

Western Australian Auditor General's Report



Regulating Minor Pollutants



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26 November 2020

**Office of the Auditor General
Western Australia**

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The Office of the Auditor General acknowledges the traditional custodians throughout Western Australia and their continuing connection to the land, waters and community. We pay our respects to all members of the Aboriginal communities and their cultures, and to Elders both past and present.

Regulating Minor Pollutants



**THE PRESIDENT
LEGISLATIVE COUNCIL**

**THE SPEAKER
LEGISLATIVE ASSEMBLY**

REGULATING MINOR POLLUTANTS

This report has been prepared for submission to Parliament under the provisions of section 25 of the *Auditor General Act 2006*.

Performance audits are an integral part of my Office's overall program of audit and assurance for Parliament. They seek to provide Parliament and the people of WA with assessments of the effectiveness and efficiency of public sector programs and activities, and identify opportunities for improved performance.

This audit assessed if the Department of Water and Environmental Regulation and local government entities effectively regulate the unauthorised discharge of minor pollutants by businesses that do not require a licence.

I wish to acknowledge the entities' staff for their cooperation with this audit.

A handwritten signature in black ink, appearing to read 'C Spencer'.

CAROLINE SPENCER
AUDITOR GENERAL
26 November 2020

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Auditor General's overview

Large scale pollution incidents often gain significant attention from the community. However, smaller scale, 'minor' pollutants can also cause environmental harm if left to accumulate over time. Successive governments have recognised this and empowered the Department of Water and Environmental Regulation (DWER) to manage this risk on behalf of the community.



The Environmental Protection (Unauthorised Discharges) Regulations 2004 regulate discharges into the environment from light industry activity, which individually are not serious enough to cause pollution and do not need a licence, but cumulatively can cause serious and long-term harm. Ensuring that minor pollutants such as paint, detergent, laundry waste, animal waste and pesticides are prevented from spilling or leaking, prevents damage to the health of our community and our environment.

The audit assessed if DWER and local government entities (LG entities) effectively manage unauthorised discharges of minor pollutants from businesses that do not need a licence (operators). This audit focussed on operators because prior reports from my office, including *Our heritage our future: health of the Swan Canning river system* (2014) and *Western Australian Waste Strategy: Rethinking Waste* (2016) have raised concerns around the risks posed by this unlicensed group.

The audit found that DWER adopts a risk based approach to targeting its activity, which has resulted in DWER focussing its limited resources on regulating compliance with its licensing regime. We acknowledge that DWER must target its resources according to risk and it would be impractical to actively regulate all operators. However, a balance is necessary between regulating both large-scale polluters and events, and regulating the cumulative impacts of minor pollution. This is important because operators have demonstrated they not only contribute to cumulative risks but can sometimes individually be responsible for higher risk pollution incidents – in fact, unlicensed operators account for 55% of recent hazardous material incidents reported to DWER, including 72% of those rated as high risk.

It was pleasing to see that the 2 audited LG entities have taken steps to protect their local environment in recognition that this is important to their communities. DWER currently relies on assistance from LG entities to regulate operators, however, DWER does not know the extent of LG entity participation in this area. It was evident from our audit that DWER needs LG entity assistance to help prevent operators from causing environmental harm.

Executive summary

Introduction

This audit assessed if the Department of Water and Environmental Regulation (DWER) and local government entities (LG entities) effectively regulate the unauthorised discharge of minor pollutants by businesses that do not require a licence (operators).

We focussed on the activities of DWER's Compliance and Enforcement Directorate, which is responsible for administering environmental legislation. Its activities include monitoring, audit and compliance inspections and investigation of complaints and incidents.

We also audited the City of Wanneroo and the City of Armadale. These LG entities were selected because they have varying degrees of interaction with DWER in the regulation of minor pollutants.

Background

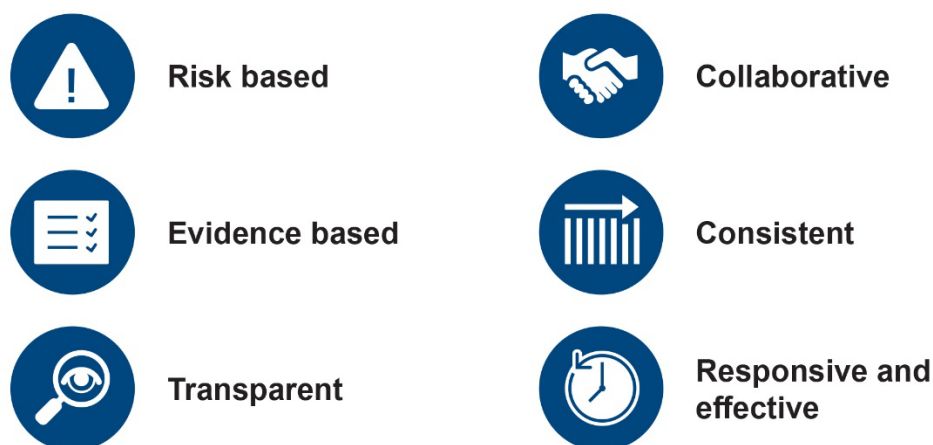
Businesses handle a range of materials that can harm the environment and public health if not managed appropriately. During a 2014 audit, we found that small to medium sized businesses were a significant source of pollutants entering and impacting the health of the Swan and Canning river systems.¹ We also found that preventing pollution is generally more cost effective than treating it.

