

Guide to Licensing

Under the Protection of the Environment Operations Act 1997

Part A

Department of
Environment, Climate Change and Water NSW



Important note

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Department of Environment, Climate Change and Water NSW
59 Goulburn Street, Sydney
PO Box A290, Sydney South 1232
Phone: (02) 9995 5000 (switchboard)
Phone: 131 555 (environment information and publications requests)
Fax: (02) 9995 5999
TTY: (02) 9211 4723
Email: info@environment.nsw.gov.au
Website: www.environment.nsw.gov.au

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Abbreviations

DECCW: Department of Environment, Climate Change and Water NSW. The Department of Environment and Conservation was formed in late 2003 from the consolidation of the Environment Protection Authority with the National Parks and Wildlife Service, Resource NSW and Botanic Gardens Trust. In April 2007, the Department of Environment and Conservation took on a range of new responsibilities and changed its name to the Department of Environment and Climate Change NSW. In July 2009 the Department of Environment, Climate Change and Water (DECCW) was formed, incorporating the water management responsibilities from the former Department of Water and Energy. In regulatory matters for environment protection, DECCW acts under the powers of the EPA.

EIS: Environmental Impact Statement

EPA: New South Wales Environment Protection Authority

EP&A Act: *Environmental Planning and Assessment Act 1979*

IDA: Integrated development assessment

LBL: Load-based licensing

POEO Act: *Protection of the Environment Operations Act 1997*

POEO General Regulation: Protection of the Environment Operations (General) Regulation 2009

POEO Waste Regulation: Protection of the Environment Operations (Waste) Regulation 2005

PRP: Pollution reduction program

1 Introduction

1.1 Aim of this document

The aim of this document is to help you determine whether you need to apply for a licence under the *Protection of the Environment Operations Act 1997* (POEO Act). This document is intended as a guide only, and should be read in conjunction with the POEO Act and the Protection of the Environment Operations (General) Regulation 2009, because changes may have been made to the Act or the Regulation since the date of publication of this guide. You may also need to consult other Regulations under the POEO Act (details of the Act and the various Regulations can be found on the DECCW website: www.environment.nsw.gov.au/legislation/legislation.htm). Seek legal advice if you are unsure about your obligations under the Act or Regulations.

1.2 What this document covers

This document provides information on how and where to apply for a licence, how much a licence costs, what you need to do if you already have a licence, and what you may need to do even if you don't need a licence.

The document is in two parts: Part A and Part B. Part A is a general guide to licensing and it refers you to the appendices in Part B where appropriate. You will need to consult both Part A and Part B when you are working out whether or not you need a licence, completing your licence application form and calculating your licence fees.

1.3 Who this document is for

This document is for anyone who:

- is involved in an activity that is not currently licensed but could need a licence under the POEO Act (see Section 2 of this guide), or
- is involved in an activity that is not required to be licensed under the POEO Act (see Section 2 of this guide), but for which the POEO Act and Regulations impose environment protection obligations (see Section 9 of this guide).

1.4 What is licensed under the POEO Act?

The POEO Act contains a core list of activities that require a licence. These are listed in Schedule 1 of the Act (which is reproduced in Appendix 2 in Part B of this guide). An activity listed in Schedule 1 is called a 'scheduled activity'. (This and other relevant expressions used in this guide are explained in Appendix 1 in Part B of this guide.) Scheduled activities are divided into:

- premises-based activities (listed in Part 1 of Schedule 1 of the POEO Act)
- activities that are not premises-based (listed in Part 2 of Schedule 1 of the POEO Act).

If work is done at premises in order to enable a scheduled activity to be carried on, the work (called 'scheduled development work') must also be licensed under the Act. Scheduled development work is discussed further in Section 2.1 of this guide.

If you require a licence but don't have one, you will have committed an offence and may be prosecuted (see Section 8.8 of this guide).

Environment protection licences may also be issued for activities that are not listed in Schedule 1 of the POEO Act (called 'non-scheduled activities') that are likely to cause water pollution.

Under the POEO Act, the Environment Protection Authority (EPA) is the appropriate regulatory authority for all scheduled activities and scheduled development work. The EPA is also the regulatory

authority for non-scheduled activities where they are subject to a licence, or are carried on by the State or a public authority. Most other non-scheduled activities are regulated by what the POEO Act calls 'local authorities'. In nearly all cases local authorities are local councils.

The POEO Act and Regulations also provide for a load-based licensing (LBL) scheme for some activities. The LBL scheme requires some licensees to pay a part of their licence fees based on the loads of pollutants that their activities release into the environment (see Section 4.4 of this guide).

Licensing requirements under the POEO Act apply to the whole of the State.

2 Do I need an environment protection licence?

2.1 Who needs to apply for an environment protection licence?

As stated in Section 1.4 of this guide, you will need to apply for a licence to conduct any activity that requires a licence under the POEO Act. Schedule 1 of the POEO Act contains a full list of these activities. You will need to refer to this list to decide whether or not you need a licence. Schedule 1 is reproduced in Appendix 2 in Part B of this guide. It is your responsibility to decide whether your activity is listed in the Schedule. You may require a licence to cover more than one scheduled activity operating at your premises.

