

Consultation on the requirements for publishing pollution monitoring data – February 2012

Analysis of submissions

The draft *Environment guidelines: Publication of monitoring data* was released for public consultation on 30 January 2012 for a period of four weeks until 24 February 2012.

Two public information sessions were held on 30 and 31 January 2012 in Sydney and Newcastle, respectively, to discuss the new requirements introduced by the *Protection of the Environment Legislation Amendment Act 2011* (POELA Act), including the new requirement to publish or provide pollution monitoring results. Additional meetings were held with community groups and industry associations.

Forty written submissions were received on the requirements from industry (21), industry associations (4), state government bodies (6), local government (2), environment groups and the community (5) and consultants (2).

The document is now called *Requirements for publishing pollution monitoring data* (the requirements).

Issue	EPA response
Negative comments and requests for changes to the new provision	
New requirements will introduce significant overheads to organisations.	<ul style="list-style-type: none"> The proposed approach has been <i>amended</i> to allow licensees to publish a monthly summary of data and to make more detailed data (obtained data) available on written request. This will be much less resource-intensive than requiring licensees to publish all data, while still allowing the public access to all data. The new legislative requirements, which were passed by Parliament, are designed to improve the community's access to timely information and make industry <i>more</i> accountable for its own pollution. The requirements aim to minimise the burden the new obligations place on licensees while also ensuring meaningful information is published or provided to the community.
There is insufficient time allowed for comment and thereafter implementation of the changes.	<ul style="list-style-type: none"> The draft requirements were released for public consultation for a period of four weeks. All issues have been considered and addressed where possible and appropriate. The consultation program took a number of forms to allow feedback to be gathered quickly. The EPA also presented at a number of forums and met with a number of organisations on request. The new publication of monitoring provision commences on 31 March 2012 and licensees have three months to comply by 1 July 2012.

Issue	EPA response
The new requirements will not result in the public being informed.	<ul style="list-style-type: none"> • The requirements have been amended to require licensees to publish a meaningful summary of their monitoring data and provide information on exceedances. The data will be in a form that is easy to understand and therefore the public will be better informed. • The requirements will also give the community (including the public and other interested parties) access to more detailed information on the pollution generated, discharged or emitted from licensed facilities, should they wish to see it.
The new requirements are onerous and unnecessary considering that all non-compliances are provided in Annual Returns and the current demand for such information is low.	<ul style="list-style-type: none"> • The new requirements aim to improve community access to the information available on the pollutants generated, discharged or emitted from licensed facilities. • The proposed approach has been amended to reduce the compliance burden on licensees.
Request the removal of requirements to publish monitoring data or provide it on request.	<ul style="list-style-type: none"> • Parliament has passed the legislation and the new requirements have already been enacted. This is an important initiative that has been designed to improve the community's access to timely information and make industry more transparent about its performance.
Request amendment of the new provision to extend the 14-day period for publishing or providing results.	<ul style="list-style-type: none"> • The requirements now clarify that the 14-day period starts once the data has been obtained or the request is made, whichever is longer. In the case of data that needs to be published on a website where monthly summaries are now required, this period applies once the monitoring result has been obtained for the last sample in a month. 'Obtained' is defined in the requirements document. • Fourteen days will be sufficient for the licensee to develop their monthly summaries using the obtained data and to make that data available by publishing it or providing it on request. • This recognises all of the processes that need to be carried out to obtain monitoring results in the form required by licences.
Change the 14-day time frame to one day.	<ul style="list-style-type: none"> • One day is considered insufficient time for licensees to analyse, format and upload data.
The provision should be amended so that it gives the licensee a choice of publishing data on a website or providing data.	<ul style="list-style-type: none"> • The aim of the provision is to ensure better public access to information and this is more widely achieved for members of the public via a website.
The EPA should change the requirement so it relates only to websites in existence for a single operating entity.	<ul style="list-style-type: none"> • This goes against the spirit of the new provision to provide easy access of data to the community. • The requirements now clarify that the provision applies to corporate or global websites that relate to the business or activity that is the subject of the licence.

