

# AUDITOR-GENERAL'S REPORT PERFORMANCE AUDIT

## Protecting the Environment: Pollution Incidents

Department of Environment,  
Climate Change and Water



The Legislative Assembly  
Parliament House  
SYDNEY NSW 2000

The Legislative Council  
Parliament House  
SYDNEY NSW 2000

In accordance with section 38E of the *Public Finance and Audit Act 1983*,  
I present a report titled **Protecting the Environment: Pollution Incidents -  
Department of Environment, Climate Change and Water.**

A handwritten signature in black ink that reads 'Peter Achterstraat'.

Peter Achterstraat  
Auditor-General

Sydney  
September 2010

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# Contents

<b>Executive summary</b>	<b>1</b>
Background	2
Conclusion	2
Supporting findings	2
Recommendations	3
Response from the Department of Environment, Climate Change and Water	4
<b>Key findings</b>	<b>9</b>
1. Does the department know about pollution incidents that harm the environment?	10
2. Does the department investigate and respond to pollution incidents that harm the environment?	15
<b>Appendices</b>	<b>25</b>
Appendix 1:About this audit	26
Appendix 2:The department’s role in receiving and responding to reports of pollution incidents	28
Appendix 3:Environment Protection Licences	30
Appendix 4:Glossary	32
<b>Performance Audits by the Audit Office of New South Wales</b>	<b>33</b>



## Executive summary

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## Background

The *Protection of the Environment Operations Act 1997* (POEO Act) gives the Department of Environment, Climate Change and Water (the department) the power to punish those who deliberately cause harm to human health or to the environment.

The department is responsible for reporting on, coordinating and monitoring pollution incidents to ensure environmental harm is minimised.

If managed well, the department's response to reports of pollution incidents can ensure that harm is minimised and wilful acts are punished by appropriate financial and non-financial penalties.

The department uses a range of administrative and regulatory tools to achieve environment protection and act as a deterrent against breaches. Once proven, the POEO Act provides substantial financial penalties for serious breaches. But these regulatory tools and penalties will only act as a deterrent if they are used effectively.

In this audit we assessed how well the department manages pollution incidents to minimise harm to the environment. We examined whether the department:

- knows about pollution incidents that harm the environment
- investigates and responds to pollution incidents.

We examined pollution incident reports relating to environment protection, but excluded reports about motor vehicle and noise pollution.

## Conclusion

The department has a systematic approach to receiving, investigating and responding to reports of pollution incidents.

However, the department does not analyse and report on :

- the extent of environmental harm caused by pollution incidents reported to it
- whether its response has minimised harm to the environment
- whether its regulatory approach has improved compliance, particularly by Environment Protection Licence (EPL) holders (licensees).

## Supporting findings

The department has a central Environment Line call centre to receive reports of pollution incidents from both the community and licensees. It uses a risk based approach to ensure that high risk pollution incidents are responded to urgently and investigated.

The department does not capture and analyse sufficient data about pollution incident reports to assess the extent of environmental harm occurring, and trends over time. For example, it does not monitor centrally:

- how many separate pollution incidents occurred
- the level of risk to the environment from these pollution incidents
- how many pollution incidents relate to licensed premises.

The department also lacks quality results based performance information to assess whether its response is effective and whether its regulatory approach has improved compliance.

Licensees must report pollution incidents to the department if they fall within certain thresholds. We found that one in five reports of pollution incidents implicating licensees were self-reported. Over the last three years, the department has taken regulatory action against 16 licensees for failing to report pollution incidents as required. While this is only a small proportion of all licensees, the department cannot give assurances that this apparent high level of compliance is accurate.

One measure to determine the success of regulatory action is compliance rates. However, the department does not systematically analyse and report a state-wide measure of compliance, nor has it done any analysis to verify that licensees are reporting pollution incidents as required.

This makes it hard for the department to demonstrate that its regulatory approach has led to better compliance, rather than a low risk of getting caught.

## Recommendations

To be implemented by December 2010, the department should:

1. Implement centralised recording and analysis of key information to improve the quality of data used for decision making and measuring performance, including:
  - a) for each pollution incident report, accurately record in a central database:
    - i. the EPL number of the licensee implicated (page 14)
    - ii. whether the report is made by the licensee (page 14)
    - iii. the assessed risk of the pollution incident (pages 14 and 16)
  - b) centrally check that compliance audit action plans are completed within required timeframes (page 15)
  - c) regularly analyse the risk profile of pollution incident reports (page 16)
  - d) report on how many separate pollution incidents have occurred (page 17)
  - e) develop and regularly analyse results-based performance measures, including compliance rates. (page 20)
2. Regularly analyse the reasons that Environment Protection Licences are varied. (page 22)
3. Better distinguish the Environment Line number for reporting pollution incidents on its brochures, publications and website to make it easy for the public to report pollution incidents. (page 10)

To be implemented by June 2011, the department should:

4. Make recommendations to the government on how to resolve the inconsistencies between the *Protection of the Environment Administration Act 1991* and the *Protection of the Environment Operations Act 1997* regarding environment protection regulatory responsibilities in NSW. (page 23)

## Response from the Department of Environment, Climate Change and Water

*I am writing to you in relation to your letter dated 16 August 2010 attaching a copy of the NSW Auditor-General's Performance Audit - Protecting the environment: Pollution Incidents and seeking a formal response to this performance audit report.*

*The Department of Environment, Climate Change and Water (DECCW) is committed to undertake our broad regulatory activities in a credible and transparent manner, concentrating on finding and fixing the most important environmental problems. Pollution incidents, as reported through Enviroline, are one part of that broader program. This audit has provided some useful information to assist the DECCW in improving its program but its narrow focus has resulted in the audit not considering the program in its totality. The previous audit conducted by The Audit Office and its subsequent review audit on pollution regulation both help to provide that broader perspective.*

*This audit has confirmed that the Department of Environment, Climate Change and Water (DECCW) has a systematic approach to receiving, investigating and responding to reports of pollution incidents. This is positive. At the same time, the audit has identified the need to improve the quality of the data collected about the incident and to facilitate reporting of incidents. I agree that improved data collection and analysis will be useful. However I do not agree with the implication in the conclusion that environmental harm is not part of our response.*

*As part of being a credible regulator, DECCW considers the level of environmental harm as part of our regulatory approaches, actions and decisions. DECCW has in place overarching Operating Principles that provide a foundation for DECCW being a credible regulator and they assist our staff to undertake their work in a consistent and effective way. The Operating Principles emphasise using a proportionate response to deal with non-compliances or incidents. This acknowledges that the choice of approaches and tools depends on the circumstances of a particular case and this includes the environmental harm that may have been caused by an incident.*

*Following this audit, DECCW will work to improve the centralised capture, analysis and monitoring of response data, although the timeframes may need to be adjusted to take into account the challenges and costs of developing statewide databases. Please take this letter and the enclosed more detailed information as our formal response to the audit and its recommendations.*

*(signed)*

*Lisa Corbyn  
Director General*

*Dated: 1 September 2010*



*The Department of Environment, Climate Change and Water (DECCW) appreciates the opportunity to make a formal response to the performance audit report on how DECCW manages pollution incidents.*

*DECCW is pleased to note that the audit confirms the appropriateness of our decisions in protecting the environment and that we have a systematic approach to receiving, investigating and responding to pollution incidents.*

*We are committed to undertaking our regulatory activities in a credible and transparent manner and our focus is on finding and fixing NSW's most important environmental problems.*

*We aim to assist those we regulate to understand and meet legislative obligations while driving compliance through consistent and accountable regulatory actions targeting those who consciously choose or negligently fail to comply with the law.*

*DECCW uses a mix of tools to achieve environmental outcomes including education, economic mechanisms and a strategic and risk based compliance and enforcement program. These include strong monitoring and industry accountability mechanisms:*

- Statutory requirements to control pollution*
- Industry monitoring and reporting requirements*
- A legally binding compliance certification process*
- Mechanisms to confirm compliance including inspections, compliance audits and campaigns*
- A formal licence review process to ensure licence requirements reflect potential environmental impacts*
- Strong but flexible enforcement powers*
- Regulatory decisions publicly available via an internet based Public Register*

*Overarching Operating Principles provide a foundation for DECCW being a credible regulator and they assist our staff to undertake their work in a consistent and effective way. The Operating Principles emphasise using a proportionate response to deal with non-compliances or incidents. This acknowledges that there is no 'one size fits all' response - the choice of approaches and tools depends on the circumstances of a particular case.*