Licences for a premises-based activity are issued to the occupier of the premises, that is, the person or organisation that manages or controls the premises. Licences for non-premises-based activities are issued to the person or organisation that is to carry on the activity.

You will also need to apply for an environment protection licence for work that is designed to enable a scheduled activity to be carried on (called 'scheduled development work') if you manage or control the premises where the work is to be done. This is different and separate from holding a development consent issued by a planning authority such as the Department of Planning or your local council.

Most activities in Schedule 1 of the POEO Act specify a threshold at or below which a licence is not needed and above which a licence is needed. For example, if you operate cattle, sheep or horse accommodation that can accommodate 1500 cattle at any one time, you would need a licence because the threshold is an accommodation capacity of 'more than 1000 head of cattle'. There are also some exemptions from licensing. For example, there is an 'exemption' for cattle, sheep or horse accommodation facilities that can accommodate more than 1000 cattle, 4000 sheep or 400 horses if they are facilities 'for drought or similar emergency relief'.

Thresholds and exemptions are included in the definition of each scheduled activity listed in Schedule 1 of the POEO Act (see Appendix 2 in Part B of this guide).

If you engage in activities that are below the relevant threshold, in addition to scheduled activities, then you will need to list all the below-threshold activities on your licence application form as ancillary activities.

The licensing schedule is based upon the potential for environmental impact. Because production levels can vary from year to year, a number of the thresholds above which licensing is required are based on 'intended capacity' or 'capacity' rather than actual activity levels. 'Intended capacity' is the amount of product that is physically able to be produced, obtained, etc. taking into account constraints such as:

- the size of the facilities, plant or equipment being used
- any expected maintenance time required during the period specified in the threshold.

Capacity can also be affected by legal constraints on the scale of activities that may be carried on at the premises.

'Intended capacity' **does not** relate to any subjective intention or forecast of lower production levels by the licensee.

If your activity is not scheduled development work or is a non-scheduled activity (that is, if it is not listed in Schedule 1 or is below a threshold set out in Schedule 1), you are not required to hold a licence.

Even if the POEO Act does not require you to have a licence for your particular activity, where there is a direct discharge to waters (for example, through a pipeline) or the likelihood that indirect run-off will pollute waters, you may choose to apply for a licence to regulate water pollution from that activity. You may also choose to apply for a non-scheduled activity licence if you believe that you are likely to pollute water due to the proximity of your activity to a sensitive water body.

In general the EPA will not issue a non-scheduled activity licence where there is a low likelihood of impact on waters and where pollution should not occur if the activity is carried out in strict compliance with a best-practice guideline. If water pollution does occur as a result of the activity, compliance with best-practice guideline documents will be relevant when determining what action will be taken. Guidance material for a number of activities and industry sectors can be obtained by contacting DECCW's Environment Line on 131 555.

If you are uncertain about whether you should apply for a licence to regulate water pollution, you may wish to discuss your situation with our regional office in your area. Contact details for the regional offices are in Section 10 of this guide.

It is your responsibility to decide whether the activity you are involved in requires a licence.

2.2 Is there anything I need to do before I apply for a licence?

If development consent has not been granted for the activity, you need to consider whether development consent is necessary. Your local council or, if necessary, the Department of Planning will be able to help you decide whether development consent is required.

If you need development consent for the activity, the EPA cannot issue you with a licence until that consent is obtained. The council, or the Department of Planning, will tell you about the development consent procedure and whether the integrated development assessment procedures (Section 2.3) or the Major Project Approval process under Part 3A of the *Environmental Planning and Assessment Act 1979* (EP&A Act) (Section 2.4) apply. For example, as part of the consent or approval procedure, you may have to prepare an Environmental Assessment, Environmental Impact Statement or a Statement of Environmental Effects.

It is in your interest to determine what has to be done under the planning laws before you apply for a licence.

2.3 What is integrated development and how will it affect me?

Integrated development assessment (IDA) procedures streamline the approval process for developments that require consent under Part 4 of the EP&A Act and approvals under other legislation, such as an environment protection licence.

Where IDA applies, and before development consent is granted by the consent authority, the EPA will be asked by that authority to provide its input into the Environmental Impact Statement (EIS) requirements. These requirements, which will be forwarded to you, will determine what information you will need to include in the EIS. See Appendix 3 in Part B of this guide for an example of the EPA's EIS requirements (this is an example only – EIS requirements are developed for each individual application, so some requirements may be omitted or modified and others added).

The EPA will assess the Development Application and EIS and either refuse to grant approval or issue its 'General Terms of Approval'. These terms of approval constitute the general licence

conditions for the activity that is the subject of the development application and, if approval is granted, the EPA is obliged to issue the corresponding environment protection licence.