Issue	EPA response
<p>The EPA should consider an exception reporting system where proponents are only required to report above a specific nationally recognised standard or trigger level rather than routine monitoring information. Requiring licensees to publish data where there has been no contravention of any licence condition may introduce a disproportionate administrative effort with questionable public benefit and result in misinterpretation by the public.</p>	<ul style="list-style-type: none"> • The intent of the provision is to provide the community with access to the monitoring data collected in a timely manner, not simply a report of non-compliances. • The publishing or provision of monitoring results will provide timely information to interested members of the community about the pollutants generated, discharged or emitted from licensed premises in their area.
<p>The EPA should implement regulatory amendments to ensure that the requirements of the Act better reflect the degree of environmental risk posed by respective industry sectors captured by the legislation.</p>	<ul style="list-style-type: none"> • Environmental risk is already accounted for in the licensing schedule and specific licences and monitoring conditions.
<p>Suggest the penalty for non-compliance should be suspension of the licence.</p>	<ul style="list-style-type: none"> • The monetary penalties for non-compliance are considered sufficient. • The EPA still has the power to suspend licences where this is appropriate.
<p>Upon request from a licensee, the EPA should be able to suspend the requirement to respond to requests from individuals where there is evidence of vexatious intent.</p>	<ul style="list-style-type: none"> • The community has a right to information about the levels of pollution from industry in their area. • Requests must be in writing.
<p>The EPA should consider reducing or removing other reporting requirements, e.g. for Annual Returns, now that licensees will be regularly publishing or providing data.</p>	<ul style="list-style-type: none"> • The purpose of these two obligations is different and hence both are required. The requirement to publish or provide monitoring data will improve public access to information about pollutants generated, discharged or emitted from premises. The Annual Return requirement is to provide a yearly report to the EPA on the level of compliance with licence conditions.

Issue	EPA response
Commencement date issues.	<ul style="list-style-type: none"> • The commencement date is set in the legislation at 31 March 2012, although licensees have three months from this date to comply with the provision. This means licensees have until 1 July 2012 to comply. • The requirements now make it clear that only data relating to monitoring that is conducted from 31 March 2012 needs to be published or provided by 1 July 2012.
Certain types of limit exceedances are acceptable and are not breaches of the licence.	<ul style="list-style-type: none"> • The requirements recommend provision of appropriate context in addition to the data including pollutant limits, a description of how the limits relate to the monitoring data and why an apparent non-compliance may not be a breach of the licence condition.
It would be easier or preferred (more targeted) to provide data on request rather than publish all data.	<ul style="list-style-type: none"> • The requirements have been amended to require monthly summaries to be published and then allow the licensee to provide more detailed information on written request. • The aim of the provision is to improve access to information and this is best done via websites where they exist.
Positive comments	
The new requirements will enhance the public accountability of facilities licensed to emit pollution and provide valuable information on the effectiveness of the licensing system as a whole.	Noted
Status of the requirements	
Clarify the legal status of the document.	<ul style="list-style-type: none"> • The requirements constitute the 'written requirements' referred to in section 66(6). They have been revised to ensure the wording throughout the document reflects this.
The document should include a provision for its review.	<ul style="list-style-type: none"> • Agreed, the requirements will be reviewed within 12 months of their release and include text to this effect. • Stakeholders can provide feedback to EPA at pirmp@environment.nsw.gov.au.
Inequity between companies with websites and those without	
It makes no sense to distinguish between licence holders. Gives impression that companies which produce the most information are the ones to look out for and others would fly under the radar.	<ul style="list-style-type: none"> • The most important outcome of the provision is that monitoring data that is required to be collected as a consequence of a licence condition is provided to the community in a timely manner. Not all licensed sites have monitoring conditions.
Meaning of 'within 14 days' of obtaining monitoring data	
Clarification sought on what this means for continuous or laboratory-analysed data.	<ul style="list-style-type: none"> • The requirements now provide more information.