*It is important to note that the audit focused on one aspect of DECCW's environment protection system - pollution incidents. The findings therefore do not take account of the range of mechanisms DECCW has in place to collect, monitor and measure environmental trends and improvements. Information is publicly reported in the NSW State of the Environment Report and in DECCW's Annual Reports. Performance measures include air quality outcomes, Environment Line incident reports about air quality, odours and noise from regulated premises, air and water pollutant loads emitted by licensees under the load based licensing system, the results of pollution reduction programs adopted by licensees to bring about environmental improvements and the number of penalty notices issued and prosecutions completed. Information on industry emissions under the National Pollutant Inventory is also publicly available. All of this information is used by DECCW to inform its regulatory programs.*

*It is also important to note that determining the level of harm or potential harm to the environment informs all of our regulatory approaches, actions and decisions and DECCW's Prosecution Guidelines lists this as an important factor to consider when determining to take prosecution action.*

*It is also noted that the audit conclusions were primarily based on an examination of the Environment Line database which is used to record pollution complaints. The auditors did not view DECCW's Integrated Statutory Environmental Management System (which contains details of regulatory actions for each licensee) or regional files containing relevant documentation.*

*DECCW believes that the narrow scope of the audit does not capture how the integrated system for protecting the environment works. DECCW will however work to improve the centralised capture, analysis and monitoring of data we hold.*

*DECCW has the following comments on the audit recommendations:*

***To be implemented by December 2010:***

*Implement centralised recording and analysis of key information to improve quality of data used for decision making and measuring performance.*

*We are investigating appropriate solutions to enhance the Environment Line database to include additional information about individual pollution incidents and improve search functionality so that data can be more easily accessed centrally for analysing and reporting trends. This investigation will determine whether or not the recommendations can be funded and achieved by December 2010 or will identify another feasible timeframe.*

*Centrally check that compliance audit action plans are completed within required timeframes.*

*Regional officers who have day to day responsibility for regulating licensed premises ensure that audit action plans are implemented. However DECCW will amend its procedures to also ensure that where the audits have been conducted by the central Environmental Audit Unit the status of action plans is reported centrally.*

*Develop and regularly analyse results based performance measures including compliance rates.*

*As outlined above, DECCW has a suite of performance measures in place to monitor environmental performance and improvements. This is in addition to the processes applied at a regional level to ensure individual pollution incidents are appropriately dealt with. DECCW is currently reviewing its key performance indicators and will consider the additional indicators recommended by the audit.*

*Regularly analyse the reasons that Environment Protection Licences are varied.*

*Notices to vary licences are the main regulatory tool for ensuring that licence conditions are appropriate and reflect potential environmental impacts at a premises. The audit report notes that licences are varied for a number of reasons including when placing a pollution reduction program on a licence to improve environmental performance.*

*The auditors found that DECCW has a structured approach to ensure that licence variations are appropriate and open to scrutiny. This approach includes a formal approval process where Regional Unit Heads and Managers confirm the reasons why the licence variation is being proposed. These reasons are then clearly stated on variation notices which are publicly available on the Public Register. Notices are also subject to appeal.*

*It is therefore not clear what additional analysis is intended to provide nor is the rationale for the above recommendation clear. However DECCW will work to make the reasons for licence variations clear.*

*Better distinguish the Environment Line number for reporting pollution incidents on its brochures, publications and website to make it easy for the public to report pollution incidents.*

*The audit report notes that calls to the Environment Line have been increasing over the last three years. This indicates that there is community awareness in knowing how to report pollution incidents.*

*DECCW will review the wording used on its publications and brochures for promoting the Environment Line for reporting pollution incidents, with the revised wording to be included on all new relevant publications. We will also review how the Environment Line is promoted on DECCW's website as part of our current Web Design Project.*

#### **To be implemented by June 2011**

*Make recommendations to the Government on how to resolve the inconsistencies between the Protection of the Environment Administration Act 1991 and the Protection of the Environment Operations Act 1997 regarding environment protection regulatory responsibilities in NSW.*

*The Protection of the Environment Administration Act 1991, which set up the then Environment Protection Authority, included a number of general responsibilities such as coordinating the activities of all public authorities to ensure that best practicable measures are taken for environment protection and inquiring into and reporting on the efficacy of those measures.*

*The enactment of the landmark Protection of the Environment Operations Act 1997 (POEO Act) which commenced on 1 July 1999 clarified environment protection regulatory responsibilities by establishing the concept of Appropriate Regulatory Authorities. This provides clear roles for DECCW and local government, avoids duplication of regulatory effort and provides transparency for the community and industry. The POEO Act also contains a range of regulatory responses for each Appropriate Regulatory Authority to use as necessary and DECCW provides guidance and support to assist councils to undertake their regulatory activities effectively, efficiently and consistently.*

*Each Appropriate Regulatory Authority must maintain a Public Register detailing regulatory actions undertaken. In addition each Council must report on its regulatory actions in its State of the Environment Reports. Therefore DECCW does not agree with the audit finding that there is a gap in information about pollution incidents.*

*All of the above mechanisms result in a higher level of regulatory accountability than was in place when the Protection of the Environment Administration Act was passed. DECCW will therefore make recommendations to the Government to resolve the inconsistencies between the two Acts.*

*In summary DECCW is confident that it has a range of mechanisms in place to ensure that the environment is not only protected, but also improved. We are however committed to improving the management of our regulatory performance data and in identifying appropriate solutions to the audit's findings.*



## Key findings

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## 1. Does the department know about pollution incidents that harm the environment?

### Conclusion

Not all pollution incidents have to be reported to the department.

The department has a structured approach to receiving reports of pollution incidents. It has a central Environment Line call centre to receive reports of pollution incidents from both the community and licensees.

However, we found there is room to improve in:

- distinguishing the Environment Line number to the public
- capturing and analysing data about pollution incident reports to assess the extent of environmental harm occurring, and trends over time
- checking completion of compliance audit action plans.

### The Environment Line identity can be improved

The Environment Line call centre has been in operation since 1996 with the same phone number 131 555, and is available 24 hours a day, seven days a week.

Calls to the Environment Line for information and reporting pollution incidents have been increasing over the last three years. This indicates some awareness in the community of the phone number.

The Department has not conducted any analysis or research into the effectiveness or public awareness of the Environment Line.

We found that not all departmental brochures publicise the Environment Line number and on some brochures it is not clearly labelled as a pollution incident reporting number. In addition, the Environment Line number is not prominently identified on the department's Internet home page.

A more consistent approach would ensure that the department is maximising the opportunity to receive reports from the public.

### Recommendation

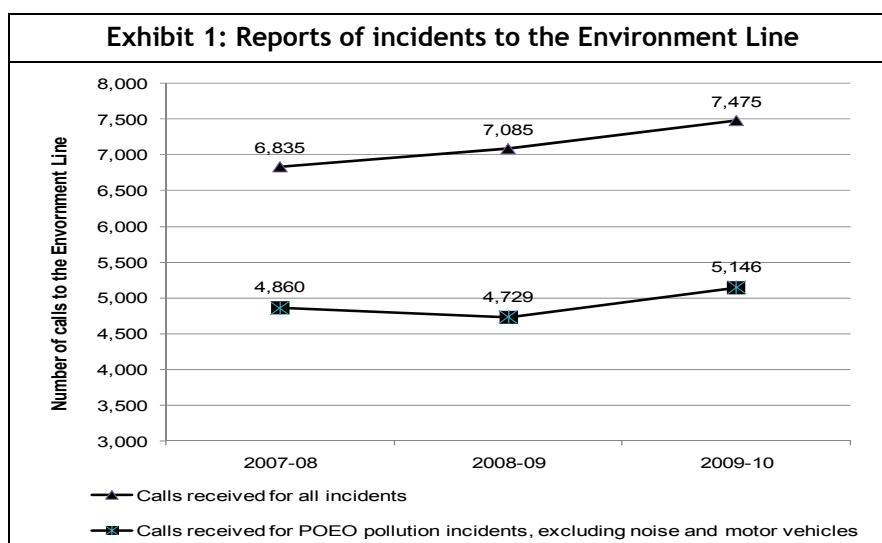
By December 2010, the department should better distinguish the Environment Line number for reporting pollution incidents on its brochures, publications and website.