The key legislation that operates to prevent and control pollution is the *Environmental Protection Act 1986* (EP Act). The EP Act has subsidiary legislation including the Environmental Protection (Unauthorised Discharges) Regulations 2004 (UDRs). The State Government introduced the UDRs in response to a report², which found that light industrial premises present a significant pollution risk. This is due to the cumulative impact of small discharges and the potential for accidents to cause pollution. The UDRs list specific materials, such as detergents, petrol, sewage, dark smoke, animal waste and paint, which must not be discharged into the environment by any business. For the purposes of our audit, we refer to these types of materials as minor pollutants.

DWER is the principal environmental regulator in Western Australia and is responsible for administering the EP Act and promoting and monitoring compliance. It operates under a set of established regulatory principles to guide its activities (Figure 1).

¹ Office of the Auditor General (2014). *Our Heritage and Our Future: Health of the Swan Canning River System*. <https://audit.wa.gov.au/reports-and-publications/reports/heritage-future-health-swan-canning-river-system/auditor-generals-overview/>

² Department of Environment and Swan River Trust (2005). *Stormwater Management Manual for Western Australia: 7 Non-structural controls* (pg 179 – 180). https://www.water.wa.gov.au/_data/assets/pdf_file/0003/1677/84958.pdf



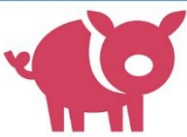


Source: DWER

Figure 1: DWER's best practice regulatory principles

We referred to these principles throughout the audit to evaluate the regulatory effectiveness of DWER and LG entities.

All types of businesses are required to comply with the EP Act and its subsidiary legislation, including the UDRs. However, the extent of their obligations varies depending on the nature of the premise and its production or design capacity. We have compared piggeries of different sizes to demonstrate this (Figure 2).

	 <500 animals 'Operator'	 500-1000 animals	 1000+ animals
Works approval	●	●	●
Licence	●	?	●
Register	●	Business nominates one only	●
Fee payable	●	One-off	Annually
Comply with conditions	●	Depends on nomination	●
Report on compliance	●	Depends on nomination	Annually

● Not required ● Required ? Options available

Source: OAG

Figure 2: Comparison of regulatory requirements for intensive piggeries

In April 2020, the Environmental Protection Amendment Bill 2020 was introduced to Parliament. It aims to streamline regulatory processes for the protection of the environment. The Bill proposes a change to the current licensing regime, where licences are no longer restricted to premises and can be granted to the person who has the care, control and responsibility for the activity. The potential shift from regulating premises to activities, may in the future result in additional operators needing a licence.

DWER's current regulatory approach

DWER's draft Compliance and Enforcement Policy indicates that it focuses on those matters that pose the greatest risk to public health, the environment and water resources.

Businesses licensed under the EP Act and the Environmental Protection Regulations 1987 are the focus of DWER's regulatory activities because it considers that these licensed businesses are of a higher pollution risk as they are included in Schedule 1 of the Environmental Protection Regulations.

Licensed businesses must comply with certain conditions set by DWER. Licence conditions are designed to protect the environment and public health from emissions and discharges. If the business does not obtain a licence or does not comply with set conditions it commits an offence under the EP Act. Licensed businesses are also subject to periodic compliance inspections and are required to submit annual compliance reports to DWER. DWER assesses and reports its performance against its regulatory activities associated with licensed businesses and is also able to recoup costs through licensing fees.

In contrast, operators are subject to less regulatory scrutiny. Operators are the focus of our audit, given they are more likely to operate in light industries, handle minor pollutants and contribute to cumulative pollution risks.

LG entities' involvement

Although DWER is the State's environmental regulator, protecting the environment is a shared responsibility for all levels of government, business and the community. The *Local Government Act 1995* broadly recognises that LG entities play a role in protecting the environment for current and future generations. LG entities also must ensure their own operations comply with the EP Act.

LG entities that choose to enforce the EP Act and its subsidiary legislation can participate in DWER's Authorised Officer Program (AOP). Authorised officers (AOs) have powers of entry, can monitor compliance, investigate alleged breaches of the EP Act and undertake enforcement action. DWER, in collaboration with a small number of metropolitan LG entities, also runs the Light Industry Program (LIP); an educational program designed to engage operators and promote compliance with the UDRs.

Conclusion

DWER is not effectively regulating the unauthorised discharge of minor pollutants by operators, and LG entities are not obligated to under the *Environmental Protection Act 1986*. DWER's current regulatory approach focuses on complaint and incident management which limits opportunities to prevent and mitigate risks posed by operators.

