



## DRAFT ONLY FOR COMMENT

# DRAFT GUIDANCE NOTE ON ENVIRONMENTAL NON-COMPLIANCE AND INCIDENTS REPORTING

## PURPOSE

To provide guidance to the mineral, petroleum and geothermal resources industry and the broader community on environmental non-compliance and incident reporting requirements under legislation administered by the Department of Mines, Industry Regulation and Safety (DMIRS).

## OBJECTIVES

The objectives are to provide advice to industry and the community on:

- what constitutes an environmental incident and non-compliance under the relevant legislation and regulations;
- when and how environmental incidents and non-compliance should be reported to DMIRS; and
- the enforcement processes that may be undertaken by DMIRS in response to an identified environmental incident or non-compliance activity under the relevant legislation.

## SCOPE

This guidance note specifically relates to environmental incidents and non-compliance with mineral and petroleum activities regulated by DMIRS, and does not apply in relation to non-compliance and incident reporting requirements for mine and petroleum safety and dangerous goods, as these are regulated under other legislation administered by the department.

## DOCUMENT HIERARCHY

The following documents guide the management of enforcement actions initiated by the department:

### Legislation and Statutory Guidelines:

- Relevant legislation; regulations and conditions
  - o *Mining Act 1978* and Mining Regulations 1981
  - o Petroleum and Geothermal Energy Resources (Environment) Regulations 2012
  - o Petroleum (Submerged Lands) (Environment) Regulations 2012
  - o Petroleum Pipelines (Environment) Regulations 2012
  - o *Environmental Protection Act 1986* (Part V) and
  - o Environmental Protection (Clearing of Native Vegetation) Regulations 2005.
- [‘Guideline for Mining Proposals in Western Australia, April 2016’](#) (the 2016 MP Guideline – mandatory for all new project sites from 1 January 2017)
- [‘Guidelines for Mining Proposals in Western Australia, February 2006’](#).
- [‘Guidelines for Preparing Mine Closure Plans, May 2015’](#) (MCP Guidelines).

### Policy:

- The department’s [Enforcement and Prosecution Policy \(2015\)](#);
- [Environmental Regulatory Strategy](#)

### Technical guidance:

- This guidance note for environmental non-compliances and incidents <sup>1</sup>
- [Environmental & Reportable Incident / Non-compliance Reporting Form; and](#)
- [Petroleum Recordable Incident Report Form.](#)

### OVERVIEW OF ENFORCEMENT PROCESS

DMIRS is responsible for regulating mineral and petroleum exploration and development activities across Western Australia and ensuring that development occurs in a manner that is safe and environmentally acceptable.

Compliance is the responsibility of all licence/tenement holders, operators, individuals and government to ensure the right approvals/permissions are obtained and authorised activities are conducted in accordance with conditions or regulatory requirements. The overall aim of environmental compliance activities undertaken by DMIRS is to ensure minerals and petroleum operations achieve leading practice in environmental management.

A range of enforcement actions can be implemented by DMIRS to address non-compliance, restore or make good environmental harm or injury to land and prevent future non-compliance. First and foremost, DMIRS aims to promote and facilitate compliance through targeted communication, engagement and providing timely information and advice. If further enforcement action is deemed appropriate, DMIRS will undertake the relevant action in accordance with the current [Departmental Enforcement Policy](#) (June 2015).

Please note DMIRS consults and works with other government agencies to ensure a whole of government approach to compliance.

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<sup>1</sup> This guidance note replaces the previous guidance note titled 'Environment Division Process for Non-compliance with *Mining Act 1978* Tenement Conditions dated July 2014'



**Figure 1:** Enforcement options available to DMIRS to facilitate environmental compliance.

When determining the appropriate level of enforcement action, the following circumstances and factors are considered:

- extent and environmental significance of any native vegetation cleared;
- adverse effects on the environment and likelihood of recovery;
- type of condition breached and whether impacts were limited to that tenement/title;
- compliance history and culpability of the tenement holder/operator;
- whether the non-compliance was self-reported; and
- timely response and remediation.

## **GUIDANCE**

This guidance note is divided into the following three activity types:

1. Mineral Activities;
2. Petroleum and/or Geothermal Activities; and
3. Native Vegetation Clearing Permit Activities;

Each section outlines the relevant legislative requirements to environmental compliance, incident reporting and enforcement action options. The last section defines self-reporting of environmental incidents or non-compliance.

## 1.0 MINERAL ACTIVITIES

### Legislation

The *Mining Act 1978* (Mining Act) requires the use of all ground disturbing equipment for the purposes of exploration, prospecting and mining to have an approved Programme of Work or Mining Proposal prior to undertaking these activities. Mining activities are to be conducted in accordance with the relevant approval documents.