### Incident reports received via the Environment Line

The Environment Line provides information and receives reports of incidents for all areas of the department's responsibilities. These include:

- environment protection: air, water, land, noise, motor vehicles
- pesticides
- threatened species
- native vegetation
- dangerous goods
- contaminated sites
- radiation control
- Aboriginal culture and heritage.

Over the last three years there has been a steady increase in the number of calls to the Environment Line reporting incidents.



Source: Department of Environment, Climate Change and Water

In 2009-10, the Environment Line received 127,186 calls. Of these:

- 112,110 were requests for information
- 7,475 were reports of incidents for all areas of the department's responsibilities
- 5,146 were reports of pollution incidents relating to air, water and land, but excluding motor vehicles and noise.<sup>1</sup>

In the following discussion when we refer to pollution incidents we mean the sub-set of pollution incident reports relating to air, water and land, but excluding motor vehicles and noise.

#### Pollution incident reports come from four main sources

Reports of pollution incidents are received from four main sources:

- public
- local councils
- other authorities: NSW Fire Brigade/NSW Police
- Environment Protection Licensees

**Exhibit 2: Source of pollution incident reports 2007-08 to 2009-10**

Source	Year		
	2007-08	2008-09	2009-10
Public	3,894	3,789	4,110
Local councils	136	196	225
Other authorities	148	120	77
Licensees	682	624	734
<b>Total</b>	<b>4,860</b>	<b>4,729</b>	<b>5,146</b>

Source: Department of Environment, Climate Change and Water

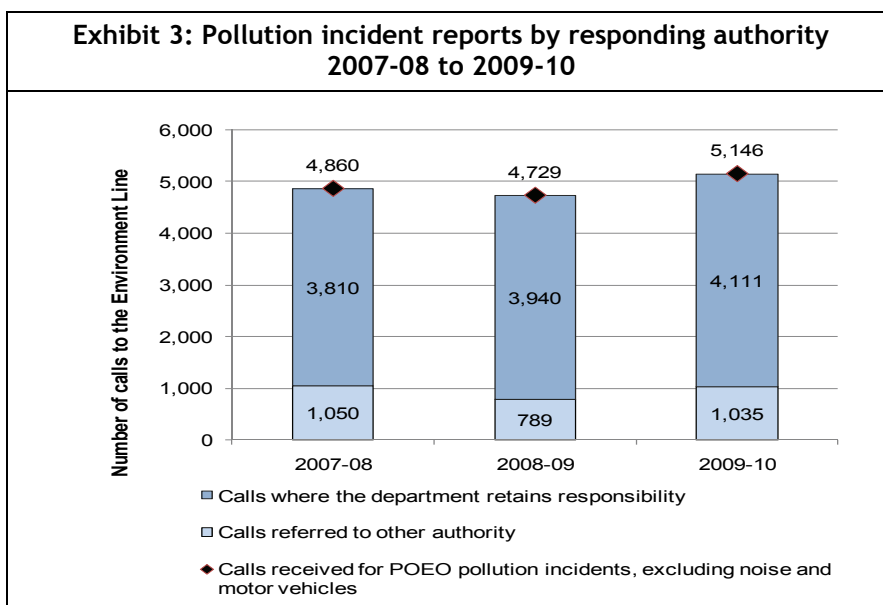
Note: The split in reports by source provided by the department is an estimate as the Environment Line database cannot be easily searched for this data.

<sup>1</sup> The department does not report on the number of separate pollution incidents. This is discussed in Section 2.

Eighty per cent of pollution incidents reports come from members of the public. As the department cannot be in all places at all times, it relies on the public to be its ‘eyes and ears’. This is a significant source of intelligence for the department and contributes to the quality of information available for decision making.

**Some reports are referred to other authorities for action**

However, the department does not have to respond to all reports it receives. In 2009-10, 1,035 of the 5,146 reports received, or 20 per cent, were referred to other authorities, such as local councils. The department does not find out what happens to the reports it refers to other authorities. Section 2 contains a discussion about the separation of responsibilities for responding to pollution incidents under the POEO Act.



Source: Department of Environment, Climate Change and Water

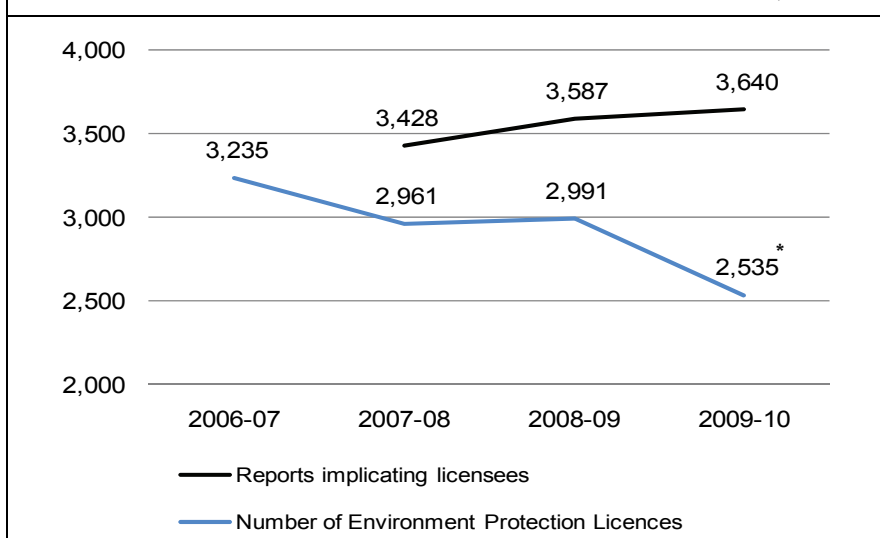
**Reports implicating licensed premises have increased**

On average over the last three years, approximately 90 per cent of reports of pollution incidents, where the department retains responsibility, have implicated licensed premises as the likely source of the pollution incident.

Since 2006-07, the number of Environment Protection Licences (EPL) issued has decreased in line with regulatory reforms that removed the licensing requirement for certain low-risk activities, such as concrete batching, bitumen mixing, transport of some types of waste and mobile plant activities. The department remains the Appropriate Regulatory Authority for these activities and a number of regulatory tools under the POEO Act can be used if necessary, for example, clean up notices, prevention notices, penalty notices and prosecutions.

However, there has been an increase in the number of reports implicating licensees. The average number of reports per licensee has increased from 1.2 in 2007-08 to 1.4 in 2009-10. This increase may indicate either more reports being received per pollution incident, or lower compliance at licensed premises. The department has not done any analysis to determine the reason for the increase. We found that the increase coincided with an increase in the department’s inspections of high risk licensees.



**Exhibit 4: Reports implicating licensed premises and number of Environment Protection Licences issued 2006-07 to 2009-10**

Source: Department of Environment, Climate Change and Water

\* Environment Protection Licences as at 31 March 2010

**The department needs better analysis to verify that licensees self report as required**

While the department cannot know about all pollution incidents, it should at least know about pollution incidents involving licensed premises that must be reported to it. This is because it is a licence condition to notify the department of incidents causing or threatening material harm to the environment. Failure to notify is a breach of a licence condition.

The department finds out about pollution incidents at licensed premises through Environment Line reports, as well as its inspections, campaigns and compliance audit program.

While licensees are required to self-report pollution incidents, there are exceptions. For example:

- if the licensee is aware that the pollution incident has already been reported by someone else
- if the licensee is in contact with a local operations officer in relation to the pollution incident
- if the pollution incident has not threatened or caused material harm to the environment.

However, the department has not done any analysis to be assured that licensees self report as required. This is discussed further in Section 2.

**Pollution incident reports recorded in the database can be improved**

Pollution incidents implicating licensees can indicate problems and assist the department in monitoring compliance with licence conditions. Local operations officers investigate reports from the Environment Line and check licensee compliance.

However, key information, such as whether the incident implicates licensed premises, the EPL number (where known), the level of risk and whether the licensee has self reported, is not captured in a way that can be accurately and reliably searched and analysed statewide.

The department has business rules for how key information should be recorded in the Environment Line database, but this is not being applied consistently. Even with the existing database design limitations, enforcing business rules can go a long way to improving accuracy of the analysis of this key information.

The lack of statewide analysis about reports of pollution incidents implicating licensed premises makes it difficult for the department to report on licensee compliance and outcomes.