Issue	EPA response
<p>What about if data comes back from the laboratory with errors – are we obliged to publish incorrect data in order to meet the 14-day timeline?</p>	<ul style="list-style-type: none"> • The requirements provide information about how to deal with this situation. • Licensees should not publish data they know to be incorrect. • However, if they suspect the data may be incorrect and re-analyse or re-test it, they must publish the data anyway and include a note that it is under review. • Where this is occurring on a regular basis, licensees should be reviewing their processes and taking action to improve the issues affecting the quality of the data.
Website issues	
<p>What if a company has a corporate website and does not maintain a website for the project? Need to clarify this especially with reference to the presence of global websites which are mainly dedicated to sales and marketing and have only minor information on a particular operation for the purpose of communicating to investors and customers.</p>	<ul style="list-style-type: none"> • The requirements now clarify that the obligation to publish monitoring data does apply to corporate or global websites that relate to the business or activity that is the subject of the licence.
<p>What about the situation where the licence holder is not the owner of the site and has no website, but the site owner runs a website?</p>	<ul style="list-style-type: none"> • Licensees are obliged to provide monitoring data to members of the public who request it.
<p>Security issues associated with providing downloadable data on a secure global or corporate website.</p>	<ul style="list-style-type: none"> • Providing downloadable Excel, Word or PDF files on websites is standard practice and it is not envisaged that this will present any unusual security issues. • Most websites will normally already include appropriate levels of security to ensure they are not tampered with.
<p>Storage issues for large amounts of data (2–3 years for numerous facilities) on corporate website.</p>	<ul style="list-style-type: none"> • The requirements now state that up to four years of monitoring data must be publicly available, but only monthly summaries and exceedances must be published. This will significantly reduce the amount of data required to be published on websites.
<p>The document should provide for the maintenance of websites that occur from time to time where websites are offline.</p>	<ul style="list-style-type: none"> • This is not needed. Reasonable periods of maintenance are considered acceptable.

Issue	EPA response
Requests from members of the public for provision of data	
This provision should be limited to avoid unnecessary printing (and environmental) costs.	<ul style="list-style-type: none"> Noted. Information can be provided electronically on request.
Where data is not available on a website, a licensee should be able to respond to a request for data in any form that satisfies the requester – not only by providing a hardcopy. There should be no reference to hardcopy in the document.	<ul style="list-style-type: none"> The requirements now clarify that data may be provided in other formats, such as CD, DVD or email, as preferred by the requester.
Data should not be provided free of charge.	<ul style="list-style-type: none"> This is required by the legislation and ensures there is equity with obtaining monitoring data from websites (which is free of charge).
Clarification sought and other comments regarding the data that must be published	
Clarify the exact data that needs to be published including relevant licence conditions.	<ul style="list-style-type: none"> Section 66(6) requires that only monitoring data <i>related to pollution obtained as a result of a licence condition</i> is required to be published or provided. Not all monitoring data collected is related to pollution. The requirements now provide additional guidance on this obligation.
It is unclear whether all data collected in real time or just data contained in the current Annual Returns is required to be published.	<ul style="list-style-type: none"> This is clarified in the requirements.
Clarification on whether public complaints need to be published or provided.	<ul style="list-style-type: none"> Public complaints do not need to be reported. This is clarified in the requirements.
It is assumed that anything published under the <i>National Greenhouse and Energy Reporting Act</i> would be excluded from any requirement to be published.	<ul style="list-style-type: none"> That is correct: the requirements clarify that this data is excluded from the obligation to be published or provided because it is already publicly available.
Given the emission of noise is not a pollution incident under the POEO Act, the requirement to publish noise monitoring data may contravene the Act.	<ul style="list-style-type: none"> The legislative requirement relates to pollution, which includes noise pollution and hence noise monitoring data must be published or provided as per the requirements.