The conditions which form the licence, if it is applied for, cannot be varied in a manner that is inconsistent with the General Terms of Approval issued as part of the development consent at least until the first review of the licence is undertaken – that is, within five years after the issue of the licence. However, if development consent is granted for your activity and you do not apply for a licence within three years of the consent date, any licence issued by the EPA may then differ from the general terms of approval.

2.4 Major Project Approvals

Part 3A of the EP&A Act provides an assessment and approvals regime specifically tailored for major infrastructure and other projects where the Minister for Planning is the approval authority. These projects are collectively called 'Major Projects' and are generally:

- development under the Major Projects State Environmental Planning Policy (SEPP)
- State Government infrastructure projects, likely to significantly affect the environment, or
- other projects, plans or programs declared in an order by the Minister.

If your development is a Major Project, the IDA process (described in Section 2.3) does not apply, but rather the Minister for Planning has a single approval role for these applications. However, an environment protection licence from the EPA will still be required for scheduled activities. Similar to the IDA process (Section 2.3), the EPA will be asked by the Department of Planning to provide its requirements for the Environmental Assessment (EA), to be prepared by the proponent and publicly exhibited for a minimum of 30 days. The EPA will also provide a submission to the Department of Planning on the EA and recommend conditions of approval, if approval is recommended.

If approval is granted by the Minister for Planning and an environment protection licence is subsequently applied for, the EPA cannot refuse to issue the licence. Licence conditions must be substantially consistent with the conditions of the Major Project Approval issued by the Department of Planning.

3 How do I apply for a licence?

When you have decided that you need an environment protection licence, you need to apply for one by filling out an application form.

There are three types of application forms:

- Licence Application – Premises: For premises-based scheduled activities, scheduled development work and non-scheduled activities likely to cause water pollution.
- Licence Application – Waste Transport: For transporters of waste.
- Licence Application – Mobile Waste Processor: For mobile-waste processing.

You only need to complete **one** 'Licence Application – Premises' form for all activities managed or controlled by you that take place at a single premises. If your activities are carried out on separate premises, you will need to fill out an application for each premises.

If you conduct premises-based scheduled activities as well as waste transport and/or operate a mobile waste processor, you will need to fill out separate application forms for each.

Remember: Your licence may regulate all types of environmental impact of your activity – that is, it may control noise, air, waste and water pollution.

3.1 Where can I obtain an application form?

Forms can be obtained from DECCW offices and the DECCW website at www.environment.nsw.gov.au/licensing/licenceforms.htm. Contact details for DECCW are listed in Section 10 of this guide.

3.2 How will reading this guide help me complete my application form?

You will not be able to complete your application form without reference to this guide. The appendices in Part B of the guide provide information that you will need in order to complete your application form successfully. The licence application form will direct you to the relevant appendices.

3.3 What else do I need to provide with my application form?

The EPA requires additional information to be provided with your application form in order to understand the type of activity involved and the potential risks of the activity to the environment. The type of information required may include details of the likely impact of any pollution that will be caused by your activity, and details of the practical measures that you intend to take to mitigate that pollution and protect the environment.

The additional information you need to send with your application form varies, depending on the type of activity being, or to be, conducted. It also depends on whether development consent is required under Part 4 of the EP&A Act. (See Section 2.2 of this guide.) Supporting documentation that must be included with your licence application form is listed in Appendix 4 in Part B of this guide.

If you, or (where applicable) your corporation or any director of your corporation (or another corporation that any director has been a director of), have been convicted or have paid a penalty under a Penalty Notice for an offence under any 'environment protection legislation'¹ (or other relevant legislation²) or have had revoked or suspended a licence (or other authority) under any 'environment protection legislation' (or 'other relevant legislation'), you must provide documentation about this to the EPA with your application form. Please note that in determining whether a person is a fit and proper person to hold an environment protection licence the EPA may take into consideration any or all of the factors listed in Section 83(2) of the *Protection of the Environment Operations Act 1997*.

Each application for a licence will be treated on its merits. The EPA will notify you of any further information it requires when it receives your application.

There is a checklist at the end of the application form that you should fill out to make sure all of the information and documentation required to process your licence is returned with your application form (see also Appendix 4 in Part B of this guide). If the EPA receives all the necessary information in good time, it will be able to process your application more quickly.

As well as sending the information and documents we require, you need to attach to your licence application a cheque for the administrative fee for the first licence-fee period. To calculate your administrative fee, see Section 4 of this guide.

Remember: Your application for a licence may not be processed and may be refused if all information and documents required are not provided, or if you do not pay the application fee.

¹ 'Environment protection legislation' is defined in Part 1 of the *Protection of the Environment Administration Act 1991*.

² 'Other relevant legislation' is defined in clause 52 of the *Protection of the Environment Operations (General) Regulation 2009*.