**Recommendation** By December 2010, the department for each pollution incident report, accurately record in a central database:

- the EPL number of the licensee implicated
- whether the report is made by the licensee
- the assessed risk of the pollution incident.

**The department uses a risk based licensing approach** Inspections conducted by the department allow it to detect potential or unreported pollution incidents at licensed premises.

The department adopts a risk based licensing approach for licensed activities, ranking licensed premises as high or low risk.

The department's approach is towards greater monitoring and inspections of high risk licensed premises. We found overall inspections of high risk licensees are greater than low risk licensees and there has been an increase in the number of inspections since 2007. This coincides with the increase in the number of Environment Line reports implicating licensees.

<b>Exhibit 5: Inspections of licensed premises 2007 to 2009</b>			
	2007	2008	2009
<b>High risk Environment Protection Licences</b>			
Number of inspections	524	486	546
Number of high risk licences*	424	424	424
Ratio of inspections to high risk licences	1.24	1.15	1.29
<b>Low risk Environment Protection Licences</b>			
Number of inspections	328	403	332
Number of low risk licences*	1,588	1,588	1,588
Ratio of inspections to low risk licences	0.21	0.25	0.21

Source: Department of Environment, Climate Change and Water

\* Number of licences as at 1 July 2010 - historical data is not available

The department can also conduct inspections to:

- investigate reports of pollution incidents
- undertake compliance audit programs.

<b>Compliance audits of high risk industries and activities</b>	<p>The department conducts one or two risk based compliance audit programs each year.</p> <p>Compliance audit programs include unannounced inspections of targeted premises or activities and can result in action plans that are developed to address problems or non compliances. Follow up and monitoring of the implementation of action plans is the responsibility of the operations officers that supervise the licensed premises.</p> <p>The department does not centrally monitor the effectiveness of its compliance audit program as there is no requirement for operations officers to report centrally on progress made in implementing action plans.</p>
<b>Recommendation</b>	<p>By December 2010, the department should centrally check that compliance audit action plans are completed within required timeframes.</p>
	<p><b>2. Does the department investigate and respond to pollution incidents that harm the environment?</b></p>
<b>Conclusion</b>	<p>The department has a structured approach to investigate and respond to reports of pollution incidents.</p> <p>Its risk based approach means that high risk pollution incidents are responded to immediately.</p> <p>However, we found the department needs better internal reporting and analysis to assess whether:</p> <ul style="list-style-type: none"> <li>▪ its response to pollution incidents minimises harm to the environment</li> <li>▪ its regulatory approach improves compliance, particularly by licensees.</li> </ul>
<b>Immediate response to high risk pollution incidents</b>	<p>The department's response to pollution incidents includes assessing risk, ensuring that containment and clean-up takes place, investigating causes, and applying appropriate regulatory action. It aims to:</p> <ul style="list-style-type: none"> <li>▪ respond quickly when needed to minimise harm to human health and the environment</li> <li>▪ find out what happened and who is responsible to avoid further incidents and penalise wilful acts.</li> </ul>
	<p>The department has experienced officers available 24 hours a day, seven days a week to ensure it can respond to serious pollution incidents quickly, even outside business hours. This includes special arrangements for Hazmat incidents that are coordinated with key agencies such as the NSW Fire Brigades.</p>
<b>Risk determines the response to pollution incidents</b>	<p>The department uses a risk based approach to ensure that high risk pollution incidents are given priority. Regional managers are expected to ensure that its resources are effectively prioritised using this approach.</p> <p>It is essential that the department documents its decisions when it exercises its powers. This provides accountability and transparency.</p>

**Risk assessment is not recorded in a central database**

Operations officers record decisions and actions taken on licensing files or in the department's investigation management system. Sometimes both. We found that the department does not require the decision about the risk ranking assigned for each pollution incident report to be recorded in a central database that can be analysed for trends and resource usage.

This means the department does not have an easy way to check:

- that each pollution incident report has been assessed for risk
- the response and regulatory action matches the assessed risk ranking and departmental guidelines
- if there are significantly more high risk pollution incidents or low risk pollution incidents, and what regional variations there are
- if the severity of pollution incidents are getting better or worse over time or in different regions
- its resources are being used effectively
- risk assessments are being applied consistently.

This also means the department cannot demonstrate that it has applied its risk based approach to responding to reports of pollution incidents and that its decisions and actions are based on the assessed risk.

The system that is used to record and track reports of pollution incidents, is also used to support decisions when the department is:

- reviewing environment protection licence conditions
- monitoring performance of licensed premises
- escalating regulatory action for repeat and severe pollution incidents.

The inclusion of the risk ranking will improve the quality of information the department uses for its decision making.

**Recommendations**

The department by December 2010:

- require operations officers to record in a central database the risk assessment for each pollution incident report that they receive for response
- regularly analyse the risk profile of pollution incident reports.

**The department does not report on how many separate pollution incidents occur**

The department can receive multiple reports to the Environment Line for the same pollution incident.

In 2009-10 the department was responsible for responding to 4,111 reports of pollution incidents. To better understand the impact on the environment, and how effective the department has been in managing its response, we wanted to know:

- how many individual pollution incidents had occurred
- the level of risk to the environment from these pollution incidents
- how many pollution incidents related to licensed premises
- how many individual licensed premises were implicated
- trends by region, licensees and risk over time.

This would be useful information to assist the department understand its workload and resourcing requirements.

The department could not inform us of the rate of regulatory action taken or the number of discrete pollution incidents that occurred as the information is not readily available.

Other regulatory agencies that receive reports of incidents publish data on the number of individual incidents.

<b>Exhibit 6: Reporting of incidents by regulatory agencies</b>	
NSW Food Authority, Annual Report 2008-09: <i>The Authority received a record 1,156 complaints alleging foodborne illness during the year - 681 individual cases and 475 incidents affecting two or more people.</i>	
Department of Environment and Conservation, Western Australia, Annual Report 2008-09: <i>Environment Enforcement Statistics 2008-09</i>	
<i>Environmental complaints received</i>	<i>1,718</i>
<i>Confirmed environmental incidents</i>	<i>854</i>

Source: Audit Office research

#### **Recommendation**

By December 2010, the department report on how many separate pollution incidents have occurred.

#### **Activities are monitored but responses and outcomes are not analysed centrally**

The department has systems in place to monitor and report on the number of reports of pollution incidents received by the Environment Line. However there is limited information on the effectiveness of its operations in responding to pollution incidents.

Local managers review decisions made by operations officers to check that actions are appropriate and consistent with policies and guidelines, including reviewing cases where the operations officer decides not to take any action.

Operations officers may not be able to take any action in some low risk cases, for example, where the source of an odour cannot be identified and it dissipates before the report is called in. However, as the department does not keep any central data on the risk assessment of pollution incidents, there is no easy way to report and monitor pollution incidents based on the level of risk to the environment.

Regular management meetings within the regions focus on significant pollution incidents and ongoing operational issues.

There is no requirement for local managers or Regional managers to provide written reports or analyse data and trends on all of the pollution incident reports they respond to or the actions taken following investigations. However, inspection reports are drafted by operations officers, approved by line managers and recorded in a central database.

Consequently we did not see a statewide analysis of results based performance measures, such as:

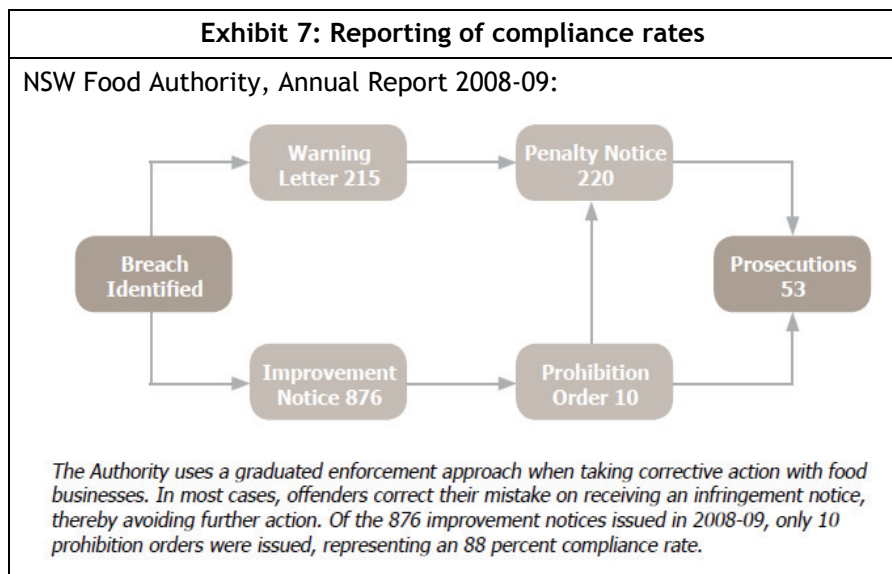
- number of discrete pollution incidents compared to the number of reports received by region
- use of resources in responding to pollution incidents by risk ranking by region
- pollution incidents implicating licensees, and trends over time by region
- number and trend in high risk pollution incidents and environmental impact by region.

