

29 March 2013

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Review of the Requirements for publishing pollution monitoring data
Reform and Compliance Branch
Environment Protection Authority
PO Box A290
SYDNEY SOUTH NSW 1232

Dear Michelle

The Australian Sustainable Business Group (ASBG) welcomes the opportunity to comment on the *Requirements Publication of Pollution Monitoring Data (the Requirements)*.

The [Australian Sustainable Business Group](http://www.asbg.net.au) (ASBG) is a leading environment and energy industry representative body that specializes in providing the latest information, including changes to environmental legislation, regulations and policy that may impact industry, business and other organisations. We operate in NSW and Queensland and have over 130 members comprising of Australia's largest manufacturing companies. Members were fully involved in the development of this submission and ASBG thanks them for their contribution.

ASBG strives to assist regulatory agencies to prepare more efficient regulatory process, with the outcome of achieving practical, efficient, low cost solutions to achieve high environmental outcomes.

ASBG comments on the Requirements are split into two areas:

- Overarching issues
- Details on the operations of the Requirements

OVERARCHING ISSUES

Overall ASBG considers the basis for the Requirements is flawed for the following reasons:

- It is redundant as the same provisions for community right to know information have been always covered under [POEO s320](#).
- No cost benefit assessment has been properly undertaken.
- It would not meet the requirements of *Independent Pricing and Regulatory Review Panel's* draft Best Practice Approach to Designing and Reviewing Licensing Schemes.
- It cannot satisfy the *community right to know* creditability requirements of a number of community groups.

Introduction of the publication of monitoring data in 2011 legislation was a heat of the moment reaction to one Environment Protection Licence holders' incident. At the time ASBG's submission on [Website Monitoring Submission](#) 22/2/12 made the comment *the Protection of the Environment Legislation*

Amendment Act 2011 (POELAA) passed through parliament with no consultation, discussion or consideration for the costs to be imposed on EPL holders and other affected activities.

Since then the Independent Pricing and Regulatory Review Panel has undertaken its [Licence Rational and Design](#), which included the draft [Best Practice Approach to Designing and Reviewing Licensing Schemes](#). While a draft document, the testing for a good licence included addressing a number of assessments, in which the Requirements would have difficulty in meeting including:

- *Are policy objectives likely to be addressed through licensing?* The main policy objective is apparently community right to know, but the Requirements are failing to meet the request of some community groups who simply do not trust or believe any ‘industry’ data and will only consider EPA data.
- *Is the coverage the minimum necessary?* → Why have all EPL holders undertake the publication of monitoring data when licence breaches are of concern?
- *Are the reporting requirements the minimum necessary?* → In fact the Requirements are by their nature close to the maximum which could be legislated.
- *Does a preliminary assessment suggest licensing will result in a net benefit?* On a cost of implementation from EPLs perspective it can be high with a number of members now telling ASBG the costs are in excess of \$100,000 p.a. On a community right to know basis it also fails to deliver information on which the community places any trusts. Additionally, only one member reported any significant interest in terms of website ‘hits’ on their Requirement’s data, but this was for a controversial remediation site just after its planning had been approved. All other ASBG EPL holders report minimal to zero interest from the community with most of the ‘hits’ tending come internally or from the EPA. Not one formal public request for data sets has been reported.

A number of members of ASBG have discussed the Requirements and the provision of EPL monitoring data with their community groups. A common theme is that the community groups just do not trust the data published by EPL holders. Based on this, publication of the data may, at least in part be useless for its intended purpose of community right to know. This is not to say that the data has no value for compliance, technical and scientific reasons, but the policy basis for the Requirements is community right to know. The Requirements state s1.1:

The intention of this new requirement is to improve the general public’s access to information about the environmental performance of licensed facilities.

Given the feedback from some community groups and their lack of trust of any monitoring data on an industry website, the ability of the Requirements to meet its intention is becoming questionable. In addition, the high costs of collecting, verifying, collating, formatting and publishing the data for apparent little community interest brings into question the overall cost effectiveness of the publication of monitoring data.

ASBG members have clearly indicated they consider the publication of monitoring data an expensive exercise and wish that it be pruned to listing only the monitoring exceedences, rather than the entire data set or variations of such data sets.

ASBG recommends the publication of monitoring data on websites be limited to monitoring exceedences only, but retain the option for a member of the public to request the data sets as currently required.

DETAILS ON THE OPERATIONS OF THE REQUIREMENTS

While not diminishing the overarching issues, ASBG has also compiled a list of recommendations regarding the Requirements and its details of operation.

The detailed issues have been in part discussed and some agreed to in the two meetings of the ASBG-EPA Working Party initiated by Mr Barry Buffier CEO EPA NSW. The two meetings took place on 31 May 2012 and 29 November 2012. Appendix A contains the main points and discussions from these two meetings. Note that in Appendix A the text in red font has been an agreed position by the EPA after the notes of the meeting were circulated and agreed to by all those participating.