3.4 Where do I send my completed application form?

Send your application for a new licence with a cheque for the licence administrative fee, to the regional office of DECCW that has responsibility for the local government area in which your activity is located. See the list of regional offices in Section 10 of this guide.

If you are applying for a licence to transport waste, send your application (together with the licence administrative fee) to DECCW's Regulatory and Compliance Support Unit (see Section 10 of this guide for address details).

3.5 How will my application be assessed?

There are a range of matters which are taken into consideration when assessing an application for a licence. These include:

- protection of the environment policies
- the objectives of the EPA
- the pollution caused or likely to be caused by carrying out the proposed work
- the likely impact of that pollution on the environment
- practical measures that could be taken to prevent, control, abate or mitigate pollution and protect the environment from the impact of that pollution
- the 'environmental values of water'³ that may be affected by the activity or work, and the practical measures that could be taken to restore or maintain those values
- tradeable emission schemes or other economic measures
- whether the applicant is considered to be a fit and proper person
- Environmental Impact Statements (EIS), Species Impact Statements (SIS) and other documents accompanying the application
- waste strategy in force under the *Waste Avoidance and Resource Recovery Act 2001*
- public submissions.

3.6 How long will it take to have my licence application processed?

Your licence will generally be granted or refused within 60 days of lodgement with the EPA. It may take longer if you have not provided all the necessary information and documents that the EPA needs to assess your licence application.

3.7 How much time do I have in which to apply for a licence?

If you are starting an activity (for example, a new development) that will be required to have a licence under the POEO Act, you will need to apply for and have a licence before you start construction or operation.

³ 'Environmental values of water' – as specified in the *Australian and New Zealand guidelines for fresh and marine water quality 2000* (Australian and New Zealand Environment and Conservation Council [ANZECC] 2000)

4 Licence fees

4.1 How much will my licence cost?

All licences attract annual administrative fees, and some licences will also require payment of annual load-based fees. The administrative fee is calculated according to the nature, size and/or capacity of your activity. The load-based fees will depend on the amount of assessable pollutants and the types of pollutants that your activity releases into the environment, as well as the conditions in the receiving environment.

For each activity classification, the levels of administrative fees and the applicable assessable pollutants are set out in Schedule 1 of the Protection of the Environment Operations (General) Regulation 2009 (the POEO General Regulation). These are also reproduced (and were current at the date of publication of this guide) in the fee-based activity classifications set out in Appendix 5 in Part B of this guide.

You can also access a licence fee calculator on the DECCW website at www.environment.nsw.gov.au/lblcalcapp/

4.1.1 What is the 'licence-fee period'?

Licence fees are paid for each 'licence-fee period' of the licence. The first licence-fee period is generally the 12-month period from the date of issue of the licence until the anniversary of that date; each subsequent 12-month period after that is also a licence-fee period.

The licence-fee period is not affected by any transfer of the licence, and comes to an end if the licence is terminated (but not when it is suspended).

The administrative fee (see Section 4.2) is payable with the application for a new licence and within 60 days after the beginning of the licence-fee period for all licence-fee periods after the first. The load-based fee (see Section 4.4), if applicable, is due within 60 days after the end of the licence-fee period each year. You may make the administrative fee payment for the coming fee period at the same time as the load-based-fee payment for the previous fee period.

4.2 The administrative fee

4.2.1 When do I pay the administrative fee for my licence?

If you are applying for a new licence, you must pay your first administrative fee when you lodge your application form with the EPA. After the first licence-fee period the EPA will send you an annual licence invoice on approximately the same date as the anniversary date of the licence. The correct administrative fee must be received within 60 days after the beginning of the licence-fee period. If your licence application is refused, you have 90 days after you have been notified of the refusal to apply for a refund of the administrative fee that you lodged with the application.

4.2.2 What happens if I don't pay my administrative fee on time?

New licence applications may not be processed or may be refused if the EPA does not receive the correct payment.

If you already hold a licence and you don't pay your fee on time, you will also have to pay a penalty of 5% per fortnight on the amount outstanding for each whole fortnight after the due date, until the amount is paid.

If the correct administrative fee remains unpaid, your licence may be suspended or revoked. If this happens, you may be committing an offence against the POEO Act if you continue to conduct your activity.

4.2.3 Calculating the administrative fee

Follow the steps below to calculate your administrative fee. This amount must accompany your application form if you are applying for a licence:

- Step 1.** Look up the scheduled activity classifications in Appendix 2 in Part B of this guide. Identify all scheduled activity classifications that 'fit' the activities conducted at your premises. There may be more than one.
- Step 2.** If the scheduled activity has a number of sub-activities, select the sub-activity that fits the activity being conducted at your premises. Again, there may be more than one.
- Step 3.** For each activity classification chosen in Steps 1 and 2, find the corresponding fee-based activities in Appendix 5 in Part B of this guide. Select the applicable scale of each activity and the number of administrative fee units shown opposite this scale.
- Step 4.** For each fee-based activity, multiply the number of administrative fee units (obtained in Step 3) by the cost of one fee unit (refer to clause 9 of the POEO General Regulation for fee unit amounts).

