requirements for publishing pollution monitoring data* available at www.epa.nsw.gov.au/resources/legislation/20120263reqpubpmdata.pdf

Penalties apply for licensees who do not publish or do not make available the results of monitoring in accordance with section 66(6). Under section 66(7) of the POEO Act, penalties also apply if a licensee publishes or makes available false or misleading data.

Obligations and the transitional period for complying with requirements

The date licensees were required to publish or provide pollution monitoring data commenced on 31 March 2012. There was no requirement for licensees to publish pollution monitoring data prior to this date.

Although the provision to publish data commenced on 31 March 2012, licensees had until 1 July 2012 to comply with this new requirement (i.e. 3 months from the commencement date of the provision).

Audit scope

The audits assessed compliance against section 66(6) of the POEO Act. The temporal scope for assessing licensee compliance with these requirements covered any pollution monitoring data collected as a result of monitoring (that was required to be undertaken by the conditions of an EPL) from 31 March 2012 to the day of the audit.

Premises audited

A total of 200 randomly selected licensees were subject to audits by the EPA. These 200 licensees were chosen by selecting a representative sample of the 1139 licensed premises with monitoring requirements on their EPL.

Premises across a range of different industry sectors and varying scales of activity were selected, based on the:

- number of monitoring requirements on the issued EPL
- range of environmental media that the monitoring requirements related to (e.g. air, water, soil)
- geographic location of the premises.

The audit program also included licences for premises that pose a high risk of environmental harm due to the nature and quantity of chemicals stored or used on the premises. Many of these facilities have a large number of monitoring requirements across a range of environmental media included on the EPL.

Audit methodology

The auditors conducted internet searches to determine which licensees maintained a website that related to the activities undertaken at the licensed premises.

In cases where the auditor found that a licensee maintained a website, the auditors determined if there was a clear link on the licensee's home page that would enable access to any monitoring data.

In cases where licensees were not maintaining websites, a search was conducted to determine if the licensee was publishing pollution monitoring data on any corporate website or websites operated by a parent company.

If it was found that pollution monitoring data had been published on the licensee's local or corporate website, the data was assessed against the audit criteria (the requirements of section 66(6) of the POEO Act).

The audit assessment involved:

- examining the EPL issued to each licensee in order to identify if there were any monitoring conditions resulting in the generation of pollution data that must then be published, in accordance with the requirements of section 66(6) of the POEO Act.
- assessing whether the monitoring data had been published in accordance with the EPA Requirements.

In cases where licences did not maintain a website, a letter was sent to those licensees advising them that an audit had been undertaken and that no website had been found, and therefore the requirements to publish pollution monitoring data did not apply. The letter included a reminder that although they did not maintain a website where pollution data could be published, they were required to provide a copy of the pollution monitoring data at no charge to any person who requested a copy of their pollution monitoring data in writing.

Licensees that maintained websites and had published monitoring data were provided with written notification of the draft audit findings. The notification provided details of any areas of non-compliance identified and included a requirement for the licensees to address those non-compliances.

Licensees that maintained websites but did not publish monitoring data were provided with written notification of the draft audit findings. In addition those licensees were given specific timeframes to publish monitoring data on their websites.

The final audit reports include any response provided by the licensees as attachments.

The compliance audits were undertaken in accordance with the procedures and protocols in the *Compliance Audit Handbook* (available at www.environment.nsw.gov.au/resources/licensing/cahandbook0613.pdf). The audit findings were presented to each auditee and the findings are also publicly available on the EPA's public register.

Audit findings

This section of the report collates and summarises the various issues identified through the 200 compliance audits undertaken by the EPA.

Sixty of the 200 licensees audited were not required to publish pollution monitoring data due to the following reasons:

- 35 licensees did not maintain websites that related to the activity that is the subject of the licence
- 25 licensees did not receive monitoring data within the temporal scope of the audit (i.e. licence conditions required to monitor at intervals greater than 6 months).

The remaining 140 licensees audited were required to publish pollution monitoring data on their websites. A review of these websites found that:

- 98 had published their data
 - seven licensees complied fully with the EPA Requirements
 - 91 licensees did not comply with some of the EPA Requirements
- 42 licensees had not published pollution monitoring data at the time of the audit.

Summary of audit findings

This section summarises the audit findings of the ninety-eight licensees who had websites and had published data on their websites. .

What monitoring data must be published? (section 3.3 of the EPA Requirements)

Any data that is obtained as a result of a monitoring condition on a licence that relates to air, water, noise and/or land pollution is required to be published and/or made available on request. The data to be published or provided is limited to data that relates to pollutants generated, discharged or emitted from the licensed premises.

Seventy-one licensees published all the required monitoring data on their websites; 27 licences published some and not all of the required monitoring data.

71/98 licensees complied
27/98 complied in part

What other information must be published? (section 3.7 of the EPA Requirements)

In order to provide appropriate context and ensure that the pollution monitoring data published can be understood and correctly interpreted by the general public, licensees were required to publish additional information such as the licensee's name and address, environment protection licence number, link to the full EPA licence, location of monitoring points, monitoring frequency, and the date on which samples were collected.