Upon granting of a tenement or at any subsequent time, conditions may be imposed on a tenement for the purpose of preventing, reducing or making good, injury to the land.

Non-compliance may result in DMIRS issuing a required action, warning, tenement forfeiture, Direction to Modify or a Stop Work Order.

In the case of forfeiture, the Minister responsible for the Mining Act can choose to forfeit the tenement, issue a penalty in lieu of forfeiture or take no action for Mining Leases, General Purpose Leases, Retention Licences and Exploration Licences (see Table 1).

The Warden's Court deals with non-compliances relating to Miscellaneous Licences and Prospecting Licences. The Warden's Court is constituted under the Mining Act and its jurisdiction extends throughout Western Australia. The Warden's Court has power to make orders on all matters within its jurisdiction as set out in Section 134 of the Mining Act.

**Table 1:** Sections of the *Mining Act 1978* relating to forfeiture of a tenement for non-compliance

Type of Tenement	Forfeiture	Penalty in Lieu of Forfeiture
Mining Lease	97(1)	97(5)
Exploration Licence	63A, 96A(1)(a)	96A(5)
General Purpose Lease	97(1) 97(5)	97(5)
Retention Licence	70K, 96A(1)(b)	96A(5)
Miscellaneous Licence	96(1), 96(2)(b)	96(3)
Prospecting Licence	96(1), 96(2)(b)	96(3)

### Direction to Modify and Stop work orders

The Division 2 & 3 of the Mining Regulations 1981 provides inspectors with an ability to give directions to tenement holders to modify or cease operations where the risks of environmental harm warrant such a direction or notice being issued.

### Non-compliance and Incidents Reporting Requirements

Operators are required to notify the DMIRS of all non-compliances and incidents. These are defined as:

- **Non-compliance** - a particular requirement of the tenement conditions or the regulations has not been complied with;
- A **reportable**, environmental incident that is required to be reported to DMIRS as defined in the 'Guideline for Mining Proposals in Western Australia, April 2016' (the 2016 MP Guideline) is:
  - o an incident that breaches any environmental outcome or performance criteria of the approved Mining Proposal;
  - o an incident arising from mining activities that has caused, or has the potential to cause environmental harm or injury to land.

## **Required Timeframes for Reporting Incidents or Non-compliance**

All Mining Proposals approved under the 2016 MP Guideline will be subject to a standard condition requiring tenement holders to notify DMIRS of any reportable environmental incidents within **twenty four hours of detection**. Failure to notify DMIRS of a reportable incident would be a breach of condition and the mining tenements would potentially be subject to forfeiture action under the Mining Act.

Following the initial notification, DMIRS will require an investigation report to be provided within a timeframe agreed with the department. The report will outline the details of the incident, explaining how it occurred, the impacts on the environment and any remedial actions taken.

All other non-compliances with tenement conditions should be reported to DMIRS within **three working days** of identification.

## **Compliance and Enforcement Process for Breach of Tenement Conditions**

### **Non-compliance**

When DMIRS is notified of a non-compliance/environmental incident, or identifies non-compliance during routine regulatory activities (such as inspections, Annual Environmental Report (AER) reviews or desktop audits), a DMIRS officer will investigate to determine if there has been a breach of tenement conditions, the severity of the non-compliance and what remedial and enforcement action is recommended.

As part of this investigation process, the tenement holder is likely to be contacted to provide details of remedial actions and measures that can be put in place to prevent further non-compliances. If the tenement holder considers that they are in compliance with all tenement conditions, a response to that effect, with relevant details, should be provided to DMIRS.

Where it is determined there has been a breach of tenement conditions, or mining activities are having, or likely to have an adverse effect on the environment, DMIRS may undertake one or more of the following enforcement actions:

- issue a required action through an inspection report;
- issue a warning;
- tenement forfeiture or penalty in lieu of tenement forfeiture;
- issue a direction to modify; and/or
- issue a stop work order

The department will determine the most appropriate measure to be used depending on the circumstances of the breach and in consideration to the aforementioned factors.

### **Note relating to tenement forfeiture**

In the case of tenement forfeiture action, the department may provide recommendations to the Minister (or applications to the Warden) on enforcement action, if a breach of tenement conditions has occurred. Under the Mining Act, it is at the discretion of the Minister or Warden whether enforcement action is taken.

When DMIRS considers that a breach of tenement conditions has occurred on a Mining Lease, General Purpose Lease, Retention Licence or Exploration Licence, and is considering forfeiture action, a letter will be sent to the tenement holder. This letter notifies the tenement holder(s) that they have 20 business days to provide a response detailing any information or circumstances they would like to have taken into consideration when DMIRS is determining a recommended enforcement action.