There has been some proactive work by DWER and LG entities to identify and engage with operators through the Light Industry Program and the Authorised Officer Program. However, LG entity participation in both programs is voluntary. At the time of our audit, only 9 of 148 LGs took part in joint inspections with DWER through the Light Industry Program and just under half of all LG entities participated in the Authorised Officer Program. Low participation by LG entities and DWER's reliance on complaints to identify non-compliance creates a regulatory gap that increases the risk offences by operators will go undetected. Operators may commit a wide range of offences from unauthorised discharges of minor pollutants to pollution, therefore, regulatory responses must be proportionate to the risks they present.

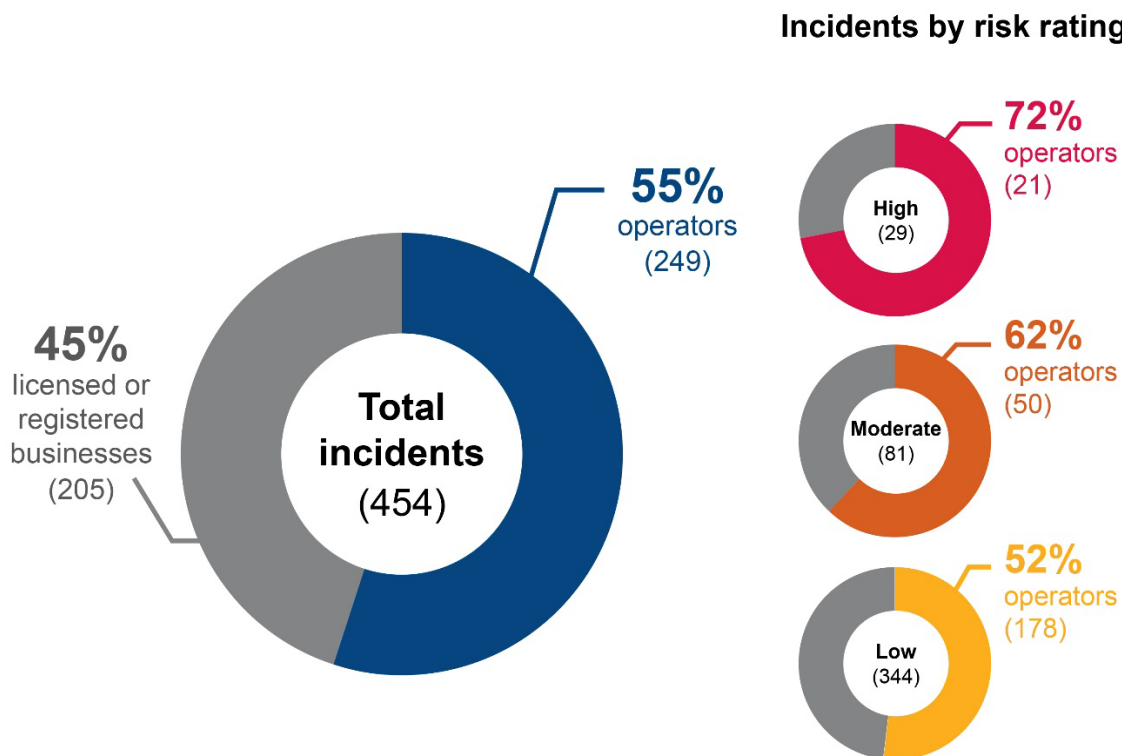
Findings

DWER does not adequately consider risks from businesses that do not require a licence

DWER's risk framework does not include operators discharging minor pollutants. This is despite its operational experience of non-compliance in this area and the UDRs identifying it as an offence to discharge specific materials. It has no standard operating procedures, documented business decisions or risk assessment criteria for regulating operators. By excluding operators from its risk framework, DWER is overlooking the serious cumulative environmental impacts operators pose.

Operators have demonstrated they can also cause pollution. DWER issues Environmental Protection Notices (notices) when it suspects environmental harm or pollution has occurred. At the time of our audit, 5 of the 10 active notices issued related to operators. Three of these notices were issued for discharging chicken waste, which is not a licensed category and therefore not subject to regular scrutiny from DWER. DWER regulates operators once harm has occurred but greater scrutiny of operators may help to prevent these events from occurring.

Operators appear more likely to be non-compliant compared to licensed businesses. DWER's current risk framework focuses on licensed businesses in part because of the potential impact if an incident occurred. However, DWER's compliance and enforcement data shows that operators represented 55% of all hazardous material incidents reported to DWER between July 2018 and September 2019. Seventy-two percent of incidents with a high risk rating also related to operators (Figure 3). Including operators in an overall risk assessment that considers both impact and likelihood may help DWER target and address operators in its proactive regulatory activities.



Source: OAG using DWER data

Figure 3: Summary of hazardous material incidents by business type and risk rating from July 2018 to September 2019

Like operators, registered businesses do not require a licence, however they conduct the same activities as licensed businesses (Figure 2). This can include manufacturing cement, sewage facilities, landfill sites and cattle feedlots. There are around 1,200 registered businesses that have been rarely, if ever, inspected. DWER identified this as an emerging risk in its 2019-20 Compliance Inspection Plan. However, at the time of our report, DWER had still not completed any inspections. This further highlights the gap created by focusing regulatory effort on licensed businesses.

