



# Guidance Note on Environmental Non-compliance and Incident Reporting

## PURPOSE

To provide guidance to the mineral, petroleum and geothermal resource sectors 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 under the relevant legislation.

## SCOPE

This guidance note specifically relates to environmental incidents and non-compliances of mineral and petroleum activities regulated by DMIRS. This guidance note does not apply to incidents or non-compliances 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
  - *Mining Act 1978* and Mining Regulations 1981
  - Petroleum and Geothermal Energy Resources (Environment) Regulations 2012
  - Petroleum (Submerged Lands) (Environment) Regulations 2012
  - Petroleum Pipelines (Environment) Regulations 2012
  - *Environmental Protection Act 1986* (Part V) (Division 2 – Clearing of Native Vegetation) and
  - 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:

- [Departmental Enforcement Policy \( June 2015\)](#);
- [Environmental Regulatory Strategy \(November 2014\)](#)

**Technical guidance:**

- This Guidance Note for Environmental Non-compliance and Incident Reporting<sup>1</sup>
- [Guideline for the Development of Petroleum and Geothermal Environment Plans in Western Australia, November 2016](#)
- [Guideline for the Development of an Onshore Oil Spill Contingency Plan, July 2015](#)
- A series of guidelines and factsheets on native vegetation clearing are available on the [Department of Water and Environmental Regulation](#) website
- [Environmental & Reportable Incident / Non-compliance Reporting Form](#); and
- [Petroleum Recordable Incident Report Form](#).

**OVERVIEW OF ENFORCEMENT PROCESS**

DMIRS is responsible for regulating mineral, petroleum and geothermal 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/instrument holders, operators, individuals and government to ensure the appropriate 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 mineral 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.



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

<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'

Table 1 sets out the circumstances and factors that are considered by DMIRS when determining the appropriate level of enforcement action for an identified environmental non-compliance or incident.

**Table 1:** Factors considered by DMIRS when determining the appropriate level of enforcement action.

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 when
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 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<sup>2</sup>. Mining activities (including exploration and prospecting) are to be conducted in accordance with the relevant approval documents and tenement conditions.

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<sup>3</sup>.

Non-compliance with tenement conditions or identified potential/actual environmental harm, may result in DMIRS issuing a required action, warning letter, recommendation for 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 2).

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 2:** 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

Part VIA, 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.

<sup>2</sup> Relevant sections of the *Mining Act 1978* relating to approvals: Mining/General Purpose Lease sections 82(1)(ca) and 82A(2), Exploration licence section 63(aa), Prospecting/miscellaneous licence section 46(aa) and Retention licence 70H(1)(aa).

<sup>3</sup> Relevant section of the *Mining Act 1978* relating imposition of conditions: Mining/General Purpose lease section 84, Exploration licence 63AA, Prospecting/miscellaneous licence section 46A and Retention licence 70I.

## Non-compliance and Incidents Reporting Requirements

Tenement holders/operators should notify the DMIRS of all non-compliances and reportable environmental incidents. These are defined as:

- **Non-compliance** – a particular requirement of the tenement conditions or the legislation has not been complied with:

### For the 2006 Guidelines for Mining Proposals

All tenements associated with a Mining Proposal approved under the ‘Guidelines for Mining Proposals in Western Australia’ February 2006 are subject to a standard condition requiring tenement holders to construct and operate the project in accordance with the approved Mining Proposal document. In this circumstance, approval via submission of a new Mining Proposal must be sought for any changes to the operation which are at variance with the existing approved Mining Proposals. Failure to construct and operate the project in accordance with approved Mining Proposals is considered a breach of tenement conditions.

### For the 2016 Guidelines for Mining Proposals

For mining operations with a Mining Proposal approved under the ‘Guideline for Mining Proposals in Western Australia, April 2016’ (the 2016 MP Guideline) a reportable, environmental incident, ‘is:

- an incident that breaches any environmental outcome or performance criteria of the approved Mining Proposal;
- an incident arising from mining activities that has caused, or has the potential to cause environmental harm or injury to land.

## Timeframes for Reporting Incidents or Non-compliance

### Reportable Environmental Incident

All tenements associated with a Mining Proposal 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 timeframe in which an investigation report is required to be submitted will be determined on a case by case basis depending on the nature of the incident. The report will outline the details of the incident, explaining how it occurred, the impacts on the environment and any remedial actions taken.

### Non-compliance

If not a reportable environmental incident, tenement holders should report all non-compliances to DMIRS **within three days** of identification.

See section 4.0 for further details on how to report a reportable environmental incident or non-compliance to DMIRS.