The administrative fee payable for your licence = (number of fee units) x (cost per unit).

If your activity involves assessable pollutants (see Appendix 5 in Part B of this guide), you will need to read about load-based fees in Section 4.4 of this guide.

4.2.4 What happens if my licence relates to more than one activity?

Only one administrative fee is payable, even if your licence relates to more than one activity. Calculate the administrative fee for each activity classification, as shown in Steps 1 to 4 above, and then select the highest of those fees. This is the administrative fee for your licence. (See worked example 2 in Section 4.3.)

Remember: The EPA will send you an invoice for your licence administrative fee for each licence-fee period (except the first fee period of a new licence). Check the details are correct and contact DECCW if there are any mistakes.

4.3 Worked examples of administrative-fee calculations

Worked example 1: Chicken accommodation with a live-weight capacity of 500 tonnes.

- Step 1.** If the activity conducted at the premises is the accommodation of chickens, the scheduled activity classification in Schedule 1 of the POEO Act (see Appendix 2 in Part B of this guide) that best describes this activity is 'Livestock intensive activities'.
- Step 2.** The sub-activity classification in Schedule 1 of the POEO Act (see Appendix 2 of Part B of this guide) that best describes this activity is 'Bird accommodation'.

Step 3. From the information below (which is extracted from Appendix 5 in Part B of this guide), the number of administrative-fee units applicable to bird accommodation with a live-weight capacity of 500 tonnes is 15.

| Bird accommodation Administrative fee | |
|---|--------------------------|
| Live-weight capacity to accommodate | Administrative-fee units |
| Not more than 375 tonnes | 5 |
| More than 375 but not more than 1000 tonnes | 15 |
| More than 1000 tonnes | 50 |

Step 4. Multiply the number of administrative-fee units from step 3 (that is, 15) by the cost per unit (\$105, as at September 2009: see *Note below worked example 2 about future administrative fees*).

The administrative fee is \$1575.

That is:

15 fee units x \$105 (cost per unit) = \$1575

Worked example 2: An abattoir with a capacity to process 10,000 tonnes of slaughtered material a year. At the same premises there is a capacity to produce 5000 tonnes of rendered products a year.

Step 1. The scheduled activity classification in Schedule 1 of the POEO Act (see Appendix 2 in Part B of this guide) that best describes these activities is 'Livestock processing activities'.

Step 2. The sub-activity classification in Schedule 1 of the POEO Act (see Appendix 2 in Part B of this guide) that best describes the abattoir activity is 'Slaughtering or processing animals'. This classification includes any livestock processing activity that slaughters or processes animals (including poultry and fish) and that has a processing capacity of more than 750 tonnes live weight per year.

The sub-activity classification 'Rendering or fat extraction' best describes the rendering part of the activity. If the production capacity for tallow, fat or their derivatives or proteinaceous matter is greater than 200 tonnes a year (as it is in this case), then the activity falls within this classification.

Step 3. From the information below, which is extracted from Appendix 5 in Part B of this guide, the number of administrative-fee units applicable to slaughtering or processing animals with a live-weight processing capacity of 10,000 tonnes is 5.

| Slaughtering or processing animals Administrative fee | |
|---|--------------------------|
| Annual processing capacity | Administrative-fee units |
| Not more than 30,000 tonnes | 5 |
| More than 30,000 tonnes | 15 |

From the information below, also extracted from Appendix 5, the number of administrative-fee units applicable to rendering or fat extraction with a processing capacity of 5000 tonnes is 15.

| Rendering or fat extraction Administrative fee | |
|--|--------------------------|
| Annual production capacity | Administrative-fee units |
| Not more than 4000 tonnes | 5 |
| More than 4000 tonnes | 15 |

Step 4. For the slaughtering or processing animals activity, multiply the number of administrative-fee units (5) by the cost per unit (\$105, as at September 2009: see *Note below about future administrative fees*). The result is \$525.

For the rendering or fat extraction activity, multiply the number of administrative-fee units (15) by the cost per unit (\$105). The result is \$1575.

Step 5. Choose the higher of the amounts calculated. The administrative fee is \$1575.

Note: Amount of administrative fee unit

- (1) An administrative fee unit for a licence fee period that begins on a date in any of the following periods is the amount specified in respect of that period:
 - (a) before 1 July 2009 – \$100
 - (b) on or after 1 July 2009 and before 1 July 2010 – \$105
 - (c) on or after 1 July 2010 and before 1 July 2011 – \$108
 - (d) on or after 1 July 2011 and before 1 July 2012 – \$110
 - (e) on or after 1 July 2012 – \$113.
- (2) For the purposes of calculating the administrative fee that must accompany an application for the issue of a licence, the period during which the licence fee period begins is taken to be the date on which the application is made.