Without good performance information, the department cannot demonstrate that it is responding to reports of pollution incidents in an efficient and effective way.

**The department could report on compliance rates**

The success of regulatory action is measured by compliance rates. The department does not have a performance measure that shows how effective its regulatory approach is in achieving better compliance.

One regulatory authority has developed an indicator of compliance that could be used by the department.



Source: Audit Office research

**Various regulatory tools are available**

The department uses a range of administrative and regulatory tools to achieve environment protection and environmental outcomes.

The department aims to use the right mix of tools at the right time for the right purpose.

<b>Exhibit 8: Tools used by the department to respond to pollution incidents</b>		
<i>Questioning tools:</i>	<i>Interrogation tools:</i>	<i>Penalty tools:</i>
<ul style="list-style-type: none"> <li>▪ Warning letters</li> <li>▪ Site inspections</li> <li>▪ Voluntary audits</li> <li>▪ Licenses</li> </ul>	<ul style="list-style-type: none"> <li>▪ Clean up actions</li> <li>▪ Prevention notices</li> <li>▪ Licence variations</li> <li>▪ Pollution Reduction Programs</li> <li>▪ Department or mandatory audits</li> <li>▪ Stop work/interim protection orders</li> </ul>	<ul style="list-style-type: none"> <li>▪ Penalty Infringement Notices</li> <li>▪ Court orders</li> <li>▪ Enforceable undertakings</li> <li>▪ Tier 1 &amp; Tier 2 Prosecutions</li> </ul>

Source: Department of Environment, Climate change and Water

**The department uses its discretion in applying regulatory tools**

The department has discretion in what regulatory tools it applies in response to a reported pollution incident.

The role of a regulator is to encourage compliance with the law. A lack of regulatory action or only low level regulatory action could indicate either high compliance or low detection.

The number of prosecutions completed for significant matters has more than doubled between 2006-07 and 2009-10. However, the court imposed financial penalty per matter has fallen by nearly a third.

<b>Exhibit 9: Selected data on regulatory actions 2006-07 to 2009-10</b>				
	<b>2006-07</b>	<b>2007-08</b>	<b>2008-09</b>	<b>2009-10*</b>
<b>Tier 1 and Tier 2 offences</b>				
Prosecutions for significant matters	19	16	22	42
Total prosecutions completed	33	68	36	53
Total court imposed financial penalties	\$751,250	\$362,850	\$1,050,000	\$860,000
Average court imposed financial penalty per completed matter	\$22,765	\$5,336	\$29,167	\$16,226
<b>Pollution Reduction Programs (PRPs)</b>				
Number of PRPs initiated	112	77	66	n/a
Value of new PRPs	\$97.5 m	\$21 m	\$360 m	n/a
<b>Enforceable undertakings</b>	1	1	2	2
<b>Penalty infringement notice# (Tier 3 offence)</b>	91	141	148	n/a
<b>Legal notices issued@</b>				
Licence variations	1,134	1,846	1,221	n/a
Clean up action	10	7	5	n/a
Prevention notices	1	0	3	n/a

Source: Department of Environment, Climate Change and Water

\* 2009-10 data is provisional. n/a=not available.

# environment protection matters excluding motor vehicles and noise

@ licensees categorised as high or low risk, some other licensees excluded.

We looked for a link between reports of pollution incidents and regulatory actions to better understand the department's response to pollution incidents. For example, how many high risk pollution incidents resulted in regulatory actions being taken.

Unfortunately, the department does not analyse its data in this way.

Better performance information would enable the department to demonstrate its effectiveness in managing its response to pollution incidents.

**Recommendation**

By December 2010, the department develop and regularly analyse results-based performance measures, including compliance rates.

**Alternative regulatory action to prosecution**

The department advises that during the course of investigating pollution incidents, other regulatory options may be considered appropriate rather than prosecution.

**Exhibit 10: Pollution Reduction Program Case study**

The department investigated a licensed operator who had been prosecuted previously in relation to water pollution incidents from its various premises.

These prosecutions generally occurred because the operator had old plant and equipment and its systems were not up-to-date. The operator also had limited finances.

When another water pollution incident occurred, rather than prosecuting, DECCW imposed a pollution reduction program on the operator's licence requiring it to undertake comprehensive steps to improve its plant and its systems. This was done on the clear understanding that if it failed to comply with the pollution reduction program it would be prosecuted.

Accordingly, rather than tie up the company's financial resources in further court proceedings, the operator was required to spend its limited finances on fixing the root causes of the incidents and by doing so, prevent similar incidents in the future.

Source: Department of Environment, Climate Change and Water

Another regulatory option available to the department when there is a pollution incident is to accept an Enforceable Undertaking from a person in appropriate circumstances.

**Exhibit 11: Enforceable Undertaking Case study**

An operator was developing an ecotourism resort on the Murray River. During the process a large number of snags and woody debris were removed from the bed and banks of the Murray River and nearby waters. This resulted in about half a kilometre of the banks of the Murray River being disturbed resulting in soil and sediment getting into waters and wetlands and the potential for many tonnes of exposed soil flowing to the waters if it rained.

This appeared to amount to a 'pollute waters' offence. The incident had a low impact on the environment and the operator was cooperative during the investigation and it otherwise had a good environmental record. The officers of the operator seemed genuinely upset about the incident and wanted to make amends.

Taking into account the factors referred to in the Enforceable Undertakings Guidelines, the department accepted an Enforceable Undertaking requiring the operator to pay over \$98,000 towards the remediation of the banks of the Murray River and the habitat of the river.

Source: Department of Environment, Climate Change and Water



**Court imposed penalties for failing to notify the department of pollution incidents are low**

Pollution incidents causing or threatening material harm to the health or safety of human beings or to ecosystems must be notified to the department.

There is also a specific condition in all licences that requires the licensee or its employees to notify the department of incidents causing or threatening material harm to the environment as soon as practicable after the person becomes aware of the incident.

Both offences, if proven, carry hefty penalties. In the case of a corporation, the maximum penalty is \$1,000,000 and a further penalty of \$120,000 for each day the offence continues. In the case of an individual, the maximum penalty is \$250,000 and a further penalty of \$60,000 for each day the offence continues.

In the six years from July 2004 to June 2010 the department has prosecuted two parties under Part 5.7 for failing to notify a pollution incident. The court imposed penalties were \$15,000 and \$84,493 respectively.

**The department has not penalised licensees for failing to notify of pollution incidents**

In the three years from July 2007 to June 2010 the department recorded 19 occasions involving 16 licensees who did not comply with the licence condition to notify the department of a material pollution incident.

In response, the department issued warning letters to the licensees reminding them of their obligations. Two penalty notices were issued for the pollution incidents that occurred, rather than for failing to comply with a licence condition.

This data shows that licensees and others do not always notify the department despite the legal obligation to do so. The department explained the lack of penalties imposed on licensees by advising that the response it takes will match the particular circumstance, such as the seriousness of the issue. In all 19 occasions the department considered that warning letters were the appropriate regulatory response.

The department does not believe that this is a wide spread problem, evidenced by the small number of cases reported. But the small number could indicate lack of detection.

One reason is that the department accepts that licensees do not have to report all pollution incidents.

This creates a gap in the department's information systems about whether licensees have self reported as required. As noted previously, this makes it difficult for the department to be assured that licensees have complied with this licence condition.

**The department escalates regulatory action but improvements can take many years to achieve**

The department has procedures in place to escalate regulatory action where there is a history of breaches.

We found that one licensee had 170 reports of air and odour pollution incidents emanating from its premises recorded in 2008-09.