If the tenement holder provides a response to DMIRS within 20 business days, that information will be provided to DMIRS' Environment Enforcement Panel (EEP) for its consideration in recommending appropriate enforcement action to the Minister. In making its recommendation, the EEP will consider the aforementioned factors.

If the Minister chooses to issue a penalty in lieu of forfeiture, DMIRS will write to the tenement holder specifying a timeframe in which the penalty must be paid. If the penalty is not paid within the time specified, the tenement is forfeited in accordance with the provisions of the Mining Act.

## **2.0. PETROLUUM AND/OR GEOTHERMAL ACTIVITIES**

### **Legislation**

The *Petroleum and Geothermal Energy Resources (Environment) Regulations 2012*, the *Petroleum (Submerged Lands) (Environment) Regulations 2012*, and the *Petroleum Pipelines (Environment) Regulations 2012* (collectively referred to as the 'regulations'), require all petroleum activities to have an approved Environment Plan (EP). Non-compliances with the regulations or an approved EP (reportable and recordable incidents) are required to be reported to DMIRS within the timeframes specified in the above mentioned regulations.

Penalties are specified for each offence prescribed in the regulations. Penalties associated with enforcement activities may relate to the following points (provided as examples):

- carrying out a petroleum activity without an approved EP;
- non-compliance with EP conditions or limitations applied to an activity; or
- carrying out a petroleum activity in a way that is contrary to an approved EP.

Non-compliance may result in DMIRS issuing a corrective action, warning, direction, withdrawal of the approved EP(s) or prosecution.

The maximum penalty under the regulations is \$10,000 for individuals and \$50,000 for companies, however, penalties may be incurred for multiple breaches. Additional penalties or enforcement action may also be imposed under the relevant petroleum Acts administered by DMIRS as the overarching legislation to the regulations.

### **Non-compliance and Incidents Reporting Requirements**

Operators are required to notify the DMIRS of all non-compliances and incidents. These are defined as:

- **Non-compliance** - a particular requirement of the approved EP or the regulations has not been complied with;
- A **reportable incident** is an incident that has caused, or has the potential to cause, an adverse environmental impact or under the environmental risk assessment process described in the EP for the activity, that environmental impact is categorised as moderate or more serious than moderate;
- A **recordable incident** is an incident that breaches an environmental performance objective or environmental performance standard in the EP.

### **Required Timeframes for Reporting Incidents or Non-compliance**

Operators are required to notify DMIRS of non-compliances and incidents within specified timeframes.

Under the regulations, petroleum related incidents require the following notifications to DMIRS:

- **Reportable incidents** - oral or written notification to DMIRS as soon as practicable, and in any case **within two hours** after the occurrence of the reportable incident, or if the reportable incident is not detected by the operator at the time of the first occurrence, the time the operator becomes aware of the reportable incident. A written report of the reportable incident must be submitted to DMIRS within **three days after** first occurrence of the reportable incident.
- **Recordable incidents** – for each month, a written report as soon as practicable and in any case **within fifteen days after the end of the month** to which it relates. If no recordable incidents occurred during the month, the report must include a statement to that effect.

Non-compliances against the regulations are required to be reported to DMIRS and where required the EP must be revised and resubmitted to DMIRS as soon as practicable as required under regulation 18.

### **Compliance and Enforcement Process for Breach of the Petroleum Regulations**

The department will conduct investigations of petroleum incidents where non-compliance with environmental conditions or limitations imposed on an activity, or non-compliance with the approved EP and/or the regulations have been identified.

When DMIRS is notified of, or identifies a matter of non-compliance, it will request that an investigation be initiated by the operator (or their nominated representative). The investigation is conducted to establish the root causes, the elements of non-compliance, the type and nature of the breach or breaches, the severity of the non-compliance, the immediate corrective actions taken and

whether adequate preventative measures have been put in place to prevent reoccurrence. The operator will subsequently send the investigation report to DMIRS. If the operator considers that they are in compliance, a response to that effect, with relevant details, should be provided within the investigation report.

If DMIRS determines that there has been a breach of approval conditions or limitations, the approved Environment Plan and/or regulations, DMIRS will write to the operator and/or the registered holders of the petroleum or geothermal title. The letter may outline DMIRS response through one or more of the enforcement actions:

- issue of a corrective action through a DMIRS inspection report;
- issue of a warning;
- issue of a direction;
- withdrawal of the EP; and /or
- intention to proceed with prosecution.

The department will determine the most appropriate enforcement actions to be used depending on the circumstances of the breach and in consideration of the aforementioned factors. Subsequent enforcement decisions will be made in accordance with DMIRS Enforcement Policy and in consultation with the Minister or his delegate.