Table 1 lists the main issues and recommendations which describe the issue and ASBG's recommendation with additional explanations for this position.

Table 1 List of Issues and Recommendations for the Requirements		
No.	Issue	Recommendation
1	Use of alternative formats other than word or Excel (s3.5). Members report security issues on the use of such formats.	The requirements permit a broad range of formats for the data to be presented in. If specific formats are required EPL holders can provide this via public request.
2	Publication of various dates (s3.7). The date data obtained and the date published are not community right to know issues, but are compliance issues only.	Remove the requirement to publish the date data obtained and the date published. EPL holders are to keep records of these dates for compliance reasons only.
3	How the data should be published (s3.2, 3.5). The use of table formats is mandatory, but the way in which data can be displayed is open to interpretation.	Clarify in the Requirements that: <ul style="list-style-type: none"> • That the tables were guidance only and it is perfectly acceptable to publish a <i>meaningful</i> summary of the data. • That raw data does not have to be published, but can use monthly summaries • Where appropriate, may include the use of data ranges for a particular month.
4	Publication of ambient local monitoring data. POEO Act s66(6)(a) covers <i>monitoring data that relates to pollution</i> . ASBG argues that ambient monitoring data is not related to pollution from that EPL site and therefore should not be included.	That monitoring data on EPLs measuring ambient monitoring be formally exempt from the Requirement to publish. The EPA can consider use and publication of this data for its own purposes, but this should be under separate processes. Publication of such data by the EPA rather than the EPL would provide increased community acceptance of the data.
5	Ability to negotiate alternative reporting requirements for specific and individual licence holders. This was discussed and agreed to in the ASBG-EPA Working Party meetings.	Include in the Requirements that individual arrangements on the publication of monitoring data are permitted. Such arrangements would especially apply to Pollution Reduction Programs where the publication of data requirements is spelt out in the PRP or other special licence conditions.
6	Reporting of background data and base line data is questionable as per No.4, (s3.7.3).	Exempting the publication of background limits and base line conditions as pollutants in EPLs and for publication purposes. These are not pollution monitoring and should be exempt from the Requirements.
7	Use of 'below detectable limit' or use of lowest limit of detection to be used where there is any contradiction .	Include the use of the following: <ul style="list-style-type: none"> • Below detectable limit rather than ½ LDL to be used • Explanations/ fact sheets in dealing with contradictory limits where they appear.
8	ASBG and EPA discussed and agreed that a set of fact sheets explaining technical issues associated with monitoring should assist with explanations for certain monitoring results.	EPA to develop Fact Sheets to advise the public on measurements where confusion can occur, e.g. noise, use of percentiles, background levels, below detectable limits, wet events, trigger levels, ambient levels, odour measurement, missed sample collections (no flow), etc.

ASBG looks forward to working with EPA on the above recommendations and will welcome an additional meeting of the ASBG-EPA Working Party on the above and related issues such as immediate reporting, Pollution Incident Response Management Plans and the development of better Environment Protection Licences (EPLs).

Should you require ASBG to clarify or elaborate on the above matter please contact me.

Yours Sincerely

A handwritten signature in black ink, appearing to read "Andrew Doig". The signature is fluid and cursive, with a large loop at the end.

Andrew Doig
CEO

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APPENDIX A -

Notes of the ASBG-EPA Working Party Meeting

31 May 2012

In Attendance:

ASBG Group

Andrew Doig	ASBG
Matthew Imber	Bluescope steel
Ben Lim	Botany Industrial Park
Paul McEwan	Koppers
Paul Seage	Caltex

EPA Group

Greg Sheehy	NSW EPA
Michelle Weight	NSW EPA

Attached is the table of issues and positions discussed at the meeting. These notes have been agreed to by all in attendance.