Issue	EPA response
Off-site pollution recording and the recording of other information necessary to determine pollution impact should also be included.	<ul style="list-style-type: none"> • Off-site monitoring is only required to be published where it relates to the measurement (or observation) of pollution generated, discharged or emitted from a licensed premises. • It is noted that the results of this type of monitoring may also include pollution from other sources in the area.
The time the data was obtained should also be published or provided.	<ul style="list-style-type: none"> • Clarification is included in the requirements on this issue.
Site maps showing monitoring locations should be published or provided.	<ul style="list-style-type: none"> • The requirements now suggest the inclusion of a site map where available.
A link to the full licence on the EPA website should also be provided.	<ul style="list-style-type: none"> • The requirements now include this simple obligation.
The need to attach details of the licence number and licensee's name to every table is excessive. This can add costs.	<ul style="list-style-type: none"> • The requirements now clarify that the additional information may be provided either in the tables or as a separate document that accompanies the data.
Raw groundwater monitoring required in determining baseline levels for coal seam gas projects should be excluded from the document.	<ul style="list-style-type: none"> • Monitoring background or baseline conditions does not fall within the definition of pollution generated, discharged or emitted from licensed premises and hence is not required to be published or provided.
The various dates required to publish are not routinely noted and will require significant changes to systems, etc.	<ul style="list-style-type: none"> • The dates required to be published have been clarified in the requirements. • The information is necessary to determine compliance with the legislative requirement to publish or provide data within 14 days of obtaining the data.
The monitoring data required should only cover source pollution.	<ul style="list-style-type: none"> • The requirements clarify that the data required to be published or provided is limited to data relating to the pollutants generated, discharged or emitted from the premises.
The requirement to provide context should not be mandatory but at the discretion of the licensee.	<ul style="list-style-type: none"> • The obligation to provide contextual information is clarified in the requirements. The revised requirements reduce the potential compliance burden for licensees.

Issue	EPA response
How the data should be published	
Recommend that monthly summary tables approach should be used for all data – more efficient and easily understood by the public.	<ul style="list-style-type: none"> • This approach has been adopted for data published on a website.
The format of the data should be capable of being printed on a typical home computer, downloaded and/or exportable to common programs like Excel.	<ul style="list-style-type: none"> • The requirements now clarify that data should be capable of being viewed, printed, downloaded and analysed using common computer programs (like Excel and Word).
The document is excessively prescriptive in defining the way in which monitoring results should be presented.	<ul style="list-style-type: none"> • The requirements are now easier to apply. Matters are prescribed where necessary. However, they are less prescriptive in general.
Licensees should not have to reformat all the data because the EPA perceives that the prescribed method will be easier to understand by the public. This can add costs and there is no evidence that presenting the data in tables rather than graphs would be more effective.	<ul style="list-style-type: none"> • Licensees are not restricted to using the formats provided in the example tables. Licensees are expected to develop the table format best suited to their own monitoring data. • Licensees may also use graphs in addition to tables to further explain their data. Graphical presentation of data by itself is not sufficient as it generally requires a level of analysis to interpret, whereas tables allow for direct reading of monitored levels. • The requirements now allow for the required additional information to be included as a separate document if needed.
Graphs should be allowed to be provided for continuous monitoring and, if so, there is no need for tables.	<ul style="list-style-type: none"> • Graphical presentation of data by itself is not sufficient as it generally requires a level of analysis to interpret, whereas tables are generally easier to understand. However, licensees are welcome to include graphs in addition to tables to further explain their data. • The monthly summary approach should address this issue to a large extent.
Continuously monitored data	
Continuously monitored data should be excluded from the requirements.	<ul style="list-style-type: none"> • The monthly summary approach has been adopted to address issues relating to continuous monitoring requirements in particular. • Any continuous monitoring of pollution levels generated, discharged or emitted from licensed premises that is undertaken in compliance with a condition on the licence falls within the obligation of the legislation to publish or provide data.