Licensee's name

Eighty-four licensees published the licensee's name with the pollution monitoring data on their websites. Fourteen licensees did not publish their name with the pollution monitoring data.

84/98 complied
14/98 did not comply

Address of the licensed premise

Seventy-seven licensees published the address of their premise with the pollution monitoring data on their websites. Twenty-one licensees did not publish their address.

77/98 complied
21/98 did not comply

EPL number

Ninety-one licensees published the EPL number with the pollution monitoring data on their websites. Seven licensees did not publish the EPL number.

91/98 complied
7/98 did not comply

Location of the sampling points

Seventy-eight licensees published the location of the sampling points with the pollution monitoring data on their websites. Twenty licensees did not publish the location of the sampling points.

78/98 complied
20/98 did not comply

Map showing the location of the sampling point

Forty-two licensees published maps showing the location of the sampling points with the pollution monitoring data on their websites. Fifty-six licences did not publish maps.

42/98 complied
56/98 did not comply

Monitoring frequency used to collect samples

Seventy-five licensees published the monitoring frequency used to collect samples with the pollution monitoring data on their websites. Twenty-three licensees did not publish the monitoring frequency.

75/98 complied
23/98 did not comply

Date the samples were collected

Ninety-three licensees published the date on which they collected the samples with the pollution monitoring data on their websites. Five licensees did not publish the date on which they collected the samples.

93/98 complied
5/98 did not comply

Date the monitoring data was obtained

Seventy-two licensees did not publish the date on which they obtained the pollution monitoring data on their websites. Twenty-six licensees did not publish the date on which the data was obtained.

72/98 complied
26/98 did not comply

Date monitoring data was published

Sixty-six licensees published the date on which the pollution monitoring data was published on their websites. Thirty-two licensees did not publish the date on which the data was published.

66/98 complied
32/98 did not comply

Pollution concentration limits imposed by statute or by a condition of the licence

Ninety-six licenses published the pollution concentration limits imposed by statute or by a licence condition with the pollution monitoring data on their websites.

96/98 complied
2/98 did not comply

Additional contextual information about exceedances

Ninety-four licences published additional contextual information about exceedances with the pollution monitoring data on their websites. Four licensees did not publish additional contextual information about exceedances.

94/98 complied
4/98 did not comply

Meaningful summaries for sampling of occasional/intermittent discharge from premises (section 3.8.1 of the EPA Requirements)

Licensees with stormwater controls or some other form of occasional discharge to water or air may have licence conditions requiring sampling only during a discharge or emission event. These licensees are required to publish monthly and yearly summaries of pollution monitoring data only for those occasions when discharge occurs. For those months or years when no discharge occurs, a note stating that no discharge has occurred is sufficient.

Eighty-four licenses published meaningful summaries for sampling undertaken during occasional/intermittent discharges to the environment. Fourteen licensees did not publish meaningful summaries.

84/98 complied
14/98 did not comply

Making the data publicly accessible (section 3.1 of the EPA Requirements)

Licensees must make their pollution monitoring data available in a prominent location on their website (if they have one) by including a clear link to monitoring data on their homepage.

Ninety-three licensees published their monitoring data in a prominent location on their website by providing a clear link to monitoring data on their homepage. Five licensees did not publish their data in a prominent location on their websites.

93/98 complied
5/98 did not comply

Information for the review of the EPA Requirements

The audits were also used to gather information to inform the review of the *Requirements for publishing pollution monitoring data*. The information gathered during the audits indicated that the EPA Requirements generally contained adequate information to assist licensees to publish meaningful pollution monitoring data.

The audit also found that the EPA Requirements contained sufficient information to enable the EPA to accurately assess compliance. The pollution monitoring data published in accordance with the EPA Requirements was found to be meaningful to the public.

However, the audits also identified areas where the EPA Requirements could be improved to make them more user friendly and to help ensure that publishing of data is not overly onerous on the licensees and that the data published is more meaningful to the public.

The information gathered from the audits has been considered in the review of the EPA Requirements undertaken by the EPA.

After the audits

Follow-up by the EPA

A follow-up review of licensees' websites by the EPA has confirmed that the non-compliances identified during the compliance audits have been addressed or are in the process of being addressed by licensees.

- The forty-two licensees that did not publish data on their website have now published their data.
- The ninety-one licensees that had published data on their website but were not fully complying with the EPA Requirements addressed the non-compliances after being provided with written notification of the audit findings. Licensees have also indicated that they will ensure that the EPA Requirements will be complied with the next time that pollution monitoring data is being published on their website.

Copies of the reports setting out the audit findings have been published on the EPA's Public Register available at www.epa.nsw.gov.au/prpoeo/index.htm.

The information collected during the audits is being used to inform the review of the EPA Requirements, to help improve the way the data is published and help ensure that the data published is meaningful to the public.