List of issues from members — Monitoring Data

Item	Law/Section	Issue	Clarification / Position
1	Implementation – period of grace and bedding down	Due to the complexity of the publication of monitoring data, especially for larger sites there will be time before the systems are bedded down and properly working to EPA’s requirements.	<p>Period of Grace: The EPA agreed that it was providing an unofficial period of grace for the accuracy and details published in the monitoring data requirements. There will be a settling down period for all to learn provided licensees can demonstrate they are acting in ‘good faith’ to meet the publishing requirements and a genuine effort is made to provide meaningful summaries of their monitoring data. The EPA will conduct audits/review to assess compliance and improvement opportunities.</p> <p>ASBG recommends where EPL holders show a genuine attempt to comply with the Requirements, the EPA will issue advice and if required warnings rather than prosecute. This period of grace will be for at least 6 months to bed down the more complex issues and educate on the Requirements.</p>
2	Implementation – Complexity issues	Due to the complexity of the publication of monitoring data, especially for larger sites there will be many example of monitoring data that is impractical to comply with the Requirements or raise other complex compliance issues.	<p>Negotiated Flexibility Arrangement: The EPA agreed to consider a flexibility mechanism to permit a negotiated outcome which can vary within reason the Requirements and the legislation. This would be a similar approach to an EPL negotiated outcome with a written agreement being generated.</p> <p>EPA also indicated that some of these issues can be solved by:</p> <ul style="list-style-type: none"> • The EPA to be open to review EPL historical monitoring requirements, which in turn will change the publication requirements. • Changing details of what is to be published to be placed in the EPL for reporting conditions (e.g. special conditions, PRPs and other (non-part 5) conditions. • Example of issue is PRPs → New PRPs to state types of data to be covered under publication of monitoring data Requirements: <ul style="list-style-type: none"> ○ Existing PRPs are exempt from publication unless specifically specified in EPL
3	POEO Act s 66(6)	The level of requirement for the publication of monitoring data by the public. What information does the EPA have on the public requirements for such data? ASBG members are especially interested in the potential likely public inquiry levels for underlying data, where summaries are provided on websites.	<p>Likely Level of Public Interest: EPA indicated that there was not a large volume of public requests, but coming though in reasonable frequency. More from the GIPA requests than from s320 POEO Act.</p>
4	POEO Act s66(6) <i>within 14 days of obtaining monitoring data... make publicly and prominently available on that website + Requirements interpretation</i>	The 14 day requirement can be difficult to achieve, especially for the more complex monitoring systems. Use of correction logs is a costly approach for all data points.	<p>Time for Verifications etc: EPA indicated the Requirements included:</p> <ul style="list-style-type: none"> • No specified time limit for correction logs to be completed. ‘Best endeavours’ is the EPA’s expectation in this regard. • Current requirements provide flexibility with respect time period from date sampled to date data obtained. EPA acknowledged this can be a considerable period. • Exceedences will need to be dealt with quickly to ensure false information is not provided. • Correction logs, where appropriate, maybe added annually in line with EPL annual returns periods. <p>ASBG recommends a 30 day period which would require a legislative change. In the interim period the 30 day period could be applied to certain complex monitoring types.</p>

Item	Law/Section	Issue	Clarification / Position
5	Requirements s3.7 What other information must be published with the data – also 3.7.5	<p>Timing is a critical issue and the Requirement specify that 3 date points are need for each data point, but in practice the chain of custody process requires 4 dates:</p> <ul style="list-style-type: none"> • date sampled/monitored • date obtained • date published/provided • Date verified (implied) <p>Reasons given “This will allow the EPA to identify instances where an unreasonable amount of time has been taken to obtain the data and the licensee is not acting in good faith.”</p>	<p>Level of Detail in Traceability: ASBG position:</p> <ul style="list-style-type: none"> • Prefer date sampled, date published only. • <i>Date obtained</i> is required for governance purposes and as such does not need to be published. • EPL holder to keep records of when data was received for EPA checking auditing. <p>EPA to consider the dropping of “date obtained” in s3.7 as long as the EPL can demonstrate, as/if required, via other records when the data was obtained.</p>
6	Requirement s3.5 How the data should be published	<p>Use of pdf documents was questioned as the Requirements state ‘The data provided on the website must be exportable to common programs like Excel or Word’</p> <p>Use of various files containing monitoring data is limited by their downloadable ability. This may vary considerably depending on the files used and the capability of the receivers IT equipment.</p> <p>Not all the public will have latest docx and xlsx compatibility.</p>	<p>Data Downloading vs Security (use of pdfs): ASBG recommends use of various files by EPL holders to display data should be permitted as long as these files can be demonstrated to be downloadable and transferable to other file types for data assessment. This especially applies for pdf documents.</p> <p>EPA to reconsider the use of pdfs, particularly for monthly summaries or other formats. Other appropriate formats to be considered either individually or criteria established.</p>
7	Requirement s3.5 How the data should be published	<p>Use of example tables etc.</p> <p>Whether data range (e.g. min, max + details of any exceedances) was adequate.</p> <p>Publication of raw data</p>	<p>The EPA indicated:</p> <ul style="list-style-type: none"> • That the tables were guidance only and it was perfectly acceptable to publish a <i>meaningful</i> summary of the data. • This, where appropriate, may include the use of data ranges. • That raw data does not have to be published, but can use monthly summaries.
8	Requirements s3.1.1 Corporate websites	<p>This section reads that if a global or corporate website exists then these must have a prominent link. However, if a local website exists for the company, division or other entity which includes the EPL/s then this should be sufficient.</p>	<p>Clarify that Local Websites can be used: s3.1.1: ASBG recommends the section be rewritten: <i>The requirement to publish monitoring data on websites applies to <u>local</u>, corporate or global websites that relate to the business or activity that is the subject of the licence.</i></p> <p>Need to make it clear that local websites are also acceptable for publication.</p> <p>EPA agreed and will consider how to make this intent clearer through FAQ document and/or amendments to the requirements document.</p>