4.4 The load-based fee

The load-based fee applies only to those activities that have assessable pollutants. To determine whether your activity has assessable pollutants, look up the fee-based activity classifications provided in Schedule 1 of the POEO General Regulation (see Appendix 5 in Part B of this guide).

You will have already identified all the applicable fee-based activity classifications for the activities conducted at your premises in order to calculate your administrative fee. As you will now be aware, there may be more than one applicable classification for your activities. Check to see which, if any, of the applicable activity classifications have assessable pollutants.

The EPA will give you a **load-calculation protocol** with your licence if required. You must follow the instructions in the protocol to calculate the assessable load (in kilograms) of each assessable pollutant. This generally requires various data to be collected throughout the whole licence-fee period.

The EPA will provide load-calculation worksheets with your Annual Return to help you calculate your load-based fee. The Annual Return is sent to you at the end of the licence-fee period (and can also be downloaded from the DECCW website at www.environment.nsw.gov.au/poeo from the start of the

licence-fee period). It will also contain your statement of compliance and some monitoring summary reporting forms.

4.4.1 What if there are no assessable pollutants for my activity?

You will not be required to calculate or pay a load-based fee if there are no assessable pollutants listed for the activities conducted at your premises. If this is the case, there will be no fee-calculation worksheets included in your Annual Return.

4.4.2 When do I pay the load-based fee?

Load-based fees must be paid within 90 days of the end of each licence-fee period. When you submit your completed Annual Return, DECCW will send you an invoice for your load-based fee.

You must calculate the actual load for each assessable pollutant discharged under your licence during each licence-fee period, including the first licence-fee period, in accordance with the load-calculation protocol.

4.4.3 What happens if I don't pay my load-based fees on time?

If load-based fees are received later than 60 days after the end of the licence-fee period, a penalty of 5% per fortnight on the amount outstanding will apply for each whole fortnight after the due date, until the amount is paid.

If the correct load-based fee has not been paid by the due date, your licence may be suspended or revoked. If your licence is suspended or revoked, you may be committing an offence against the POEO Act if you continue to conduct the activity.

4.4.4 Records of fee calculations

You must keep all records used to calculate your administrative and load-based fees for at least four years from the date on which you paid the fee or the fee was payable, whichever occurred later. If you do not, you may be fined up to \$22,000 by a court (the maximum penalty for an individual or corporation).

5 Waste contributions

5.1 What are waste contributions and who has to pay them?

Section 88 of the POEO Act requires occupiers of licensed waste facilities to pay a monthly waste contribution. The POEO Waste Regulation outlines the type of facilities or waste that may be exempted from the contribution or eligible for rebates. For further information about waste contributions you can view the forms and user guides on the DECCW website at www.environment.nsw.gov.au/wr/index.htm or contact the Waste Operations Section (see Section 10 of this guide for contact details).

6 Your licence package

6.1 What will be in my licence package?

Your licence package will contain:

- a list of key DECCW contacts and due dates
- your environment protection licence
- an Annual Return form for your first reporting period (note transporters of waste are not required to submit an Annual Return)

- a load-calculation protocol, if applicable.

6.2 What do I have to do after I receive my licence package?

Licences are issued with environment protection conditions, which you must meet. Licence conditions are aimed at preventing or minimising the pollution impact of your activity. These conditions could, for example, limit the amount of noise that can be emitted by your licensed activity, or require you to monitor pollutants or ensure that your operating procedures are environmentally acceptable. In some cases you may be required by your conditions of licence to develop and implement a pollution reduction program (PRP). The aim of a PRP is to reduce the environmental impact of your activity over time.

The EPA will consider your activity and determine the appropriate conditions to attach to your licence.

It is an offence to fail to comply with your licence conditions and you could be fined up to \$1,000,000 for a corporation (with a further penalty of \$120,000 for each day the offence continues) by a court and \$250,000 for an individual (with a further penalty of \$60,000 for each day the offence continues).

If your activity involves assessable pollutants (see Schedule 1 of the POEO General Regulation set out in Appendix 5 in Part B of this guide), you must begin monitoring assessable pollutants at the start of the licence-fee period in accordance with the load-calculation protocol that was sent to you with your licence package. This monitoring information will be needed to allow you to calculate your load-based fee using the load-calculation worksheets provided in the annual-return form sent to you at the end of each licence-fee period.

7 Annual Returns

7.1 What is in my Annual Return?

Annual Returns contain the following sections:

- A. Statement of Compliance – Licence details (this is pre-printed with your licence details and the relevant reporting period)
- B. Monitoring and Complaints Summary (to be completed in accordance with your licence conditions)
- C. Statement of Compliance – Licence conditions
- D. Statement of Compliance – Load-based fee calculation worksheets (if applicable)
- E. Signature and Certification

7.2 When is it due?

The Annual Return must be lodged within 60 days of the end of the reporting period. If a transfer has occurred, both parties involved in the licence need to submit an Annual Return for the part of the licence period that they held the licence. If your Annual Return has not been lodged within the required time, you will have breached your licence conditions and may be subject to a Penalty Notice or prosecution.