## Compliance and Enforcement Process for Breach of Tenement Conditions or Reportable Environmental Incident

### 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 letter;
- recommend further tenement conditions;
- tenement forfeiture or penalty in lieu of tenement forfeiture;
- issue a direction to modify; and/or
- issue stop work order.

The department will determine the most appropriate measure to be used in accordance with the Departmental Enforcement Policy (June 2015) and in consideration to the factors presented in Table 1.

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

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'), requires all petroleum activities to have an approved Environment Plan (EP). Non-compliances with the regulations or an approved EP are required to be reported to DMIRS.

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 applying to an activity;
- carrying out a petroleum activity if new or increased environmental impacts or environmental risks are identified; 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 overarching petroleum Acts administered by DMIRS.

### Non-compliance and Incidents Reporting Requirements

A **non-compliance** is when a particular requirement of the approved EP or the regulations has not been complied with.

Operators are required to notify the DMIRS of environmental incidents. These are defined as:

- 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.

### Timeframes for Reporting Incidents or Non-compliance

Operators are required to notify DMIRS of environmental incidents within the timeframes specified in the regulations.

Under the regulations, petroleum related incidents require the following notification 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.

DMIRS expects all other non-compliances (i.e. with conditions or limitations that apply to the activity; with the regulations; or with an approved EP) to be reported as soon as practicable, and in any case **within three days** of identification.

See section 4.0 for further details on how to report a reportable/recordable incident or non-compliance to DMIRS.

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

The department will conduct investigations where non-compliance with conditions or limitations applying to a petroleum activity, with the regulations or with the approved EP have been identified.

When DMIRS is notified of, or identifies a matter of non-compliance, it may trigger its own investigation and/or request that an investigation be initiated by the operator (or their nominated representative).

Operator investigations should be conducted to establish the root causes, the elements of non-compliance, the type and nature of the non-compliance, 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 non-compliance with approval conditions or limitations, the regulations and/or the approved EP, DMIRS will advise the operator and/or the registered instrument holders in writing of the proposed enforcement actions. The enforcement action may include:

- issue of a corrective action through a DMIRS inspection report;
- issue of a warning;
- issue of a direction under the relevant overarching petroleum Acts;
- withdrawal of the EP;
- cancelation of instrument; and/or
- prosecution.

The department will determine the most appropriate enforcement actions to be used depending on the circumstances of the non-compliance and in consideration of the factors presented in Table 1. Subsequent enforcement decisions will be made in accordance with the Departmental Enforcement Policy (June 2015) and in consultation with the Minister or his delegate.



### 3.0 NATIVE VEGETATION CLEARING

#### 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 relevant DMIRS environmental incident email address, using the [Environmental and Reportable Incident/Non-compliance Reporting Form](#). The initial reporting of non-compliance to DMIRS must be by specific notification and independent of any other reporting requirements. Reporting non-compliance via annual reports and approval documents is **not** considered self-reporting. Details of the non-compliance should be included in these documents where relevant, however, the initial notification to DMIRS should be a separate and specific 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 do occur. Incidents which are of greater concern to DMIRS are those which have occurred and have not been appropriately identified, reported and acted upon, and have subsequently been detected by DMIRS during an inspection or compliance review.

**Table 3:** DMIRS timeframes for reporting environmental incidents and non-compliance.

Type of Incident or Non-compliance	Timeframe for Reporting
<b>Mineral Activities</b>	<p><b>Reportable Environmental Incident:</b> Notification within <b>twenty four hours</b> of detection; and written report provided to DMIRS within agreed timeframe.</p> <p><b>All other non-compliances:</b> Written report provided to DMIRS within <b>three days</b> of identification.</p>
<b>Petroleum and/or Geothermal Activities</b>	<p><b>Reportable Incident:</b> Notification to DMIRS within <b>two hours</b> of occurrence; and written report provided to DMIRS within <b>three days</b> of occurrence.</p> <p><b>Recordable Incident:</b> 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.</p> <p><b>All other non-compliances:</b> Written report provided to DMIRS within <b>three days</b> of identification.</p>
<b>Native Vegetation Clearing</b>	Written report provided to DMIRS within <b>three days</b> of identification.

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

Subject line: region, name of site/project; permit/title/tenement/instrument number; description of incident/non-compliance.

Please attach an [Environmental and Reportable Incident/Non-compliance Reporting Form](#) which should include preliminary information on the nature, scope and scale of the environmental incident and/or non-compliance, and any relevant photos, maps or supporting documents.

## ENVIRONMENTAL INCIDENT AND NON-COMPLIANCE CONTACTS

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

Minerals/Native Vegetation – environment incident reporting email:

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

Petroleum – environment incident reporting email:

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

For further information, please contact the DMIRS Environmental Compliance Branch.

Contact details can be found on the DMIRS [website](#).