Reliance on reactive monitoring increases the risk offences will go undetected

Operators are not routinely monitored by DWER and are generally inspected after they have been reported to DWER. For example, an operator, without a licence or registration, buried waste in the Perth metropolitan area undetected for 10 years, which resulted in the site becoming contaminated. The operator only came to the attention of the then Department of Environmental Regulation (DER) following a number of complaints. DER officers observed waste oil drums, leaking containers and stained soil at the site. While we do not expect all operators to be subject to monitoring, a targeted operator inspection program may act as a deterrent (Figure 4) and provide an opportunity for early intervention before unauthorised discharges become more serious.

Case study 1 - Common reasons for non-compliance

The Queensland Department of Environment and Resource Management examined motivations for non-compliance in the waste industry and found 3 main reasons:

- economic motivations – money to be made from non-compliance, and/or avoiding the costs of compliance
- lack of enforcement – the legislation is not enforced; they do not think they will be caught
- ignorance – due to a lack of understanding of how to achieve compliance, or a lack of awareness of the laws.

Source: Queensland Department of Environment and Resource Management


Figure 4: Common reasons for non-compliance

DWER unduly relies on LG entities to voluntarily engage with and regulate operators

LG entities do not have to regulate the UDRs, but DWER expects them to

DWER refers environmental complaints about small to medium businesses to LG entities (Figure 5). However, the majority of LG entities are not authorised under the EP Act to deal with complaints referred to them. Only 65 of 148 (44%) LG entities can enforce the EP Act and subsidiary legislation because they participate in the AOP. Of the 65, only 21 are specifically trained to enforce the UDRs. At the time of our audit, 9 of 29 (31%) metropolitan entities participated in the LIP. Some LG entities may be able to address DWER referrals under their own by-laws, however this capability varies across the sector. If the UDRs are not adequately regulated, the cumulative risks that minor pollutants pose may be ignored.

Reporting pollution to land – including waste and litter

To report	Contact
Pollution from premises that are licensed or registered by DER under the <i>Environmental Protection Act 1986</i> . Check if a premises is licensed	DWER's 24 hour Pollution Watch hotline – 1300 784 782 or use the Online reporting form
Hazardous materials emissions and major pollution incidents	DWER's 24 hour Pollution Watch hotline – 1300 784 782
Residential or small to medium business pollution-related matters	Your local council 

Source: DWER's website

Figure 5: Extract of DWER's website – who to contact when reporting pollution to land, including waste and litter

DWER assumes LG entities are regulating minor pollutants, but it does not request information from them. It does not know how many offences, complaints or infringements have occurred, or if LG entities are using the UDRs or their local by-laws to regulate. DWER promoted the UDRs as a voluntary tool for LG entities to manage environmental issues, but they were not designed to delegate responsibility to them. Without information from LG entities, DWER cannot know if cumulative risks are being managed.

The 2 LG entities we audited have chosen to regulate the UDRs in an effort to meet community expectations. For example, the City of Wanneroo actively inspects operators as part of the LIP to protect the Yellagonga Wetlands. While the City of Armadale is not part of the LIP, it is using the UDRs and its own local by-laws to address emerging environmental issues from local industrial areas. Both LG entities believe they can play a valuable role in improving the environmental standards of operators.






Support and training for LG entity authorised officers is limited, but DWER authorised officers are well trained

DWER has not developed standards for LG entity AOs to measure the severity of environmental complaints or developed fit for purpose tools that LG entities can use when addressing issues. For example, dust issues are commonly referred to LG entities but we found there were no criteria available for determining if it is an unauthorised discharge or when it should be referred back to DWER for further investigation. Without adequate tools, AOs may not take action proportionate to identified risks, and operators may not be equitably regulated across the State or even within an LG boundary.

While LG entity AOs are generally familiar with conducting inspections and investigations, some lack the specialised training to manage environmental issues. We expected DWER to provide training to support AOs to identify and measure compliance for the types of complaints it refers to them. Instead, we found that DWER's training program for LG entity AOs heavily focuses on regulatory practice and does not address other core capabilities identified in best practice guidance (Figure 6). Including some elements of the core regulatory capabilities in training could help support LG entity AOs assess and act on environmental non-compliance.

Case study 2 - Regulatory Officer Capability Framework

The Australasian Environmental Law Enforcement and Regulators network (AELERT) is a professional network of environmental regulators. It has developed a framework that is applicable to regulatory officers regardless of their position or experience. Officers can refer to this framework to self-identify areas for further development and education.