ASBG-EPA Working Party – New Legislative Requirements

List of issues from members — Monitoring Data - OTHER ISSUES



Item	Law/Section	Issue	Clarification / Position
9	Requirements Ch5 – monitoring data not required to be published	In many instances the groundwater monitoring is to establish baseline conditions, does not have any limits set, is not measuring an emission or discharge but is included in the Monitoring conditions where the parameters to be monitored are referred to as pollutants. (One licence has Monitoring conditions that refer to environmental monitoring and parameters for groundwater and another licence that refers to groundwater quality monitoring and yet the list is of pollutants like sodium, chlorine, etc.)	Monitoring data that is to establish baseline conditions: ASBG recommends that a period of grace to monitoring background data. The Requirements do not provide enough details on what is in or out in this meaning of <i>may be used by EPA officers to establish baseline conditions</i> . This period of grace extend until the EPL can have it clarified in writing in the EPL or otherwise, that the data collected is for establishing baseline conditions.
10	Dealing with Public requests for monitoring data	Concern that vexatious applications will be made focusing on a few sites. Repeated requests for bulk information from individuals or groups are considered vexatious.	EPA and vexatious applications: The EPA acknowledged that some applications for monitoring data will be vexatious. EPA also handles vexatious and unreasonable requests commonly. EPA to include a statement in the Requirements documentation that public requests must be ‘reasonable’.
11	Requirements Section 3.2 What monitoring data needs to be published	S3.3 states: <i>Data obtained as a result of all monitoring conditions that relate to pollution is required to be published. This will include, but is not limited to, the underlying data that forms the basis of the summary submitted annually to the EPA via the annual return.</i> The Requirement s3.2 appear to interpret s66(6) <i>make any of the monitoring data that relates to pollution as ‘underlying data’</i> . Concern is that underlying data may have a broader meaning than under the legislation. <u>It is unclear what is considered to be “underlying data”. This may include information about the monitoring point and its details.</u>	Clarification of underlying data: The EPA to provide a clearer definition of what is intended as <i>underlying data</i> used to derive/support a final monitoring result. ASBG recommends greater reference in the Requirements to expanding upon EPL annual returns (data and format) would provide improved guidance to licence holders as to what is being sought in the new regulations. Ensure that ‘underlying data’ term is used carefully in the Requirements as it is to only relate to: <i>monitoring data that relates to pollution</i> .
12	Requirement 3.7.3 Licence condition limits	Monthly summaries of monitoring data apply to all measurements undertaken. However, some monitoring is undertaken weekly or has annual criteria in which to meet. How this is dealt with requires clarification. Alignment of annual date percentiles with annual return dates is required, not as stated in the requirements of the use of 31 March each year.	Alignment of Publication dates with Licence/monitoring dates: Requirements to introduce flexibility to permit alternative use of limits and summaries in the Requirements. EPA noted that EPL holders : <ul style="list-style-type: none"> • Can use previous data, prior to 31 March 2012, to complete the initial annual summary report i.e. annual percentiles • Where multiple pollution control limits are applicable only the lowest limits applicable to a specified pollutant must be published. • Use a partial year first year and then use full EPL year after with explanation • Wait until a full year is made to report on compliance with annual percentile
13	Type of data to display	Use of monthly summaries was a welcome relief from the need to display full data sets. However, even displays of monthly summaries will be substantial for some complex EPL sites.	Use of monthly exception reports: Use of monthly exception reports on exceedences is considered a better approach. ASBG recommends a legislative change that monthly exception reports replace underlying data and monthly summaries. This is a legislative change and a longer term issue.

ASBG-EPA Working Party – New Legislative Requirements
List of issues from members — Monitoring Data - OTHER ISSUES

Item	Law/Section	Issue	Clarification / Position
14	Support information and guidance document and education	<p>There remains considerable confusion amongst industry on the 3 key changes to the POEO (i.e. immediate reporting, PIRMPs and the publishing of monitoring data) and where they apply. ASBG still gets people saying, immediate reporting does not apply to us as we are not EPL holders.</p> <p>EPA can also assist by providing scientifically correct contextual data, as it will be more believable than EPL holders contextual information.</p>	<p>Educational Ideas: ASBG is willing to assist the EPA with communication and education on the details and operations of the 3 new legislative requirements on business in NSW.</p> <p>EPA expressed interest in the development of information / Fact sheets to advise the public on measurements where confusion can occur, e.g. noise, use of percentiles, background levels, below detectable limits, wet events, trigger levels, ambient levels, odour measurement, etc.</p> <p>ASBG and EPA to consider other educational approaches to getting the correct messages out to EPL holders and the public.</p>
15	3.7.3 – information to be provided to avoid misinterpretation	<p>The limits applied to pollutants in the licence for a discharge event are contradictory.</p> <p>Discharge limits include one pollutant limit that is technically half the limit of another pollutant where the pollutant is usually only for water quality for manufacturing and not wet weather discharges.</p>	<p>Limit Issues: The licensee will find it difficult to explain what is not logical or consistent with EPL limits and conditions.</p> <ul style="list-style-type: none"> • Use of below detectable limit rather than ½ LDL • Dealing with contradictory limits • Removing references to background limits as pollutants in EPLs and for publication purposes <p>EPA indicated that</p> <ul style="list-style-type: none"> • Will accept use of ‘below detectable limits’, • Use of lowest limit to be used if contradiction appears and • EPLs, with particular focus on monitoring issues, will need to be reviewed.