The EPA will continue to monitor licensees' websites to help ensure that the pollution monitoring data published is published in accordance with the POEO Act.

Related initiatives

Improving community access to information about industry performance

Review of the EPA Requirements for publishing pollution monitoring data

The document *Requirements for publishing pollution monitoring data* (EPA 2012) has been reviewed based on feedback provided by licensees and other stakeholders, and is available at www.epa.nsw.gov.au/licensing/pubmonitdata.htm. The EPA has also included some frequently asked questions (FAQs), available at www.epa.nsw.gov.au/legislation/faqs/pubpmdata.htm. Licensees can refer to the FAQs for clarification on common issues raised by licensees. The EPA will update the FAQs as necessary to assist licensees to comply with the EPA Requirements.

Licensees can also discuss any issues relating to the EPA Requirements with an officer from the relevant EPA regional office.

Additional information to be made available to the public

The reforms contained in the *Protection of the Environment Legislation Amendment Act 2011* also included additional requirements to enhance regulatory information available on the public register maintained by the EPA and by other appropriate regulatory authorities such as local councils.

The information now made available includes details of:

- any mandatory audit required to be undertaken from 31 March 2012 in relation to a licence (EPA only)
- each pollution study required by a condition of a licence undertaken from 31 March 2012 (EPA only)
- each pollution reduction program required by a condition of a licence undertaken from 31 March 2012 (EPA only)
- each penalty notice issued from 31 March 2012.

Review of the EPA's licensing framework

The EPA is undertaking a comprehensive review of the environment protection licensing framework to ensure that the conditions of EPLs adequately reflect the level of harm to the environment or human health posed by the activity regulated by the licence.

Ongoing compliance and enforcement activities

The EPA will continue to pro-actively monitor licence holders' compliance with environmental requirements using a range of mechanisms, including site inspections, targeted compliance audits and campaigns, and investigation of complaints and incidents.

In addition, licensees are required to report on their level of compliance with licence conditions and relevant legislative requirements, including the requirements to publish pollution monitoring data, in their Annual Return.

Glossary

Audit	A systematic, independent and documented verification process of objectively obtaining and valuating audit evidence to determine whether specified criteria are met.
Audit criteria	The audit criteria are defined requirements against which the auditor compares collected audit evidence. Criteria may include regulatory requirements, standards, guidelines or any other specified requirements.
Audit scope	The audit scope defines the extent and boundaries of the audit such as locations, organisational units, activities and processes to be audited, and the time period covered by the audit.
Compliance	There is sufficient and appropriate evidence to demonstrate the particular requirement has been complied with and is within the scope of the audit.
Corporate website	An informational website operated by a company or associated companies. Large companies typically maintain a single website for various brands or subsidiaries.
Environment Protection Licence (EPL)	A licence that authorises the carrying out of scheduled development work or scheduled activities or controls water pollution arising from non-scheduled activities, being a licence issued under Chapter 3 of the <i>Protection of the Environment Operations Act 1997</i> and in force.
Environmental harm	Includes any direct or indirect alteration of the environment that has the effect of degrading the environment and, without limiting the generality of the above, includes any act or omission that results in pollution.
Facility	A premise where a scheduled or non-scheduled activity is undertaken.
Monitoring	Monitoring generally means to be aware of the state of a system. The process of monitoring involves data collection, data analysis and interpretation of the data to determine the state of the system and how the system is changing.
Monitoring data	Data collected for the purpose of characterising changes in an event as the result of a direct observation or experiment. The facts are usually numbers that reflect the result of a measurement determined from observations or experiments.
Monitoring frequency	The frequency by which licensees are required to collect samples, as required by their Environmental Protection Licence.
Non-compliance	Clear evidence has been collected to demonstrate the particular requirement has not been complied with and is within the scope of the audit.

Pollution	Means water pollution, air pollution, noise pollution, or land pollution.
Public register	<p>The public register under section 308 of the POEO Act is an online searchable database and contains:</p> <ul style="list-style-type: none"> · environment protection licences · applications for new licences and to transfer or vary existing licences · environment protection and noise control notices · convictions in prosecutions under the POEO Act · results of civil proceedings · licence review information (submissions regarding licence review can be made at any time) · exemptions from the provisions of the POEO Act or regulations · approvals granted under clause 9 of the POEO (Control of Burning) Regulation · approvals granted under clause 7A of the POEO (Clean Air) Regulation.
Scheduled activity	An activity listed in Schedule 1 of the <i>Protection of the Environment Operations Act 1997</i> .
Scheduled (premises)	<p>A premise (as defined in the <i>Protection of the Environment Operations Act 1997 – POEO Act</i>) on which an activity listed in schedule 1 of the POEO Act is carried out. The person or company undertaking the activity is required to hold an Environment Protection Licence to carry out the activity.</p> <p>Premises includes:</p> <ul style="list-style-type: none"> · a building or structure or · land or a place (whether enclosed or built on or not) or · a mobile plant, vehicle, vessel or aircraft.