The department advised that the problems occurring at this licensed premise were related to complex environmental issues that it was addressing through a range of regulatory tools. For example, it successfully prosecuted the licensee in September 2006 in the Land and Environment Court for odour offences.

The Court mandated an environmental audit which was completed in November 2007, and the department added conditions to the Environment Protection Licence to require implementation of certain odour prevention and control measures within an agreed timeframe. In addition, the department required that odour mitigation works be implemented at the premises via a pollution reduction program on the licence imposed in August 2009.

In addition to these measures, the department has actively supervised this licensee over a number of years. The licensee has now implemented the necessary odour control works which should reduce reports in the future. However, this outcome has taken more than three years to achieve.

**Licence conditions are used to control environmental impacts**

Another way that the department responds to pollution incidents occurring at licensed premises is by varying the licence conditions.

Significantly, 99 per cent of legal notices issued to licensees from 2006-07 to 2008-09 were for variations to licence conditions under Section 58 of the POEO Act. For example, in 2008-09 there were 1,221 licence variations effected for approximately 2,991 licensees. This means that on average 40 per cent of licences were varied that year.

Licences are varied for many reasons, including:

- as a result of an inspection or audit program the department may decide to change licence conditions
- at the request of the licensee, for example when operations have changed and the condition is no longer relevant
- as a result of the licence review process. Each licence must be reviewed at least once every 5 years
- when placing a Pollution Reduction Program on a licence
- as a result of making “global” changes to licences, for example as part of implementing changes to legislation or streamlining reporting requirements for some low risk licences.

The department has a structured approach to ensure that individual licence variations are appropriate and open to scrutiny.

However, the department does not centrally analyse the use of Section 58 licence variations. So the department cannot easily report aggregate data on why licences are varied or the extent to which environmental outcomes have been improved.

Just as the POEO Act public register of licences is of interest to the public, the data on the reasons that licences are varied is a matter of public interest.

**Recommendation**

By December 2010, the department regularly analyse the reasons that Environment Protection Licences are varied.

**Responsibility for responding to pollution incidents is split between the department and other authorities**

The *Protection of the Environment Operations Act 1997* delegates some of the department's powers to investigate and respond to pollution incidents and prosecute offenders to other authorities, such as local councils. But the department retains a general oversight responsibility given by the *Protection of the Environment Administration Act 1991*.

The department has provided guidance to these other authorities on responding to pollution incidents and investigating and prosecuting offenders. This is to develop consistency across authorities administering environment protection legislation.

The department reports annually on the number of penalty infringement notices issued by local councils, but not any other regulatory information.

We found that the department is not exercising the general oversight responsibilities it has under the *Protection of the Environment Administration Act 1991*. This means that it does not know what happens to the 20 per cent of pollution incident reports that it refers on to other authorities.

The split in regulatory powers between the department and other authorities does not of itself create problems.

Our concern is the gap in information about pollution incidents occurring across the state, and the extent of environmental harm, as well as the inconsistency between the two Acts.

**Recommendation**

By June 2011, the department should make recommendations to the government on how to resolve the inconsistencies between the *Protection of the Environment Administration Act 1991* and the *Protection of the Environment Operations Act 1997* regarding environment protection regulatory responsibilities in NSW.



## Appendices

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## **Appendix 1: About this audit**

**Audit objective** The audit objective is to assess how well the department manages pollution incidents to minimise harm to the environment.

**Lines of inquiry** In reaching our opinion against the audit objective, we sought to answer the following questions:

1. Does the department know about pollution incidents?
2. Does the department investigate and respond to pollution incidents?

**Audit criteria** In answering the lines of inquiry, we used the following audit criteria (the ‘what should be’) to judge performance. We based these standards on our research of current thinking and guidance on better practice. They have been discussed, and wherever possible, agreed with those we are auditing.

For line of inquiry 1, we assessed whether:

- the department has in place mechanisms to find out about pollution incidents
- the department has in place risk based approaches to detect potential or unreported pollution incidents.

For line of inquiry 2, we assessed whether:

- the department ensures that there is an effective risk based response to pollution incidents
- the department ensures that appropriate regulatory action is taken against identified polluters.

**Audit focus** The focus was on the department’s response to reports of pollution incidents within its responsibilities under the *Protection of the Environment Operations Act 1997* (POEO Act). The specific areas of pollution incidents we examined included:

- those reported via the Environment Line or any other source
- those detected by the department through its risk-based compliance, surveillance and intelligence programs.
- those relating to air, water and land
- those self reported by licensees.

The audit did not examine:

- pollution incidents that are responded to by local authorities (or other relevant authorities), but we will examine the department’s coordination and reporting responsibilities under Section 7 of the POEO Act
- any incident covered by the State Emergency Management Plan, but we may refer to the department’s responsibilities in the Plan
- self reported pollution incidents from licensees which only relate to non compliance with licence conditions that do not impact the environment
- pollution incidents not covered by the POEO Act, such as those involving pesticides or radiation
- pollution incidents relating to noise

- the department’s program to detect and prosecute illegal waste dumping, as this may be examined separately, although pollution incidents involving waste is within scope
- the effectiveness of remedial action to pollution incidents nor the science around clean up.

<b>Audit approach</b>	<p>The audit team will acquire subject matter expertise through:</p> <ul style="list-style-type: none"> <li>▪ interviews and examination of relevant documents including guidelines, reports, case files, strategies and reviews relating to pollution incident reports</li> <li>▪ data on pollution incidents reported to the department and responses for the period 2004-05 to 2009-10</li> <li>▪ discussions with relevant staff at the department</li> <li>▪ discussions with representatives of key stakeholders</li> <li>▪ comparisons where appropriate with other States and countries</li> <li>▪ discussions with other audit offices</li> <li>▪ relevant government policies</li> <li>▪ research on best practice responses to pollution incidents.</li> </ul>
<b>Audit selection</b>	<p>We use a strategic approach to selecting performance audits which balances our performance audit program to reflect issues of interest to Parliament and the community. Details of our approach to selecting topics and our forward program are available on our website.</p>
<b>Audit methodology</b>	<p>Our performance audit methodology is designed to satisfy Australian Audit Standards on Assurance Engagements, ASAE 3500 Performance Engagements, and to reflect current thinking on performance auditing practices.</p> <p>Audits are produced under the Office’s quality control policies and practices, including a quality management system certified to International Standard ISO 9001. Our processes have also been designed to comply with the Public Finance and Audit Act 1983.</p>
<b>Acknowledgement</b>	<p>We gratefully acknowledge the co-operation and assistance provided by the Department of Environment, Climate Change and Water.</p>
<b>Audit team</b>	<p>Our team leader for this performance audit was Giulia Vitetta, who was assisted by Mai-Ann Nguyen. Jane Tebbatt and Sean Crumlin provided direction and quality assurance.</p>
<b>Audit cost</b>	<p>Including staff costs, printing costs and overheads the estimated cost of the audit is \$165,000.</p>

## Appendix 2: The department's role in receiving and responding to reports of pollution incidents

The department has a broad role to protect, restore and enhance the quality of the environment in New South Wales under the *Protection of the Environment Operations Act 1997* (POEO Act).

The Environment Protection Regulation Group under the department have the responsibility to:

- report on, coordinate and monitor pollution incidents falling under the POEO Act. In 2009-10, there were 4,111 reports of pollution incidents but no data on the number of individual pollution incidents.
- undertake investigations for prosecutions for environment protection offences under the authority of the Environment Protection Authority. In 2009-10, legal action was referred in 60 cases.
- issue and regulate environment protection licences to the owners or operators of industrial premises. There were 2,535 licences as at 31 March 2010.
- respond to pollution incidents involving activities regulated under the POEO Act and activities of public authorities.

The Environment Protection Authority is the appropriate regulatory authority (ARA) for scheduled activities under the POEO Act, and all scheduled activities are licensed by the department.

A pollution incident causing or threatening material harm to the environment must be notified to the department. Where the department licenses the activity causing the incident, there are also additional notification requirements as part of the licence.

Pollution incident reports are received via the Environment Line, the department's main source of intelligence from the public and licensees. The Environment Line is available to receive reports of pollution incidents, 24 hours a day, and seven days a week.

Where the department is the ARA for the reported pollution incident, the report is allocated for investigation and action, including any regulatory action which may be imposed for identified polluters.