ASBG-EPA Working Party – New Legislative Requirements
List of issues from members – Immediate Reporting



Item	Law/Section	Issue	Clarification / Position
1	POEO Act S148	Requirement to report to 5 agencies, separately via phone calls	<p>One-Stop-Shop: ASBG Recommend one phone number for environmental incidents and another for other incidents – eg fire, safety etc. Environmental reporting number use a triage approach to determine priority and contact with other agencies where required.</p> <p>This will require a legislative change.</p> <p>EPA indicated that they are working on it.</p> <p>ASBG request a timeframe for this development to communicate more broadly with our members.</p>
2	POEO s148+	<p>Immediate reporting generates many trivial incidents. EPA has the power to decide with adequate information (triage like other agencies) to determine what are trivial and incidents of material harm.</p> <p>The trigger for material harm is considered too low @\$10,000 and should be revised upwards.</p>	<p>Triage on Reported Incidents: ASBG recommends flexibility from the EPA to waive reporting to other agencies and written report requirements for obvious trivial incidents. Eg A triage system can provide advice from a central pollution line that an incident does not require further contacts with other government agencies or completion of the subsequent incident reports.</p> <p>As above. In addition, the EPA is considering resetting the material harm trigger higher later this year within the POEO Act review.</p>
3	POEO (Gen) Reg s101 Notification of pollution incidents	Requirement to provide a written notification of an incident within 7 days of its occurrence	<p>Simplification of Reporting: ASBG recommended that EPA prepare a standard form or template for reporting incidents.</p>

ASBG-EPA Working Party – New Legislative Requirements

List of issues from members – PIRMPs



Item	Law/Section	Issue	Clarification / Position
1	POEO (Gen) Reg and Guidelines	Alignment of PIRMPs with MHF is very strong with MHF going beyond the requirements in many ways.	<p>MHFs to Cover PIRMP requirements: MHF sites should be effectively exempt from preparing a PIRMP document as its requirements are more than adequately managed under MHF requirements.</p> <p>EPA indicated this was built into the Guidelines, but that you need to have a separate PIRMP that maps the elements in the legislation to the relevant section in your emergency Management Plan.</p> <p>ASBG recommends changing the Requirements to exempt MHFs from PIRMP documentation.</p>
2	Guidelines information	There is considerable cross over between the PIRMP requirements and the WSH legislation.	<p>Gap Analysis: ASBG recommend EPA to develop a guideline gap analysis between Hazardous Chemicals coverage under the WHS legislation and PIRMPs. This will assist EPL holders in concentrating on what is not covered.</p>
3	Duplication of enforcement	PIRMPs sets an overlapping standard on environmental and safety controls which can conflict with OH&S requirements and legislative conditions such as the use of Australian Standards for chemical storage and handling.	<p>Australian Standards Vs PIRMP etc: EPA to recognise the differences between their guidance and educational materials and Australian Standards and other OH&S design criteria.</p> <p>Use of EPA controls above Australian Standards design criteria to be clarified as a voluntary option for hazardous chemical storage.</p> <p>EPA indicated interest in developing an environmental storage and handling Australian Standard with AS.</p>

Notes of the ASBG-EPA Working Party Meeting

29 November 2012

In Attendance:

ASBG Group

Andrew Doig	ASBG
Matthew Imber	Bluescope steel
Ben Lim	Botany Industrial Park
Paul McEwan	Koppers
Paul Seage	Caltex

EPA Group

Lynne Neville	NSW EPA
Greg Sheehy	NSW EPA
Michelle Weight	NSW EPA
Andrew Mitchell	NSW EPA
Plus others	

Attached is the table of issues and positions discussed at the meeting. These notes have not been yet circulated or considered by the EPA.

