



Department of **Energy, Mines,
Industry Regulation and Safety**

Procedure

Environmental Compliance and Enforcement Administrative Procedure

July 2024

For matters regulated under the *Mining Act 1978*,
Petroleum and Geothermal Energy Resources Act 1967,
Petroleum Pipelines Act 1969 and *Petroleum (Submerged
Lands) Act 1982*

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Document Hierarchy

Legislation	<i>Mining Act 1978</i> <i>Petroleum and Geothermal Energy Resources Act 1967</i> <i>Petroleum Pipelines Act 1969</i> <i>Petroleum (Submerged Lands) Act 1982</i>
Policy	Enforcement Policy Environmental Objectives for Mining
Guidelines	Guidance Note on Environmental Non-compliance and incident reporting
Procedures	This document

Version History

Version	Date	Changes
1.0	2024	Initial publication

Purpose

To outline the Department of Energy, Mines, Industry Regulation and Safety's (DEMIRS) approach to addressing environmental non-compliances under the *Mining Act 1978* (the Mining Act), *Petroleum and Geothermal Energy Resources Act 1967*, *Petroleum Pipelines Act 1969* and *Petroleum (Submerged Lands) Act 1982* (collectively, Petroleum Acts).

Objective

The procedure's objective is to provide stakeholders with information on the department's approach to ensuring compliance with environmental statutory obligations.

Scope

This procedure applies to environmental compliance matters that the department's Resource and Environmental Compliance Division is responsible for under the Mining Act and Petroleum Acts.

Procedure

DEMIRS utilises a risk-based compliance approach to regulate activities across the lifecycle of a resource operation, whereby the level of monitoring and surveillance is proportionate to the level of risk to the community and environment. This allows the division to undertake its regulatory functions in an efficient manner by allocating its resources and focusing its efforts on matters representing the greatest risk, (likelihood and consequence) of non-compliance.

Compliance activities are undertaken in accordance with the regulatory principles defined in the department's [Enforcement Policy](#) in order to deliver high quality and transparent regulatory services that meet the expectations of all stakeholders, including the Western Australian community.

DEMIRS' principal objective for environmental regulation is:

Resource industry activities are designed, operated, closed, decommissioned and rehabilitated in an ecologically sustainable manner, consistent with agreed environmental outcomes and post-mining and post-activity land uses without unacceptable liability to the State.

DEMIRS has a broad responsibility to regulate compliance matters throughout all phases of a resource operation and its approach to risk-based regulation is predicated on reducing impact, ensuring compliance and promoting positive behavioural change. The department undertakes a broad range of compliance activities to ascertain whether tenement holders, instrument holders and operators have complied with environmental conditions. This ensures that the department's interactions with industry, the community and across government are fair, transparent, accountable, collaborative and timely.

1. Mining related non-compliance actions

Sections 96A and 97 of the Mining Act empower the Minister for Mines and Petroleum (the Minister) with the right to forfeit exploration licences, retention licences, mining leases and general purposes leases for breaches of tenement conditions. Where a breach of tenement conditions occurs on a miscellaneous licence or prospecting licence, a mining registrar or officer of the department authorised by the Minister in relation to Section 96 of the Mining Act, can apply to the Warden for an order of forfeiture. As an alternative measure, the Minister or Warden may elect to impose a penalty in lieu of forfeiture of up to a maximum of \$75,000 for individuals or \$150,000 for companies.

A penalty amount is recommended based on an internal penalty calculation tool which provides weighting values based on the seriousness of the breach. The calculator is used by departmental officers in preparing case briefings for consideration of the Resource and Environmental Compliance Panel (RECEP) and recommendations to the Minister or Warden.

Following procedural fairness, affected tenement holders will be notified of potential breaches of environmental conditions and the investigation prior to matters being brought to the RECEP. Tenement holders will be afforded an opportunity to respond or provide further information in relation to the potential breach.

In determining the recommended penalty amount for each case presented, RECEP may consider other issues relevant to the actual case (including the extent of public interest, the number of instances that a breach has been recorded for the tenement, the tenement holder's actions undertaken to address non-compliance and whether a general or specific deterrent is required). Following a decision by the Minister, DEMIRS will notify the tenement holder of any penalty to be paid. The penalty will also be recorded on the tenement register.

Directions and stop work orders

Part VIA of the Mining Regulations 1981 provides that authorised inspectors may issue directions in response to significant adverse effects on the environment and stop work orders in response to non-compliance, an accident or unexpected event.

2. Petroleum related non-compliance actions

Under Section 95 of the *Petroleum and Geothermal Energy Resources Act 1967*, the Minister may, by instrument in writing give to the registered holder of a permit, lease, licence, infrastructure licence, pipeline licence, special prospecting authority or access authority, a direction as to any matter with respect to which regulations may be made under Section 153 of the Act, including environmental matters.

Under Section 101 of the *Petroleum Submerged Lands Act 1982*, the Minister may, by instrument in writing give to the registered holder of a permit, lease, licence, infrastructure licence, pipeline licence, special prospecting authority or access authority, a direction as to any matter with respect to which regulations may be made under Section 152 of the Act, including environmental matters.

Under Section 41 of the *Petroleum Pipelines Act 1969*, the Minister may, by instrument in writing give to the licensee, a direction as to any matter with respect to which regulations may be made under Section 67 of the Act, including environmental matters.

The Petroleum Acts and Regulations also prescribe financial penalties for contraventions of various requirements. The imposition of a penalty requires the commencement of court action and non-compliances must be proven beyond reasonable doubt in a court of competent jurisdiction.

Public reporting of compliance actions and non-compliances

Where the department's compliance activities conclude that a tenement or title holder has failed to meet the requirements of its obligations, DEMIRS will publish the details of each on-compliance matter in a tiered basis. The tiered basis differentiates between publishing the name of the relevant tenement holder alongside details outlining the nature of the non-compliance, relevant title and the total value of any financial penalty imposed as reflective and proportionate to the nature and scale of the non-compliance. The details of completed directions, stop work orders and prosecutions will also be published.

The tiered scale of reporting non-compliances is as follows:

- For any individual tenement or titleholder penalties below \$20,000 it will publicise the nature of the breach but withhold the holder's name.
- For any individual tenement or titleholder penalties above \$20,000 it will publicise the tenement/title details (including the holder's name) and nature of breach.

For high-risk matters and/or serious breaches, DEMIRS may also consider publishing a web story detailing the nature of the breach, compliance actions undertaken by DEMIRS and 'lesson/s learnt' for industry.

Non-compliances will be published in the Compliance and Enforcement Report published each quarter through the Resource and Environmental Regulation Group's eNewsletter.

Government of Western Australia

**Department of Energy, Mines, Industry Regulation
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8.30am – 4.30pm

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