CORE REGULATORY CAPABILITIES	SKILL SETS
REGULATORY PRACTICE	<ul style="list-style-type: none">> Undertaking Regulatory practice> Applying regulatory powers> Using regulatory tools> Note-taking and record-keeping 
STAKEHOLDER ENGAGEMENT	<ul style="list-style-type: none">> Communication and stakeholder engagement 
COMPLIANCE	<ul style="list-style-type: none">> Undertake inspections> Assess and act on non-compliance> Ensure compliance with legislation 
INVESTIGATIONS	<ul style="list-style-type: none">> Plan, undertake and finalise investigations> Interviewing> Collect and manage evidence> Give evidence 
HEALTH AND SAFETY	<ul style="list-style-type: none">> Work Health and Safety 

DWER completed a capability mapping exercise for its own AOs using this framework in November 2019. As a result, all DWER AOs must complete a Certificate IV in Government Investigations. We reviewed the updated training package and found it addressed all the core regulatory capabilities.

Source: AELERT

Figure 6: Regulatory Officer Capability Framework

LG entities that participate in the LIP have more opportunities to develop capabilities through joint inspections with DWER and access to dedicated DWER support. Non-participating LG entities do not have the same access. For example, they must lodge queries with DWER through a general email address. By not providing support and suitable training to all LG entities, but still referring complaints to them, there is a risk that issues will not be identified nor addressed appropriately and consistently.

DWER does not provide adequate support and guidance to operators

DWER has not provided operators with sufficient guidance on how to achieve compliance with the EP Act and its subsidiary regulations, including the UDRs. As DWER is the State environmental regulator, we expect them to set the standard for promoting compliance and to share materials with LG entities to pass on to operators. We found that:

- DWER has an environmental self-assessment checklist available on its website to help operators self-assess their business practices. However, there is no guidance on how to address identified issues.

- DWER's educational materials focus on regulatory enforcement and penalties, rather than providing possible solutions to avoid damaging the environment. Other jurisdictions have developed user friendly guidance to assist operators (Figure 7).
- Information on the DWER website was difficult to locate and outdated. For example, the LIP pamphlet had not been updated since 2014 and information on the LIP could not be found from a search on DWER's home page.

To support small businesses to manage their own compliance, the Productivity Commission recommends removing unnecessary complexity in guidance materials and offering acceptable solutions.³ DWER is responsible for ensuring there is information available that is solution focused, relevant, easy to find and simple to understand to support operators to comply with the UDRs.

Case study 3 - Steps to control hazards and risks

The below figure is from *Assessing and Controlling Risk: A Guide for Business* produced by the Environmental Protection Authority Victoria. Businesses are encouraged to identify hazards that might cause harm to human health and the environment, and respond by implementing controls to reduce risks to an acceptable level.



The guide also provides examples of common hazards, how to assess the risks associated with them, as well as simple controls and checks that can be put in place to effectively manage and mitigate them.

Source: Environmental Protection Authority Victoria and OAG

Figure 7: Example of better practice guidance from another Australian jurisdiction.

The primary purpose of the Light Industry Program is unclear

Operators are not given the opportunity to prepare for LIP inspections. DWER's website encourages operators to prepare for a LIP inspection by completing an environmental assessment. However, this is not always possible, as LIP inspections are often unannounced. Many small businesses welcome inspections to seek reassurance they are compliant and to draw on the inspector's knowledge.³ As the LIP aims to be informative, there is an argument that scheduling inspections would allow operators to get the most value from the inspection.⁴

³ Australian Government Productivity Commission (2013). *Regulator Engagement with Small Business*. p. 115. <https://www.pc.gov.au/inquiries/completed/small-business/report/small-business.pdf>

⁴ Ibid. p. 116.

Operators do not receive clear recommendations from DWER after a LIP inspection. We observed AOs providing advice to operators verbally, however a written record of the inspection was not provided. Of the sample of inspection records we obtained, we found that the outcomes were often poorly recorded and timeframes for re-visit not set. Adequate documentation, including recommendations, provides a clear basis for decision-making, an audit trail and gives operators clear directions to achieve compliance.

DWER could improve its approach for managing complaints and monitoring operators

DWER did not always action complaints in a timely manner

DWER had a significant backlog of unresolved complaints. At 6 November 2019, 73 of 916 (8%) unresolved complaints were allocated to 16 people that no longer worked at DWER. Of the total unresolved complaints, nearly 50% occurred before 1 July 2019. DWER told us it relies on complaints to identify high risk operators. However, this approach will be less effective if DWER continues to experience delays in addressing complaints.

Of the 916 unresolved complaints, 345 had been received but no further action was taken. The EP Act has a 24 month deadline for commencing prosecutions for some offences. Seven percent of complaints that DWER had not investigated had already exceeded the timeframes to seek prosecution if it was required. Failing to investigate complaints in a timely manner may limit DWER's ability to prosecute in some circumstances.

During our audit, DWER was drafting standard work practices to improve its process for receiving complaints. This was in response to findings reported by an external consultant in 2018. The report found that a lack of documented work practices resulted in inefficient processing of the large volume of complaints and incidents. We reviewed the draft work practices and found some gaps, including:

- non-DWER matters are to be referred externally (to other State and LG entities), but these matters are not clearly defined
- it does not set minimum information requirements for receiving a complaint or an incident
- there is no guidance on how to refer or escalate complaints between internal branches
- there are multiple channels for receiving complaints, which limits DWER's ability to prioritise and delegate complaints consistently.