List of issues from members — Publication of Monitoring Data - Auditing

Item	Law/Section	Issue	Clarification / Position
1	Data details	<p>EPA auditors appear to seek and require additional details on corporate websites beyond the monthly summaries which are permitted.</p> <p>This was a common theme across many members.</p>	<p>Management of Monitoring details: The Requirements clearly permits the use of monthly summaries for publication on corporate websites. Nevertheless, EPA auditors commonly require adherence to the example tables.</p> <p>ASBG appreciates there is a compliance role for the EPA to investigate, however, there needs to be a separation of the:</p> <ul style="list-style-type: none"> • Information to be posted on the EPL’s website • Supporting compliance information supporting this information but is not considered relevant for community right to know information. <p>Analysis of monitoring data is difficult even for persons with scientific background. Expecting even the educated part of the public to also understand the complexities of the compliance requirements detracts from the purpose of provision of meaningful data. ASBG considers it is the EPA’s role to provide the policing of the compliance issues so that the public can assess and understand monitoring data provided. Obviously the best way to achieve this is for publication of exceptions, which is already in part published under the Public Register list of annual returns. ASBG recommends improved training for the EPA auditors to achieve consistency.</p> <p><i>In general the EPA noted ASBG’s comments on the auditing processes and will take them on board.</i></p>
2	Misunderstanding of the 14 day trigger to publish data s3.3	<p>EPA auditors have confused the date sampled with the date the data was received.</p> <p>The community right to know need for date published.</p>	<p>Nevertheless, there is confusion from some EPA auditors where it is erroneously believed the publication date is 14 days from the sampling date. There appears a lack of understanding that complex analytical measurements can take considerable time periods to prepare and be provided with confidence to the EPL holder.</p> <p>ASBG and the EPA agreed following our last meeting that the date the data was obtained need not be published as it is a compliance issue, not a community right to know issue. This also applies to the date of publication, which is also a compliance issue only.</p> <p>ASBG considers the date the monitoring data was published is not community right to know, but compliance based issue, so if other supporting documented evidence can be provided it is unnecessary to be published on the website.</p>
3	Obligation to provide maps of sample points s 3.7.2	<p>EPA auditors misinterpreting s 3.7.2 of the Requirements: Maps showing sample points should be used, but are not mandatory.</p> <p>S3.7.2 identification of sampling points can be a security issue. EPL holders should be able to withhold this information if this is considered the case.</p>	<p>EPA auditors are interpreting s3.7.2 as all EPLs publishing monitoring data must provide a map of the site showing the sample points. There are a number of issues with this:</p> <ol style="list-style-type: none"> 1) The Requirements say <i>where available</i> and <i>should</i> not <i>must</i> 2) Security issues can affect some EPL holders and they should have the right not to display maps <p>Sample points have been vandalised, though rare there are cases. A member has reported its website was hacked and erroneous data was inserted, by a vexatious opponent. ASBG is also concerned that specific sample point information also contains security issues for some EPL sites.</p>

ASBG-EPA Working Party – New Legislative Requirements
List of issues from members – Publication of Monitoring Data - Auditing

Item	Law/Section	Issue	Clarification / Position
4	Use of abbreviations for measurement units s3.7.4	Use of abbreviated units of measure	<p>EPA has agreed with ASBG on the need to prepare educational material. The use of Fact Sheets was discussed to some length with a high level of agreement.</p> <p>Preparation of Fact Sheets on units of measure will be more beneficial to the public than merely spelling out units of measure. They should expand on the meaning of the units and provide examples.</p> <p>Fact sheets prepared by the EPA carry more public credibility than information provided by EPL holders.</p> <p>As discussed before, ASBG would be happy to assist the EPA in the development of such Fact Sheets.</p>
5	Use of pdfs	<p>Last meeting EPA said it was considering the use of pdfs.</p> <p>Some EPA auditors have indicated that pdfs are not acceptable.</p> <p>The FAQ page also reflects this.</p> <p>ASBG wishes to finalise this matter.</p>	<p>ASBG estimates the majority of monitoring data is published using pdfs.</p> <p>There is mixed signals from EPA auditors saying they are not suitable and others ignoring it.</p> <p>ASBG strongly supports the use of pdfs, largely for security reasons.</p> <p>A member has reported its website was hacked and erroneous data was inserted, by a vexatious opponent.</p> <p>Note the Cyber Crimes Act carries 10 years jail, but this is not a deterrent for such criminal activity.</p> <p>ASBG members IT departments generally only accept pdf due to their increased security over more common forms of electronic documentation.</p> <p><u>EPA will review the use of pdfs for publication purposes.</u></p>
6	EPA use of 'non-conformance'	<p>EPA auditor reports provide only 'non-compliance' lists.</p> <p>There is no division between major, minor or trivial issues.</p>	<p>Professional environmental managers are concerned over the heavy and terse language used in the audit reports and blunt approach by auditors. Reporting any trivial issue as a non-conformance is out of line with other audit reports such as under ISO 14001.</p> <p>Internally for many EPL holders a non-conformance is considered quite serious. So minor non-conformances being treated in this manner gives the EPA a very heavy handed approach to even trivial issues. Use of non-conformances is inconsistent with EPA compliance audits use of the risk matrix for other compliance matters.</p> <p>ASBG recommends the EPA be more consistent with the auditing profession and provide a scale of 'non-conformances' including the use of 'observations'.</p>
7	EPA's requirement for supply of underlying data	EPA auditors have called for the supply of full data sets supporting monthly summaries for EPL sites.	<p>Need for Guidance Protocols: The time and cost impacts of meeting an EPA requirement for a full data set is akin to a taxation audit for many environmental managers. The EPA has no published protocols or written procedures to trigger this event.</p> <p>ASBG members have been subjected to this level of scrutiny and find the process to the whim of the auditor. This is not how a professional audit team should function.</p> <p>ASBG calls for a publically available protocol to call for a full data set assessment on publication of monitoring data.</p>