7.3 Who can sign my Annual Return?

The Annual Return may only be signed or certified by:

- the licence holder, or

- a person who has been authorised by the licence holder and approved in writing by the EPA to sign on behalf of the licence holder.

7.4 How can I gain approval for someone else to sign or certify my Annual Return?

Those who have generally been approved by the EPA to sign the Annual Return on behalf of a licence holder are:

| If the licence holder is: | the Annual Return must be signed and certified by one of the following: |
|---|--|
| an individual | the individual licence holder, or a person approved in writing by the EPA to sign on behalf of the licence holder. |
| a company | by affixing the common seal, in accordance with the <i>Corporations Act 2001</i> , or by 2 directors, or by a director and a company secretary, or if a proprietary company that has a sole director who is also the sole company secretary – by that director, or by a person delegated to sign on the company's behalf in accordance with the <i>Corporations Act 2001</i> and approved in writing by the EPA to sign on behalf of the company. |
| a public authority other than a council | by the Chief Executive Officer of the public authority, or by a person delegated to sign on the public authority's behalf in accordance with its legislation and approved in writing by the EPA to sign on behalf of the public authority. |
| a local council | by the General Manager in accordance with s.377 of the <i>Local Government Act 1993</i> (LG Act), or by affixing the seal of the council in a manner authorised under the LG Act. |

Application for EPA approval to sign Annual Return forms are available from www.environment.nsw.gov.au/licensing/licenceforms.htm

8 Other licensing questions

8.1 How long does a licence last?

Licences under the POEO Act are ongoing. This means that you won't have to renew your licence each year. However, annual fees and reporting requirements still apply, and the EPA may, after giving you the required period of notice, change the conditions of your licence at any time (see also Section 8.6 of this guide). There are also grounds on which the EPA will be able to suspend or revoke your licence.

Your licence will also be reviewed at least once every five years. The EPA is required to give public notice through a newspaper advertisement of its intention to review a particular licence.

8.2 How are licences transferred?

A licence may need to be transferred to another person in certain circumstances, such as when a business is bought or sold.

To transfer the licence, an application form needs to be completed and then signed by the current licence holder and the proposed new licence holder. The licence transfer application form is available from the DECCW website at www.environment.nsw.gov.au/licensing/licenceforms.htm. The completed form must be sent with the transfer fee (equal to two fee units) to DECCW's Regulatory and Compliance Support Unit (see Section 10 of this guide for contact details). The transfer does not take effect until it has been approved by the EPA.

8.3 What happens if I change the type or scale of my activity?

Your licence conditions relate to the type and scale of activity described in your licence application. If you change the nature of your activity, you need to complete an application form to have your licence varied. The licence variation application forms are available from the DECCW website at www.environment.nsw.gov.au/licensing/licenceforms.htm. Send the application to vary your licence to the regional office of DECCW in the area where your activity is located, or – if your licence is for the transporting of waste – to DECCW's Regulatory and Compliance Support Unit (see Section 10 of this guide for contact details). Your licence will not be varied unless the EPA approves your application.

If the change in your type of activity means you no longer need a licence, you will need to apply to surrender your licence (see Section 8.4 of this guide).

The administrative fee for a licence varies with the scale of an activity (see Sections 4.2 and 4.3 of this guide). Therefore, if the scale of your activity changes, you may need to apply for a variation of the scale of the activity specified in your licence and adjustments may need to be made to the last administrative fee you have paid.

Note: You will need to pay more, or be granted a refund, only if the change in the scale of your activity results in a difference of at least \$190 between the administrative fee you have already paid and the adjusted fee.

8.4 What if I don't need a licence any more?

If you think you no longer need a licence, you should fill out a surrender-of-licence application form and return it to DECCW's Regulatory and Compliance Support Unit (see Section 10 of this guide for contact details). The licence surrender application form is available from the DECCW website at www.environment.nsw.gov.au/licensing/licenceforms.htm.

We will notify you in writing whether your licence surrender application has been approved. If it has been approved, we will advise the relevant local council, which will then be responsible for regulating your activity.

8.5 What happens if my company name changes?

If your company name changes but your ACN/ABN stays the same, you will need to notify the EPA in writing and attach a Certificate of Registration on Change of Name (available from the Australian Securities Investment Commission). Send the completed form and certificate to DECCW's Regulatory and Compliance Support Unit (see Section 10 of this guide for contact details).

If your company name and ACN/ABN changes, you need to complete a licence transfer application form. The completed form must be sent with the transfer fee (equal to two fee units) to DECCW's Regulatory and Compliance Support Unit (see Section 10 of this guide for contact details). The transfer of the environment protection licence does not take effect until it has been approved by the EPA.

8.6 Can I appeal against a licensing decision?

Under the POEO Act, you may appeal against licensing decisions, including decisions to revoke or suspend a licence and refusals to approve the surrender of a licence, issue or transfer a licence, or vary the conditions of a licence.