DWER will not be able to reduce its backlog of complaints and avoid future inefficiencies unless new work practices are comprehensive and adopted by all relevant teams.

While LG entities do not receive the same volume of environmental complaints as DWER, they had clear processes in place to manage and monitor them. For example, the City of Wanneroo set targets for actioning and resolving complaints, and it also monitored complaint resolution on a weekly basis. It also had a requirement to provide management with explanations for unresolved issues. At the time of our audit, the City of Wanneroo had no outstanding complaints in relation to minor pollutants.

DWER collects a lot of information about operators but is not using it effectively

DWER is unable to easily analyse its complaints and incident information for operators. We found that system generated reports available in its Incident and Complaints Management System were not readily usable. This was in part because information was entered in free

text fields in no set format and DWER had not established rules for updating records. As a result, staff told us they were spending a lot of time cleaning data for analysis. DWER relies heavily on complaints information to identify non-compliant operators. Therefore, its capacity to respond to emerging operator risks is limited by its ability to analyse data and perform risk assessments in a timely manner.

DWER has started to use packages of information developed by its new Intelligence Branch to inform key investigative activities. We reviewed a recent information package developed about a suburb of interest. It included useful details such as:

- the number of associated complaints and their locations
- seasonality of complaints. For example, if complaints were more frequent at particular times of the year
- a list of industries operating close-by, considering both operators and licensed premises
- identification of common sources of emissions by relevant industry.

The development of these packages is a good example of a more comprehensive risk and evidence based approach to planning and preparing for investigations. A similar strategy could be used to provide more structure to the LIP (Figure 8).

Case study 4 - OAG attendance at Light Industry Program inspections identified opportunities for improvement

The LIP is an initiative run by DWER in collaboration with select LG entities to increase operator's awareness of the UDRs. The program includes inspections of light industrial operators. There is no set structure to select an operator to visit, although DWER encourages LG entities to perform their own risk assessments of operators in their area.

The audit team attended 3 joint LIP inspections led by DWER and accompanied by the City of Wanneroo. During these inspections we identified opportunities for improvement:

- **Regulatory scope creep:** The LIP is intended to be specific to the UDRs, but it is being used to investigate and gather information about other matters. For example, 2 out of 3 inspections targeted used tyre stockpiling. Under the UDRs, it is only an offence to cause dark smoke due to the burning of tyres. However, under the Environmental Protection Regulations 1987, it is considered an act of pollution to store in excess of 500 used tyres without approval. As LG entities are not expected to regulate pollution, the appropriateness of including these types of issues in the LIP should be reviewed.
- **Inspection preparation:** DWER selected an operator for an unannounced LIP inspection after identifying a tyre stockpile via aerial imagery. There were no tyres on site at the time of inspection. Following the inspection, the audit team found the operator was authorised by DWER to carry and transport used tyres, which could have provided a plausible explanation for the tyres observed during the survey. DWER did not adequately research and prepare prior to conducting the inspection. This caused unnecessary disruption to the business and inefficient use of resources.
- **Inadequate scrutiny:** DWER determined another operator was polluting by stockpiling over 2,000 used tyres without approval. DWER ordered the removal of the tyres, which the operator appeared to comply with. However, we reviewed the proof of remediation and found that:

- 1 piece of evidence of tyre removal pre-dated the inspection date
- an unapproved carrier was used to remove the used tyres from the site
- the total amount of tyres removed did not reconcile to the amounts observed on site.

At the time of our audit DWER had closed this investigation, despite the documented evidence indicating the operator may not have sufficiently resolved the issue.

Attending the inspections demonstrated to us that DWER could improve its use of available information to plan and resolve inspections more effectively. For every LIP inspection performed, there is an opportunity cost for DWER, the LG entity and the operator. Therefore, inspections and the LIP more broadly should be adequately planned to ensure maximum impact.

Source: OAG

Figure 8: LIP inspections

Entities are not measuring if operator compliance is improving

DWER has not monitored performance of the LIP following the end of its pilot project in 2017. When DWER considered the continuation of the LIP following the pilot, its evaluation report included analysis on the level of operator compliance, nature of issues identified and inspections performed by business type and size. It has not completed this sort of analysis on current LIP activities. Without ongoing monitoring, DWER will be unable to assess if the LIP is continuing to achieve its desired outcomes.

DWER's LIP data suggests that operator non-compliance has remained consistent, but LIP inspections have reduced. We found from 2017 onwards, the proportion of issues identified at initial LIP inspections remained relatively consistent with the pilot project, at around 70%. Despite this, inspection numbers dropped by about 40% and use of enforcement actions decreased by 33%. Without periodic evaluation of LIP data, participating entities will not know if the LIP remains effective in improving operator compliance.