List of issues from members — Publication of Monitoring Data - Auditing			
Item	Law/Section	Issue	Clarification / Position
8	Access of EPL and other URLs on EPA website's Public Register	The Public Register has been recently modified to provide use of URLs, which apparently did not work for some time.	<p>Members reported that for some time the www.environment.nsw.gov.au Public Register did not permit the copying of URL links to specific EPLs. While this issue has been corrected there are many EPL holders who are not aware of this.</p> <p>ASBG considers that listing a non-conformance for not listing an EPL URL is unfair given the changing nature of the Public Register's website. Such non-conformances should be changed to advice for at least the next 6 months.</p> <p>ASBG recommends the EPA provide guidance on how to access and use URLs from the Public Register for such legislated purposes. This could be included on the Public Register section.</p>

ASBG-EPA Working Party – New Legislative Requirements

List of issues from members – PIRMP Issues



Item	Law/Section	Issue	Clarification / Position
9	Confusion over the coverage of PIRMPs s 2.1 Guidelines	Clarification required on: <ul style="list-style-type: none"> • Scale of incident • Fire is it an incident or not? • Is smoke from a fire an incident or not • Odour - 	<p>Smallest incident under the PIRMP ASBG wishes the EPA to back its verbal position that incidents below material harm threshold need not be covered under the PIRMP. This is not the way ASBG interprets the legislation, which appears to place no limit and hence include sub-material harm incidents.</p> <p>Fire is not a pollution incident: The EPA also repeatedly states that fire is not a pollution incident. ASBG wishes this to be put into writing as this is not clear under any definition of pollution incident. ASBG considers that if the fire is not an incident then smoke and fire water generated are pollution incidents.</p> <p>Odour is not a pollution incident: Noise is not a pollution incident by definition under the POEO Act. However, odour is not considered to be an incident of material harm s148(7). Though this was not included in the Guidelines.</p> <p>ASBG recommends the PIRMP Guidelines be amended to clarify its coverage on minimum threshold, treatment of fire, dust, noise and odour incidents.</p>
10	Location of website link in prominent position for both Publication of Monitoring data and PIRMPs.	EPA Auditors have indicated that the location of PRIMPs on company websites are “difficult to locate” and required improvement, but the link was only 2 mouse clicks away. This member feels singled out and has far better prominence than most other EPL holders.	<p>The requirement is that the PRIMP is located “in a prominent position” on a publicly available website. This is a subjective requirement and EPA have enforced action even in cases where the links to the information are presented within a reasonable number of clicks from the home page. There is much competition for prominent positions on company websites, particularly for multi-site, mutil-jurisdictional (i.e. national) or multi-national companies. To devote a more “prominent” position to a single compliance requirement arising in a single jurisdiction (i.e. NSW) and applicable only to a subset of an EPL holders’ operations can be challenging and problematic.</p> <p>ASBG recommends these challenges be recognised by EPA and request that factors such as the size and geographical extent of an EPL holders’ operations (and therefore the proportion of visitors to the website that would reasonably be interested in operations in matters related to NSW operations) are considered in the regulation of this aspect of the legislative requirements, or alternatively, the requirement be amended.</p> <p>ASBG also recommends the EPA’s Guidance Protocol include advice on ‘prominent location, on websites</p>

ASBG-EPA Working Party – New Legislative Requirements

List of issues from members – PIRMP Issues



Item	Law/Section	Issue	Clarification / Position
11	Use of reference documents in the PIRMP s3.2	PIRMP documents specifically permit the ability to reference other documents to support the PIRMP. Use of reference documents not being understood by auditors.	<p>Confusion and a lack of understanding by some EPA auditors of the use of reference documents and how they are incorporated into the PIRMP leads to poor advice from the EPA. This has led to non-conformances that have been disputed.</p> <p>Additionally, there is some confusion as to the types of reference documents which can be called up. S3.2 refers to other <i>emergency response plan, emergency plan or incident response plan</i>, but these documents in themselves do not cover the range of issues required under a PIRMP. In practice many other documents, procedures, reports (risk assessments) and safety protocols and procedures, community relations and communications documents, ISO 14001 EMS and supporting documentation etc. can play an existing part of the requirements under the PIRMP requirements. This is not made clear under s 3.2 if it ready in a narrow manner.</p> <p>s98B(2) is broader than the guidelines: <i>(2) A plan may form part of another document that is required to be prepared under or in accordance with any other law so long as the information required to be included in the plan is readily identifiable as such in that other document.</i></p> <p>ASBG considers that other documents which are prepared under a law should be broadly interpreted to include the full range of risk management documentation and procedures etc.</p>
12	Notification of audits	EPA auditors do not provide warnings when they will undertake an audit.	<p>ASBG members find the ‘no warnings’ by EPA auditors undertaking PIRMP and PMD audits disruptive and unnecessary. In many cases the appropriate contact may not be available to explain the details required by the auditor.</p> <p>Monitoring data publication is monthly or less frequently, so there is little to be gained by a surprise audit. If the EPA is on a mission to assist and encourage compliance first rather than catching non-compliances, a two day warning is considered reasonable in this context.</p> <p>Preparation of PIRMP documents are complex and even the more simple site EPLs require at least 20 to 30 hours to prepare the initial plan assuming the supporting documentation fully covers most of the requirements.</p> <p>ASBG recommends that the PMD and PIRMP audits provide two working days forewarning.</p>