### 3.0 NATIVE VEGETATION CLEARING PERMITS

#### Legislation

Under Section 51C of the *Environmental Protection Act 1986* (the EP Act), clearing of native vegetation is prohibited; unless the clearing is done in accordance with a clearing permit, or the clearing is for an exempt purpose. It is also an offence under Section 51J of the EP Act for a permit holder to contravene a condition which the permit is subject to. The EP Act provides for penalties upon conviction for an offence of up to \$500,000 for a company and \$250,000 for an individual.

Under Sections 18 - 20 of the EP Act, DMIRS has delegated responsibility for administering native vegetation clearing provisions for mining (minerals) or petroleum related activities.

#### Compliance and Enforcement Process for Breach under the Environmental Protection (Clearing of Native Vegetation) Regulations 2004

Under its delegated responsibility, DMIRS investigates incidences of non-compliance associated with mining (minerals) and petroleum related activities. DMIRS works cooperatively with the Department of Water and Environmental Regulation (DWER) and applies enforcement actions consistent with DWER's Enforcement and Prosecution Policy. Any prosecution actions for unlawful clearing will be undertaken by DWER.

### 4.0 SELF-REPORTING OF ENVIRONMENTAL INCIDENTS OR NON-COMPLIANCE

If a company or individual identifies an environmental incident or non-compliance as detailed in the above sections, this should be reported directly to the DMIRS environmental incidents email address, using the [reporting template](#). The initial reporting of non-compliance to DMIRS must be by specific notification and independent of any other reporting requirements. Reporting non-compliance in annual reports and approval documents is not considered self-reporting. Details of non-compliance should be included in these documents where relevant, however, the initial notification to DMIRS should be a separate communication. DMIRS encourages companies and individuals to take a proactive approach to environmental management and demonstrate there are adequate internal systems in place to identify non-compliance should it occur.

Mitigating circumstances are considered when determining the most appropriate enforcement action to address non-compliance. This includes whether the non-compliance was self-reported. Self-reporting and a proactive approach to non-compliance is recognised by DMIRS and reflected in its considerations for enforcement action.

It is important to note that the reporting of incidents or non-compliances will not mean that DMIRS will automatically classify the company or individual as a 'poor operator'. Minor incidents with no residual environmental impacts commonly occur on most operations. Incidents which are of greater concern to DMIRS are those which have occurred and not been appropriately identified, reported and acted upon and have subsequently been detected in a DMIRS inspection or compliance review.

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**Table 2:** DMIRS required timeframes for reporting environmental incidents and non-compliance.

Type of Incident or Non-compliance	Timeframe for Reporting
Mineral Activities	Environmental Incident: <ul style="list-style-type: none"> <li>Notification within <b>twenty four hours</b> of detection; and written report provided to DMIRS within agreed timeframe</li> </ul> All other non-compliance with tenement conditions: <ul style="list-style-type: none"> <li>Written report provided to DMIRS within <b>three working days</b> of identification.</li> </ul>
Petroleum and/or Geothermal Activities	Reportable Incidents: <ul style="list-style-type: none"> <li>Notification to DMIRS within <b>two hours</b> of occurrence; and written report provided to DMIRS within <b>three days</b> of occurrence</li> </ul> Recordable Incidents: <ul style="list-style-type: none"> <li>Written report as soon as practicable and in any case within <b>fifteen days</b> after the end of the month to which it relates.</li> </ul>
Native Vegetation Clearing Permits	Written report provided to DMIRS within <b>three</b> working days

When notifying or reporting non-compliance/incidents by email, please use the following naming convention in the email subject line:

### Minerals

Subject line: region, project code/name; tenure type and number.

Please attach an incident report form and any relevant photos, maps or supporting documents.

### Petroleum

Please initially notify the department by calling the Petroleum Environment emergency incident number on 0419 960 621 and follow up in writing using DMIRS Submissions Portal or email [petroleum.environment@dmirs.wa.gov.au](mailto:petroleum.environment@dmirs.wa.gov.au)

Please include preliminary information on the nature, scope and scale of the incident.

## ENVIRONMENTAL INCIDENT AND NON-COMPLIANCE CONTACTS

The following points of contact in DMIRS are listed below for any environmental incident and non-compliance reporting:

Minerals – environment incident reporting

Email: [incidents.environment@dmirs.wa.gov.au](mailto:incidents.environment@dmirs.wa.gov.au)

Petroleum – environmental incident notification/reporting

Email: [petroleum.environment@dmirs.wa.gov.au](mailto:petroleum.environment@dmirs.wa.gov.au)

Native Vegetation – environment incident reporting

Email: [native.vegetation@dmirs.wa.gov.au](mailto:native.vegetation@dmirs.wa.gov.au)

For further information, please contact DMIRS Environment Operation Team. Contact details can be found on DMIRS [website](#).