Issue	EPA response
If a link is provided to continuously monitored data, there should be no requirement to provide monthly reporting as well.	<ul style="list-style-type: none"> Monthly summary tables of continuously monitored data are also required to improve the community's interpretation of the data.
Difficulties meeting time frame in the case of remote download sites where travel and physical site visits are required, followed by data processing in the office.	<ul style="list-style-type: none"> The requirements clarify that the data must be published within 14 days of obtaining the data as defined in the requirements. This allows for data to be downloaded from remote sites.
Providing hardcopies of the data is onerous. To edit this information on a monthly basis will be an onerous and costly undertaking.	<ul style="list-style-type: none"> The requirements now provide for the provision of data in other formats as preferred by the requester.
Calls for greater EPA involvement in the publishing of monitoring data	
It would be much easier for interested parties to understand published data if the EPA published the required licensee data. It would be much easier to access and read as there would be a uniform format and language and the context would be provided. It would allow for greater comparison between licensees.	<ul style="list-style-type: none"> It is the responsibility of industries to be accountable for their operation and environmental performance and hence to publish or provide their own monitoring data. The resources to manage such a process would be significant, involving the continual and regular receipt of monitoring data from around 2600 licences, the analysis and formatting of the data, and the regular upload of this information.
Requiring licensees to publish data on their own websites rather than uploading monitoring data to the POEO public register does not meet the intent of providing available and meaningful public information.	
The EPA should keep and publish a register of licensee's websites used to display monitoring results.	<ul style="list-style-type: none"> This is considered unnecessary.

Issue	EPA response
The EPA should publish fact sheets to assist in explaining exceptions and technicalities associated with monitoring data, especially where certain types of limit exceedances are acceptable and are not breaches of licences.	<ul style="list-style-type: none"> • The requirements document will be reviewed within 12 months of its release. • The EPA will be accepting written feedback on the requirements at pirm@environment.nsw.gov.au. Licensees should refer any licence-specific questions that are not addressed by the requirements to their appropriate EPA officer in the first instance. • The EPA intends to regularly provide answers to common questions or issues raised at www.environment.nsw.gov.au/legislation/faqspubpmdata.htm.
Those without websites should have to lease space on the EPA network.	<ul style="list-style-type: none"> • This is not a practical suggestion nor is this the responsibility of government. Licensees must be accountable for their own pollution and it is the licensees' responsibility to publish or provide data.
Published data will create confusion and fear	
Concern over misinterpretation of data.	<ul style="list-style-type: none"> • The requirements set out what additional information should be provided with the monitoring data to increase community understanding of it and limit the potential for misinterpretation of results.
Members of the public are likely to become concerned at the information provided. This may translate to distrust and anger towards that facility and vexatious complaints.	<ul style="list-style-type: none"> • The requirement to publish monthly summaries will address this issue to a large extent. The requirement for licensees to include additional contextual information where necessary will also limit the potential for this to occur.
Monitoring data is not readily understood by the layperson and is of no value unless it is in a context that a particular person can understand. One person's context is not the same as another's.	<ul style="list-style-type: none"> • The use of monthly summaries will address this issue to a large extent. • The aim of the requirements is to ensure that enough information is provided along with the data to improve the community's understanding of the information. • The EPA intends to regularly provide answers to common questions or issues raised at www.environment.nsw.gov.au/legislation/faqspubpmdata.htm.
Duration of data accessibility	
Suggest that data should be available for five licence periods instead of two.	<ul style="list-style-type: none"> • This is deemed to be unnecessary. • Under the requirements, licensees must make four years of data publicly available. This is consistent with licence requirements that monitoring and other data used to prepare Annual Returns is retained for four years.
Application of requirement to suspended, revoked or surrendered licences	
What is the rationale for this? If it is revoked, you no longer hold a licence.	<ul style="list-style-type: none"> • The requirements clarify that the obligation to publish or provide data is not automatically applicable to suspended, revoked or surrendered licences.
Security of data	
Data should be displayed securely and in a form that cannot be tampered with.	<ul style="list-style-type: none"> • Licensees are best placed to ensure the security of data on websites.

Issue	EPA response
Monitoring conditions on licences	
Need updating to ensure polluters monitor the substances that pollute.	<ul style="list-style-type: none"> The EPA will continue to review monitoring conditions on licences as necessary as part of its ongoing licence review process (and opportunistically) to ensure the type and extent of monitoring conditions is proportional to the level of environmental risk posed by the facility.
Monitoring frequencies should be increased to real time.	
Technology used for monitoring should be the latest High Tec Light Beams.	
There are inconsistencies on the units of measures on licences for similar facilities and pollutants.	
Request more frequent reporting and update of old licences with minimal monitoring requirements.	

EPA 2012/0270
March 2012