DWER maintains a spreadsheet of LIP inspection data, but the only reporting it provides on the program is the number of inspections performed per quarter. In addition, the data did not appear to be systematically used for decision-making or assessing regulatory performance. It was not always clearly documented why some operators required multiple re-inspections, but remained non-compliant. The data showed that 16% of inspections required 5 or more follow ups, and 2 operators were inspected 10 times each over 2 years. Analysing inspection data would support DWER to assess if decision making is fair and equitable and determine if there is an undue regulatory burden on operators.

Recommendations

1. The Department of Water and Environmental Regulation (DWER) should:

- a. complete a risk assessment of operator activities and use this information to adjust its regulatory response to target identified cumulative and emerging risks

DWER response: The activities identified as being of a particularly high risk to the environment are defined as “prescribed premises” in Schedule 1 of the Environmental Protection Regulations 1987. Following the passage of the Environmental Protection Amendment Bill 2020, which is currently before Parliament, DWER will review Schedule 1 as the Bill changes the approach from prescribed premises to prescribed activities. This process will include a comprehensive assessment of risks from activities that have the potential to cause pollution or unreasonable emissions to ensure that activities are captured, including those that do not currently require a licence.

Implementation timeframe: 18 months from the proclamation of the Environmental Protection Amendment Bill 2020.

- b. improve its collection and management of data to efficiently identify and monitor non-compliant operators

DWER response: DWER is developing a new digital one-stop-shop for environmental assessments, approvals and compliance, called Environment Online.

Environment Online will consolidate water and environmental regulatory processes and will, amongst other things, provide a modern case management system on one platform instead of functions spread across different systems and directorates. This new platform will greatly assist DWER’s Compliance and Enforcement Intelligence Team in the collection and management of data to efficiently identify and monitor non-compliant operators.

In the interim, the Intelligence Team is progressing the warehousing of data held within the existing systems to enable presentation of data visualisation and a dashboard to assist all Compliance and Enforcement staff to identify issues and allocate resources in a proactive and timely manner.

Development of the Environment online platform will begin in early 2021, with the first release in July 2021 and subsequent releases across three years.

The interim dashboard will be implemented by 31 December 2020.

Implementation timeframe: 31 December 2020

- c. improve responsiveness by establishing work practices that prioritise complaints and incidents according to risk and set clear thresholds for action

DWER response: DWER has established a Compliance and Enforcement Intelligence Team which has developed work practices to triage and prioritise complaints and incidents according to risk. The department focuses its resources on those matters that pose the greatest risk to public health, the environment and water resources. The majority of unauthorised discharge offences are likely to be assessed as a low risk. DWER will continue to review and maintain these work practices.

Implementation timeframe: Ongoing

- d. help operators identify and mitigate the risks of minor pollutants by developing educational material that offers good practice examples and cost effective solutions

DWER response: DWER is currently developing new and improved educational materials to assist light industries to find cost effective solutions in addition to verbal advice from officers.

Implementation timeframe: 31 March 2021

- e. monitor and periodically evaluate performance to determine if desired minor pollutant regulatory outcomes are being met. In particular, set and monitor targets and objectives for the Light Industry Program (LIP)

DWER response: DWER is introducing an electronic inspection tool that allows for better analysis of trends and reporting of light industry through the LIP. DWER will periodically evaluate performance of the LIP in conjunction with participating local governments.

Implementation timeframe: 31 March 2021

- f. assist local government entities (LG entities) who choose to regulate the Environmental Protection (Unauthorised Discharge) Regulations 2004 (UDRs) by:
 - o developing guidance to determine which complaints DWER can refer to LG entities and which complaints LG entities should refer to DWER
 - o providing access to timely advice and support
 - o tailoring and sharing resources to guide investigations
 - o providing opportunities for refresher training and further development.

DWER response:

- a. DWER will continue to refer environmental nuisance complaints to LG entities that can be appropriately addressed through local laws, planning laws, the *Public Health Act 2016*, the *Local Government Act 1995* or environmental legislation. Complaints concerning licensed premises or serious offences under the EP Act, received by LG entities should continue to be referred to DWER.
- b. DWER will continue to provide access and timely support to local government entities who choose to regulate the UDRs.
- c. Where appropriate DWER will continue to share resources with local governments to guide investigations. Some materials that details enforcement methods and procedures for investigations of serious offences under the EP Act may remain confidential to protect and maintain their effectiveness.
- d. DWER supports joint training and development, which benefits both DWER and local government staff and will continue to provide opportunities for refresher training and further development to local government where appropriate.

Implementation timeframe: Ongoing

- 2. Local government entities should analyse their available data to evaluate if their current regulatory approach adequately addresses risk within their areas.

City of Armadale response: The City of Armadale accepts the findings and recommendations within the report. The City has analysed its approach to regulatory compliance and service requests of Health Services and prioritised its responses/investigations.

Implementation timeframe: 30 June 2021

City of Wanneroo response: The City of Wanneroo acknowledges that the Department of Water and Environmental Regulation (DWER) is responsible for administering environmental legislation and promoting and monitoring compliance in Western Australia. The City of Wanneroo does not support further delegation of responsibility for managing environmental issues from DWER to Local Government Authorities. In the interest of meeting the expectations of its community to protect the natural environment, the City of Wanneroo voluntarily participates in DWER's Authorised Officer Program (AOP) and Light Industry Program (LIP).