Not all pollution incidents must be reported to the department. The department only responds to pollution incidents that are within its statutory responsibilities. These relate to:

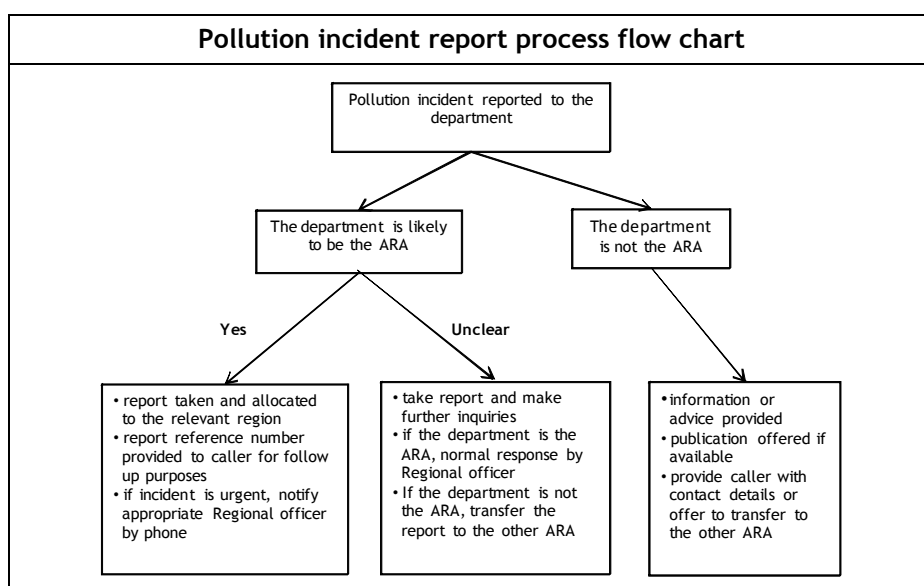
- licensees or scheduled activities that are regulated by the POEO Act
- activities carried on by the State or a public authority, whether at premises occupied by the State or a public authority or otherwise.

Where the department is not the ARA, the call is forwarded to the responding authority.

The *Protection of the Environment Administration Act 1991* (PEOA Act) gives the department general responsibility for oversight of other authorities that respond to pollution incidents. This oversight includes:

- ensuring that pollution incidents are addressed, and co-ordinating the activities of all public authorities
- inquiring into and reporting on the effectiveness of the response to pollution incidents.





Source: The Department of Environment, Climate Change and Water, 2010

Since 2003, the department has progressively taken on additional responsibilities including climate change, water, native vegetation, threatened species, Aboriginal culture and heritage, and national parks and wildlife. The department has managed this diversity by training its operations officers to administer the requirements of additional and often diverse legislative and regulatory requirements.

The shift to greater diversity of the responsibilities of operations officers means that it is important that the department can monitor the effectiveness in its management of pollution incidents.

As a regulator, the department has considerable power. It can:

- allow or prevent businesses from undertaking activities that produce and discharge pollution
- compel these businesses to provide it with information
- undertake criminal prosecutions
- issue penalty notices
- negotiate court enforceable undertakings.

### Appendix 3: Environment Protection Licences

In NSW, the Department of Environment, Climate Change and Water (the department) is the agency responsible for licensing industries (large facilities), activities which present an environmental risk and activities conducted by public authorities. Responsibility for regulating small and medium sized facilities generally rests with local councils.

Environment Protection Licences (licences) are granted under the Protection of the Environment Operations Act 1997 (POEO Act). Licences impose conditions on industry to control the environmental impact of their activities.

All licences attract annual administrative fees, and some licences will also require payment of annual load-based fees. The administrative fees are calculated according to the nature, size and/or capacity of the activity undertaken, which are self assessed by licensees. Load based pollutant fees depend on the quantity and type of pollutant emitted.

Licence administrative fees range from \$390 to \$265,000 depending on the type and level of activity. The current maximum load based fee is \$4.3 million. For example, a licence to generate power from coal attracts an administrative fee of \$42,000 plus a load based fee of \$4.35 million.

The activities in Schedule 1 of the POEO Act specify a threshold at or below which a licence is not needed and above which a licence is needed. For example, if you operate cattle, sheep or horse accommodation that can accommodate 1,500 cattle at any one time, you would need a licence because the threshold is an accommodation capacity of ‘more than 1,000 head of cattle’.

Where an activity does require a licence, the licence conditions set limits on emissions of defined pollutants. Not all emissions from licensed premises will be controlled by a licence condition. For example, there is no limit set on the emission of carbon dioxide from a coal fired power generation licensee.

**Examples of licensed activities and administrative fees**

Activity type	Scale	Administration fee
Livestock accommodation	>500 - 2,500	\$1,575
Livestock accommodation	>2,500	\$5,250
Chemical production: - dangerous goods production - waste generation	0-10,000 T produced >5-100 T generated	\$1,620
Chemical production: - battery production - waste generation	>1,500 T produced >100 T generated	\$14,580
Coal mining: - mining for coal - coal works	>500k-2m T produced 2m-5m T loaded	\$14,175
Coal mining: - mining for coal - coal works	2m-3.5m T produced 2m-5m T loaded	\$35,175
Coal mining: - mining for coal - coal works	>5m T produced >5m T loaded	\$89,250
Electricity generation from coal	>1k-4k Gwh generated	\$17,325
Electricity generation from coal	>4k Gwh generated	\$44,100

Source: *Protection of the Environment Operations Act 1997* Public Register

**Examples of breaches of environment protection licenses****Company director - breach of environment protection licence**

In March 2009, a company director was convicted in the Land and Environment Court of being the director of a company that breached a condition of its environment protection licence, which required it to operate in 'a competent manner'.

The director was the sole director of a company which held a licence to operate a hazardous industrial waste treatment and storage facility in Sydney. Around 376 tonnes of hazardous waste and dangerous goods were stored on the premises in an incompetent and dangerous manner.

The director was fined \$39,500 and ordered to pay legal costs. The director was also ordered to pay clean-up costs of \$88,395.75 to the department and clean-up costs of \$375,933.43 to the owners of the premises.

**Petroleum products production and storage facility (the licensee) - breach of environment protection licence**

On 4 July 2008, the licensee was convicted in the Land and Environment Court of breaching its environment protection licence when the company failed to operate the refinery in a proper and efficient manner, resulting in the release of odorous gases. Thirtyfive complaints were made by the community to the licensee and the department during the incident. The company was ordered to pay a penalty of \$78,000 to fund a weed management strategy at a local nature reserve and to pay legal costs.

**Electricity generator (the licensee) - breach of environment protection licence**

In February 2009, the licensee was convicted in the Land and Environment Court of breaching a condition of its environment protection licence by emitting excessive coal dust due to the inadequate management of a coal ash repository at its power station. The licensee was fined \$45,000 and ordered to pay legal costs.

Source: Department of Environment and Climate Change, Annual Report 2008-09

## Appendix 4: Glossary

<b>Appropriate Regulatory Authority</b>	The EPA is the appropriate regulatory authority under the <i>Protection of the Environment Operations Act 1997</i> (POEO Act).
<b>Enforceable Undertaking</b>	The administrative power of the EPA to accept a written undertaking by a company or individual in relation to an actual or potential breach of the POEO Act, which is enforceable in the Land and Environment Court.
<b>EPA</b>	Environment Protection Authority
<b>EPL</b>	Environment Protection Licence
<b>Hazmat</b>	Hazmat is short for hazardous materials which are defined as 'anything that, when produced, stored, moved, used or otherwise dealt with without adequate safeguards to prevent it from escaping, may cause injury or death or damage to life, property or the environment'. ( <i>Fire Brigades Act 1989</i> )
<b>Licensee</b>	Environment Protection Licence holder
<b>Material harm</b>	Material harm is defined as not trivial or resulting in actual or potential loss valued at more than \$10,000.
<b>POEO Act</b>	<i>Protection of the Environment Operations Act 1997</i>
<b>Pollution incident</b>	Under the <i>Protection of the Environment Operations Act 1997</i> is an incident or set of circumstances during or as a consequence of which there is or is likely to be a leak, spill or other escape or deposit of a substance, as a result of which pollution has occurred, is occurring or is likely to occur. It includes an incident or set of circumstances in which a substance has been placed or disposed of on premises, but it does not include an incident or set of circumstances involving only the emission of any noise.
<b>Pollution Reduction Program</b>	Program used by the department to reduce air emissions and address specific air and water pollution issues.
<b>Public authority</b>	Means a public or local authority constituted by or under an Act, and includes: a) a government department b) a statutory body representing the Crown, a state-owned corporation or a local council, or c) a member or staff or other person who exercises functions on behalf of a public authority.
<b>The department</b>	Department of Environment, Climate Change and Water

## **Performance Audits by the Audit Office of New South Wales**

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## Performance Auditing

### What are performance audits?

Performance audits determine whether an agency is carrying out its activities effectively, and doing so economically and efficiently and in compliance with all relevant laws.

