

Environmental regulation in WA

Background

The Department of Environment and Conservation is responsible under the *Environmental Protection Act 1986* for licensing or registering industrial premises. DEC also monitors and audits compliance with works approvals, licence conditions and regulations, takes enforcement actions as appropriate, and develops and implements departmental licensing and industry regulation policy.

Premises with significant potential to cause pollution of air, land or water are known as 'prescribed premises' under the Act and must hold a works approval before beginning any work or construction. A licence to prevent or regulate emissions and discharges of waste must also be obtained before operating prescribed premises.

Some premises only require registration (for operation) under the Act. Licences and works approvals are issued with legally binding conditions intended to prevent or minimise the potential for pollution. Registrations are issued to premises that are managed through general regulations under the Act and codes of practice.

There are currently 863 licensed premises and 1671 registered premises in Western Australia.

If a proposal for a prescribed activity is new (i.e. not yet constructed or operating) or represents a major change to existing operations, it may also be referred to the Environmental Protection Authority to determine if assessment is required. If the EPA considers the environmental impact of a proposal is likely to be significant, a formal assessment may be required.

The EPA may then prepare a detailed assessment report which is released for a two-week public appeals period. Appeals on the EPA report are referred to the independent Appeals Convenor who prepares a

report for the Minister for the Environment. The Minister determines whether the proposal can be implemented. If the project is approved, the Minister may impose specific conditions under which the proposal must operate. DEC also monitors compliance with Ministerial conditions imposed on projects assessed by the EPA and is responsible for enforcing cases of non-compliance.

The next step is DEC officers assessing works approval applications and, if acceptable, issuing a works approval before construction and a licence before operations begin. If a proponent intends to change the type, nature or scale of a licensed activity, DEC must be advised in advance to determine whether a works approval or licence amendment is required.

DEC aims to inspect licensed premises on an annual basis, though the timing of inspections varies according to the type of premise and the type of operation. Complaints may also prompt additional inspections.

DEC considers any breach of the Act to be very serious. A proponent may be liable for prosecution if it illegally operates without a licence and could be fined up to \$100,000 for a corporation or \$50,000 for an individual (daily penalties also apply). It is also an offence to contravene a licence condition. This offence carries a penalty of up to \$125,000, with a daily penalty of up to \$25,000 for a corporation.

In December 2006, the *Contaminated Sites Act 2003* came into effect. The Act authorises DEC to enforce investigation and clean up in cases where contamination is suspected. It also provides a legal framework for the management of contaminated sites in Western Australia and requires owners, occupiers and polluters to report known or suspected contaminated sites to DEC.

Esperance Port Authority

Esperance port includes prescribed premises under categories relating to loading or unloading bulk material. The current two-year licence held by the Esperance Port Authority was issued on 7 October 2006 and can be viewed on DEC's website.

The Port Authority was first issued a licence to ship lead carbonate from the Magellan lead mine at Wiluna in November 2004. In seeking approval, the Port Authority advised the then Department of Environment that the lead carbonate would be shipped in moist, small agglomerates to prevent dust. The licence was issued on that basis and refers to the material being pelleted.

The Port Authority's licence requires it to collect air samples on a three-monthly basis and report these to DEC annually by 1 November each year. The report provided on 31 October 2006 was incomplete and a final report was not received until 31 January 2007. This report included dust monitoring results for lead carbonate that were well above the historic levels. DEC notified the Port Authority on 27 February that it was required to update its dust monitoring program urgently to allow the possible health and environmental impacts to be assessed. DEC also notified the Port Authority that it would be conducting a review of the current licence.

Investigations into mass bird deaths around the Esperance townsite between December 2006 and January 2007 were well under way by this stage (see Fact Sheet 1). Initial tests on the small sample of the dead birds were inconclusive, but lead poisoning was later suggested as the cause of death. Further bird deaths in March were also attributed to lead poisoning and subsequent isotope testing matched the lead in the bird samples to material transported into and out of the town.

Although the first test results did not provide direct evidence of a lead source, the Port Authority voluntarily halted shipping lead carbonate when the second mass bird deaths occurred in March. DEC served a prevention notice on the Port Authority on 15 March to prevent it receiving and shipping lead carbonate. This means that movement of lead through the port can only resume if and when DEC decides it is safe to do so.

DEC's review of the Port Authority's licence and facilities, and compliance with the licence, is continuing.

DEC's Director General announced on 4 April that he would commission an independent review of the Department's audit and inspection processes for the Esperance port to identify where improvements were needed.

The Esperance lead issue was also referred to a Parliamentary Standing Committee on 4 April. The Education and Health Standing Committee will inquire into the cause and extent of lead pollution in the Esperance area and report by 16 August 2007, in particular examining:

- how the environmental approval process for the transport and export of pelletised lead enabled the transport and export of granulated lead;
- the effectiveness of dust monitoring and reporting in relation to lead levels in the area and the adequacy of the response to those reported levels;
- the extent to which handling and other practices at Esperance port gave rise to the benthic lead levels in the harbour;
- whether the Esperance Port Authority properly exercised its responsibilities in relation to the potential lead pollution; and
- whether the Department of Environment and Conservation's responsibilities in relation to the Esperance Port Authority processes, practices and procedures, including the legal and regulatory framework, were adequate and properly exercised.