As a Local Government Authority, the City of Wanneroo is not obligated to enforce the Environmental Protection Act and its subsidiary legislation. The City of Wanneroo collaborates with DWER and participates in the AOP to investigate and resolve pollution incidents within the City of Wanneroo.

The City of Wanneroo collaborates with DWER and participates in the LIP to reduce the entry of contaminants from industrial and commercial activities into groundwater and drainage systems that feed into the Yellagonga Wetlands.

In the 2020/21 financial year the City of Wanneroo intends to analyse records that relate to its participation in the AOP and LIP, expand its existing quantitative data collection and commence collecting qualitative data. This will enable the City to identify trends in compliance and non-compliance and evaluate whether service delivery is adequately addressing risks and community expectations to protect the natural environment from pollution and maintain public health standards.

Implementation timeframe: 30 June 2021

Response from the Department of Water and Environmental Regulation

Emissions and discharges in Western Australia are regulated by the State Government and local governments.

The primary environmental protection legislation is the *Environmental Protection Act 1986* (EP Act), which is administered by the Department of Water and Environmental Regulation (DWER). The EP Act has two main regulatory areas: Ministerial statements for proposals assessed by the Environmental Protection Authority (Part IV), and environmental regulation of clearing of native vegetation, pollution, serious or material environmental harm, and unreasonable emissions (Part V). Approvals are defences to these offences and are provided through clearing permits under Part V Division 2, or licences under Part V Division 3.

The Environmental Protection (Unauthorised Discharges) Regulations 2004 (UDR), which are the subject of this audit, were introduced in 2004 to address a recommendation from the 1999 Swan-Canning Industry Survey to “develop a framework to facilitate local government management of local light industry pollution issues”. The UDR were not made to provide a regulatory tool to address emissions and discharges which were not serious enough to amount to an offence under the EP Act. These regulations provide local governments and DWER with a means to address minor environmental issues which are not so significant as to be subject to regulation under the EP Act. The offences in the UDR do not require proof of any environmental impact, and their relative seriousness is demonstrated by the low penalty in contrast with offences such as causing pollution under the EP Act which are significantly greater, and may include imprisonment.

DWER uses a range of tools to monitor compliance with the legislation it administers. As stated in the draft DWER Compliance and Enforcement Policy, DWER will focus its resources on those matters that pose the greatest risk to public health, the environment and water resources.

DWER will continue to support local governments to respond to and manage local minor environmental issues.

Audit focus and scope

This audit assessed if the Department of Water and Environmental Regulation (DWER) and local government entities (LG entities) effectively regulate the unauthorised discharge of minor pollutants by businesses that do not require a licence (operators).

Our specific criteria were:

- Do entities effectively identify and engage with operators to deter improper discharge of minor pollutants?
- Do entities effectively monitor operators to detect improper discharge of minor pollutants?

We focused on DWER as the key entity responsible for regulating environmental matters under the *Environmental Protection Act 1986* and subsidiary legislation, including the Environmental Protection (Unauthorised Discharges) Regulations 2004. We also completed audit work at 2 LG entities to understand how complaints and inspections were delegated from DWER and managed by LG entities.

We assessed and analysed information and available data from DWER for the period from 1 July 2016 to 6 November 2019.

During the audit we:

- considered how recommendations from our 2016 report, *Western Australian Waste Strategy: Rethinking Waste* relating to operator risk assessment and over-reliance on complaints to identify non-compliance were addressed
- reviewed relevant policies, procedures and better practice guidance
- interviewed DWER and LG entity staff and observed relevant internal processes
- attended a number of joint DWER and LG entity Light industry Program inspections
- sampled complaint, incident and inspection records at both DWER and LG entities
- reviewed DWER's training, support and guidance material for operators
- reviewed DWER and LG entity processes for monitoring and reporting on operator compliance.

We did not audit how DWER regulates licensed premises, contaminated sites, illegal dumping or controlled waste.

This was an independent performance audit, conducted under section 18 of the *Auditor General Act 2006*, in accordance with Australian Standard on Assurance Engagements ASAE 3500 *Performance Engagements*. We complied with the independence and other ethical requirements related to assurance engagements. Performance audits focus on primarily the effective management and operations of entity programs and activities. The approximate cost of undertaking the audit and reporting was \$267,000.

Auditor General's 2020-21 reports

Number	Title	Date tabled
7	Audit Results Report – Annual 2019-20 Financial Audits of State Government Entities	11 November 2020
6	Transparency Report: Major Projects	29 October 2020
5	Transparency Report: Current Status of WA Health's COVID-19 Response Preparedness	24 September 2020
4	Managing the Impact of Plant and Animal Pests: Follow-up	31 August 2020
3	Waste Management – Service Delivery	20 August 2020
2	Opinion on Ministerial Notification – Agriculture Digital Connectivity Report	30 July 2020
1	Working with Children Checks – Managing Compliance	15 July 2020

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