The activities examined by a performance audit may include a government program, all or part of a government agency or consider particular issues which affect the whole public sector. They cannot question the merits of Government policy objectives.

The Auditor-General's mandate to undertake performance audits is set out in the *Public Finance and Audit Act 1983*.

### Why do we conduct performance audits?

Performance audits provide independent assurance to Parliament and the public that government funds are being spent efficiently, economically or effectively and in accordance with the law.

Through their recommendations, performance audits seek to improve the efficiency and effectiveness of government agencies so that the community receives value for money from government services.

Performance audits also focus on assisting accountability processes by holding managers to account for agency performance.

Performance audits are selected at the discretion of the Auditor-General who seeks input from Parliamentarians, the public, agencies and Audit Office research.

### What happens during the phases of a performance audit?

Performance audits have three key phases: planning, fieldwork and report writing. They can take up to nine months to complete, depending on the audit's scope.

During the planning phase the audit team develops an understanding of agency activities and defines the objective and scope of the audit.

The planning phase also identifies the audit criteria. These are standards of performance against which the agency or program activities are assessed. Criteria may be based on best practice, government targets, benchmarks or published guidelines.

At the completion of fieldwork the audit team meets with agency management to discuss all significant matters arising out of the audit. Following this, a draft performance audit report is prepared.

The audit team then meets with agency management to check that facts presented in the draft report are accurate and that recommendations are practical and appropriate.

A final report is then provided to the CEO for comment. The relevant Minister and the Treasurer are also provided with a copy of the final report. The report tabled in Parliament includes a response from the CEO on the report's conclusion and recommendations. In multiple agency performance audits there may be responses from more than one agency or from a nominated coordinating agency.

### Do we check to see if recommendations have been implemented?

Following the tabling of the report in Parliament, agencies are requested to advise the Audit Office on action taken, or proposed, against each of the report's recommendations. It is usual for agency audit committees to monitor progress with the implementation of recommendations.

In addition, it is the practice of Parliament's Public Accounts Committee (PAC) to conduct reviews or hold inquiries into matters raised in performance audit reports. The reviews and inquiries are usually held 12 months after the report is tabled. These reports are available on the Parliamentary website.

### Who audits the auditors?

Our performance audits are subject to internal and external quality reviews against relevant Australian and international standards.

Internal quality control review of each audit ensures compliance with Australian assurance standards. Periodic review by other Audit Offices tests our activities against best practice. We are also subject to independent audits of our quality management system to maintain certification under ISO 9001.

The PAC is also responsible for overseeing the performance of the Audit Office and conducts a review of our operations every three years. The review's report is tabled in Parliament and available on its website.

### Who pays for performance audits?

No fee is charged for performance audits. Our performance audit services are funded by the NSW Parliament.

### Further information and copies of reports

For further information, including copies of performance audit reports and a list of audits currently in-progress, please see our website [www.audit.nsw.gov.au](http://www.audit.nsw.gov.au) or contact us on 9275 7100.

## Performance Audit Reports

No	Agency or Issues Examined	Title of Performance Audit Report or Publication	Date Tabled in Parliament or Published
205	Department of Environment, Climate Change and Water	<i>Protecting the Environment: Pollution Incidents</i>	September 2010
204	Corrective Services NSW	<i>Home Detention</i>	8 September 2010
203	Australian Museum	<i>Knowing the Collections</i>	1 September 2010
202	Industry & Investment NSW Homebush Motor Racing Authority Events NSW	<i>Government Investment in V8 Supercar Races at Sydney Olympic Park</i>	23 June 2010
201	Department of Premier and Cabinet	<i>Severance Payments to Special Temporary Employees</i>	16 June 2010
200	Department of Human Services - Ageing, Disability and Home Care	<i>Access to Overnight Centre-Based Disability Respite</i>	5 May 2010
199	Department of Premier and Cabinet NSW Treasury WorkCover NSW	<i>Injury Management in the NSW Public Sector</i>	31 March 2010
198	NSW Transport and Infrastructure	<i>Improving the Performance of Metropolitan Bus Services</i>	10 March 2010
197	Roads and Traffic Authority of NSW	<i>Improving Road Safety: School Zones</i>	25 February 2010
196	NSW Commission for Children and Young People	<i>Working with Children Check</i>	24 February 2010
195	NSW Police Force NSW Department of Health	<i>Managing Forensic Analysis - Fingerprints and DNA</i>	10 February 2010
194	Department of Premier and Cabinet Department of Services, Technology and Administration NSW Treasury	<i>Government Advertising</i>	10 December 2009
193	Roads and Traffic Authority of NSW	<i>Handback of the M4 Tollway</i>	27 October 2009
192	Department of Services, Technology and Administration	<i>Government Licensing Project</i>	7 October 2009
191	Land and Property Management Authority Maritime Authority of NSW	<i>Administering Domestic Waterfront Tenancies</i>	23 September 2009
190	Department of Environment, Climate Change and Water NSW Environmental Trust	<i>Environmental Grants Administration</i>	26 August 2009
189	NSW Attorney General's Department NSW Department of Health NSW Police Force	<i>Helping Aboriginal Defendants through MERIT</i>	5 August 2009
188	NSW Department of Health	<i>Tackling Cancer with Radiotherapy</i>	23 June 2009
187	Roads and Traffic Authority of NSW	<i>Improving Road Safety - Heavy Vehicles</i>	13 May 2009
186	Grants	<i>Grants Administration</i>	6 May 2009
185	Forests NSW	<i>Sustaining Native Forest Operations</i>	29 April 2009

No	Agency or Issues Examined	Title of Performance Audit Report or Publication	Date Tabled in Parliament or Published
184	NSW Police Force	<i>Managing Injured Police</i>	10 December 2008
183	Department of Education and Training	<i>Improving Literacy and Numeracy in NSW Public Schools</i>	22 October 2008
182	Department of Health	<i>Delivering Health Care out of Hospitals</i>	24 September 2008
181	Department of Environment and Climate Change	<i>Recycling and Reuse of Waste in the NSW Public Sector</i>	11 June 2008
180	Follow-up of 2003 Performance Audit	<i>Protecting Our Rivers</i>	21 May 2008
179	NSW Office of Liquor, Gaming and Racing; NSW Police Force	<i>Working with Hotels and Clubs to reduce alcohol-related crime</i>	23 April 2008
178	Greyhound and Harness Racing Regulatory Authority	<i>Managing the Amalgamation of the Greyhound and Harness Racing Regulatory Authority</i>	3 April 2008
177	Office of the Director of Public Prosecutions	<i>Efficiency of the Office of the Director of Public Prosecutions</i>	26 March 2008
176*	Better Practice Guide	<i>Implementing Successful Amalgamations</i>	5 March 2008
175	Department of Commerce Department of Primary Industries	<i>Managing Departmental Amalgamations</i>	5 March 2008
174	Department of Education and Training	<i>Ageing workforce - Teachers</i>	13 February 2008
173	NSW Police Force	<i>Police Rostering</i>	5 December 2007
172	Department of Primary Industries	<i>Improving Efficiency of Irrigation Water Use on Farms</i>	21 November 2007
171	Department of Premier and Cabinet Department of Commerce	<i>Government Advertising</i>	29 August 2007
170	RailCorp	<i>Signal Failures on the Metropolitan Rail Network</i>	15 August 2007
169	NSW Police Force	<i>Dealing with Household Burglaries</i>	27 June 2007
168	Ministry of Transport	<i>Connecting with Public Transport</i>	6 June 2007

\* Better Practice Guides

**Performance audits on our website**

A list of performance audits tabled or published since March 1997, as well as those currently in progress, can be found on our website [www.audit.nsw.gov.au](http://www.audit.nsw.gov.au).

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