ASBG-EPA Working Party – New Legislative Requirements

List of issues from members – PIRMP Issues



Item	Law/Section	Issue	Clarification / Position
13	Waste Transporter PIRMP Template	Waste transporter template PIRMP requirements extend to asbestos and clinical waste management issues.	<p>ASBG appreciates the EPA’s development of a template PIRMP for licensed Waste Transporters.</p> <p>Transport of asbestos and clinical wastes does not require the truck or waste company to be licensed, unless the waste is from interstate. This also generates a double standard between licensed waste transport companies and vehicles and non-licensed ones.</p> <p>Most liquid and controlled waste transport vehicles will not be transporting these materials and consequently not include them in the template.</p> <p>ASBG recommends that the reference to asbestos and clinical waste clauses be removed from the template and the template not be used for auditing purposes.</p>
14	Quality of combat advice from EPA	A report that poor advice was EPA provided during an incident drill	<p>ASBG is concerned of a report that the EPA officer on the site called out for the testing of a PIRMP did not understand what appropriate combat actions to undertake. The office was indecisive and when a direction was provided it was considered inappropriate.</p> <p>ASBG recommends the EPA improve its training for its officers on dealing with environmental incidents as the EPA has a major combat role to perform.</p>

ASBG-EPA Working Party – New Legislative Requirements
List of issues from members – Immediate Reporting



Item	Law/Section	Issue	Clarification / Position
15	POEO Act S148	Requirement to report to 5 agencies, separately via phone calls	<p>One-Stop-Shop: Has there been any progress towards the development of a reduced number of phone contacts for immediate reporting requirements?</p>
16	Waste Transport incident reporting poorly responded to	The waste industry reports that road incidents requiring reporting are ignored by agencies.	<p>Local Government and Department of Health have shown little interest in waste transport incidents triggering material harm.</p> <p>Many incidents of low risk pollution incidents where other agencies apart from the EPA have little concerns or interests. For example the breaking or overflowing of a sewer line.</p> <p>See item 17 for recommendations.</p>

ASBG-EPA Working Party – New Legislative Requirements

List of issues from members – Review of POEO Act

Item	Law/Section	Issue	Clarification / Position
17	Review of the threshold for material harm	<p>The threshold for material harm is set too low at \$10,000.</p> <p>It is an inappropriate threshold for Local Government and Department of Health to become involved in a pollution incident</p>	<p>ASBG recommends:</p> <ol style="list-style-type: none"> 1) The material harm threshold be raised to \$30,000. 2) That Local Government and Department of Health be removed from the immediate reporting requirements 3) Department of Health either have a separate immediate reporting threshold be used (i.e. a air bourn toxic pollutants above material harm threshold (i.e. Dangerous Goods Class 2.3 Toxic Gas, or dusts with Class 6.1 Toxic substances.) Otherwise they be informed by either the EPA or WorkCover.
18	Separation of non-conformances in EPL compliance	<p>The listing of all non-conformances under an EPL is causing confusion.</p>	<p>ASBG recommends that, as with the audit process, use a professional approach of a range of non-conformance issues. In addition for EPLs the non-conformances should be divided into:</p> <ul style="list-style-type: none"> • Non-conformances relating to pollution events (e.g. exceedences of monitoring limits or pollution incidents) • Non-conformances relating to non-pollution events (e.g. document, risk management or failure to comply with conditions, but do not relate to an unacceptable emission from the site) <p>In addition each non-conformance under the above types should use:</p> <ul style="list-style-type: none"> • Major non-conformance • Minor non-conformance • Observation or note (e.g. suggestion to improve the process)
19	Use of corporate licences for organisations with multiple sites	<p>Combining EPLs from individual sites under one licence for the organisation has considerable efficiencies for the licensee and licensor.</p>	<p>Use of corporate licences by the Victorian EPA has removed considerable red tape from organisations with multiple</p> <p>In NSW the annual return process requires sign off from Director level. Use of corporate licences makes this process a one stop process rather than a multiple process.</p>
20	Remove licence duplication under the Environmentally Hazardous Chemicals Act 1985 (EHC Act)	<p>The EHC Act has licensing duplication which can be incorporated under EPLs.</p>	<p>To streamline the licensing system the licensing requirements under the EHC Act should be incorporated under the POEO Act's Environment Protection Licences. This will remove the duplication of licensing requirements for EHC and EPLs for chemical waste storages under Chemical Control Orders. It should not change the requirements but merely change the administration of the licensing to the EPL system and remove the need for separate inspections and 3 yearly renewals</p> <p>ASBG recommends the licensing components for EHC Act Chemical Waste storage and management be transferred under EPL.</p>