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Draft publication of monitoring data guidelines  
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### **Draft environmental guidelines: publication of monitoring data**

The Environmental Defender's Office (NSW) (**EDO**) welcomes the opportunity to provide a submission on the draft environmental guidelines relating to the publication of monitoring data under the recent amendments<sup>1</sup> to the *Protection of the Environment Operations Act 1997* (NSW) (**POEO Act**).

The EDO is a community legal centre specialising in public interest environmental law. We have previously been involved in law reform and litigation relating to the impact of pollution on communities in NSW. In 2011, we provided a submission to the NSW Legislative Council inquiry into the Kooragang Island Orica chemical leak.<sup>2</sup> In 2010, we provided a submission on the *Protection of the Environment Operations (Clean Air) Regulation 2010* to the Clean Air Regulation Review.<sup>3</sup>

We believe that the requirements to publish monitoring data, enacted in the new s 66(6) of the POEO Act, will enhance the public accountability of facilities licensed to emit pollution. The publication requirements will also provide valuable information on the effectiveness of the licensing system as a whole.

We submit that the guidelines on the publication of monitoring data should be framed with the overarching aim of public accessibility in mind. To this end, we suggest three principles that should underpin the finalisation of the guidelines:

- 1. The guidelines should make public access to monitoring data as easy as possible**
- 2. Monitoring data should be published in a way that is meaningful to the public**
- 3. Ensure data quality over quantity (including via feedback, review and updates).**

Our primary suggestion is that the EPA and the guidelines establish a process which brings together information on all facilities in a single online location (such as the POEO register). We also emphasise the need to improve the proposed process for public access to information about licensees who do not maintain their own website. There are a range of circumstances

<sup>1</sup> Made by the *Protection of the Environment Legislation Amendment Act 2011* (NSW).

<sup>2</sup> See [www.edo.org.au/edonsw/site/pdf/subs/111104orica\\_inquiry.pdf](http://www.edo.org.au/edonsw/site/pdf/subs/111104orica_inquiry.pdf).

<sup>3</sup> See [www.edo.org.au/edonsw/site/pdf/subs/100701poeo\\_submission.pdf](http://www.edo.org.au/edonsw/site/pdf/subs/100701poeo_submission.pdf).



where community members should not have to make direct requests to licensees for this data, especially where this would require the requester to identify themselves.

### **1. The guidelines should make public access to monitoring data as easy as possible**

The new s 66(6) of the POEO Act requires a licensee who maintains a website to make monitoring data available on that website, and a licensee who does not maintain a website to make a copy of monitoring data available to the public, free of charge, upon request.

#### ***(a) Centralised access to data***

In order to provide optimum public accessibility, monitoring data from all licensed facilities should be available online. In addition, ideally the data should be published on one central website. The public register maintained by the EPA under s 308 of the POEO Act provides the ideal location.<sup>4</sup> In our view, the benefits of centralised data collation include greater convenience for anyone requiring the data; easier comparison of data and performance between facilities; and as a result, an added incentive for improved compliance. If centralised publication on the EPA register itself is not practicable, then the register should nevertheless provide convenient and up-to-date links to data published by each licensee.

Where a licensee does not maintain a website with published data, we recommend the EPA establish mechanisms to obtain the information from those licensees and publish it on the register. For example, the new s 66(6) may provide scope for the EPA to establish an ongoing request to companies without a website to feed data electronically to the EPA. The EPA could then publish this information, rather than requiring members of the public to make such requests to the licensees directly.

#### ***(b) Ensure clear systems for data to be requested and provided, taking into account privacy concerns***

We recognise that the amendments to the POEO Act have not enacted a requirement for publication of monitoring data on the EPA's register. If online access to monitoring data from licensees without a website cannot be provided, we suggest amending the guidelines to ensure clear systems are in place for data to be requested and provided, taking into account personal privacy concerns.

We believe the guidelines need to specify the means of providing monitoring data to the public where it is not published online. Data should be provided in the most convenient form possible (usually the form requested), whether by email, fax or post (with postage paid by the licensee). Members of the public should not have to attend the facility in person to collect a copy.

In comparison to making data accessible online (via the EPA or a licensee's website), requiring the community to request monitoring data from the licensee has several disadvantages. It is reactive, rather than proactive. It is potentially slower, as the guidelines allow a further 14 days after the request is made before the licensee must provide the data. It also means an individual requesting monitoring data will have to identify themselves to the licensee, whereas a website allows anonymous access. The requirement to provide personal information may deter requests.

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<sup>4</sup> See <http://www.environment.nsw.gov.au/prpoeo/>.



This latter requirement does not account for community dynamics and power imbalances, such as where community members and facilities are in dispute about ongoing pollution incidents. The EDO is aware of personal threats made in these circumstances. There are good privacy and safety reasons for requiring monitoring information to be available and anonymously accessed, either through an intermediary (the EPA, as discussed above) or a licensee's website. The EPA should consider this issue further in finalising the guidelines.

## **2. Monitoring data should be published in a way that is meaningful to the public**

The EDO supports the proposed requirement in section 3.6 of the guidelines to publish additional information that would help to clarify the meaning of the monitoring data. In particular, we support the requirement in section 3.6.5 to provide licence condition limits along with the licence data. We would emphasise that this should be provided in such a way as to make it easy for members of the public to understand whether licence conditions have been breached, and the implications of any breach for the receiving environment.

Explanations should be provided with all data whose meaning may otherwise be misleading. These explanations should make it easy to discern whether any data is contrary to expected results or ordinary conditions.

## **3. Ensure data quality over quantity (including via feedback, review and updates)**

Building on point 2, we note the potentially vast amount of data available from licensed facilities, particularly as new information technology and monitoring continues to develop. We also note that such data is only useful to the extent it can be processed, analysed and understood (whether by the operator, the EPA, public interest groups, the media or community members). It is therefore important to analyse the value of the types of data being published under the guidelines; seek public feedback on its utility and accessibility; and update the guidelines and legislative requirements where necessary (for example, an independent review and consultation one year after operation, and further review at regular intervals).

We also note the NSW Audit Office's recommendations in its 2010 performance audit of responses to pollution incidents.<sup>5</sup> One recommendation was that the EPA implement improvements to centralised recording and analysis of key information, to improve the quality of data used for decision making and measuring performance.<sup>6</sup> Building on this recommendation, we submit that the EPA should draw on the data published in accordance with the requirements of s 66(6) of the POEO Act to inform its decision making and assist public understanding.

Yours sincerely

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<sup>5</sup> *Protecting the Environment: Pollution Incidents - Department of Environment, Climate Change and Water*, Auditor General's Report Performance Audit, September 2010.

<sup>6</sup> Recommendation 1.



*An independent public interest legal centre specialising in environmental law*