You may send a written request to the EPA for a statement of reasons for decisions to issue (or refuse to issue), transfer or vary a licence. The EPA will provide you with a statement outlining the significant environmental or other issues, and the environmental outcomes, standards or requirements (if relevant) that it took into account in making its decision.

Licence holders or potential licence holders may appeal to the Land and Environment Court against licensing decisions within 21 days of being given notice of the decision. (**Note:** Licence-variation notices take effect from the date of the decision or the day otherwise specified by the EPA, which means that action may be required *within* the appeal period. However, the recipient may apply to the court for a stay of the notice, in which case (if granted) the variation notice will not take effect until the stay ceases to have effect, the court confirms the stay or the appeal is withdrawn, whichever occurs first.)

If the EPA does not determine your application within 60 days, you may appeal to the court as if your application had been refused. (**Note:** If you are required to provide information to the EPA, the time taken for you to do so is not taken into account when calculating this 60-day period.)

8.7 Will information about my licence be available to the public?

The EPA maintains a public register website, which provides information on a range of licensing activities carried out by the EPA. It can be accessed at www.environment.nsw.gov.au/prpoeo/.

The public register contains information on licence applications and any decisions made by the EPA with regard to the applications. In relation to licences issued by the EPA, the public register contains: licence conditions; any variation of licence conditions; licence applications and annual licence fees; statement of compliance forms; any decisions to suspend, revoke or approve the surrender of a licence; certain load-based licensing information, including any load-reduction agreements; and the details of any court-enforceable undertakings. The date of completion of each licence review is also available to the public.

In addition to the above, information about the following things will be made available:

- environment protection notices (that is, clean-up, prevention and prohibition notices) or noise control notices issued by the EPA
- any exemptions granted under the POEO Act or Regulations
- convictions in prosecutions by the EPA under the Act
- results of civil proceedings before the Land and Environment Court by or against the EPA
- summaries of the conclusions of audit reports relating to mandatory environmental audits supplied to the EPA
- certain monitoring data supplied to the EPA by the licence holder.

8.8 What happens if I don't apply for a licence and I need one?

You will be liable to prosecution if you do not hold a licence and you need one. This could result in fines as high as \$1,000,000 (for corporations) or \$250,000 (for individuals). For a continuing offence, you could be fined a further \$120,000 (in the case of a corporation) or \$60,000 (in the case of an individual) for each day the offence continues.

9 If I don't need a licence, do I need to do anything else?

If you decide that you don't need a licence, you still have responsibilities to fulfil. Other environmental laws may still apply to your activity.

For example, under the POEO Waste Regulation, certain environment protection requirements apply to:

- non-licensed transporters of waste
- activities involving the transport and disposal of asbestos waste
- activities involving the disposal of clinical waste.

There are also reporting requirements for non-licensed landfill sites, other than sites where waste disposal is carried out for non-commercial purposes or where only virgin excavated natural material is received. Within 30 days of the establishment of a non-licensed landfill site, the EPA must be notified of the:

- location of the landfill site
- name and address of the occupier of the landfill site.

The occupier of a non-licensed landfill site must also send information concerning the type and quantity of waste received at the landfill to the EPA annually.

The maximum penalty for a breach of these requirements is \$22,000 for a corporation and \$11,000 for an individual. EPA and local council officers may issue Penalty Notices (\$500) for breaches of environment protection requirements for non-licensed waste activities and transporters.

Please contact DECCW if further information is required.

10 Further information

As the EPA is now part of DECCW, certain EPA statutory functions and powers, such as the determination of licence applications and other licensing functions under the POEO Act, are carried out by DECCW in the name of the EPA.

If you need help to complete your application for an environment protection licence or have any technical inquiries, contact your nearest DECCW office. A list of contact details is provided below.

Metropolitan

Parramatta

Department of Environment, Climate Change and Water
PO Box 668
PARRAMATTA NSW 2124

Phone: 9995 5000
Fax: 9995 6900

Wollongong

Department of Environment, Climate Change and Water
PO Box 513
WOLLONGONG EAST NSW 2520

Phone: 4224 4100
Fax: 4224 4110

North East

Newcastle

Department of Environment, Climate Change and Water
PO Box 488G
NEWCASTLE NSW 2300

Phone: 4908 6800
Fax: 4908 6810

Grafton

Department of Environment, Climate Change and Water
PO Box 498
GRAFTON NSW 2460

Phone: 6640 2500
Fax: 6642 7743

North West

Armidale

Department of Environment, Climate Change and Water
PO Box 494
ARMIDALE NSW 2350

Phone: 6773 7000
Fax: 6772 2336

Bathurst

Department of Environment, Climate Change and Water
PO Box 1388
BATHURST NSW 2795

Phone: 6332 7600
Fax: 6332 2387

South

Albury

Department of Environment, Climate Change and Water
PO Box 544
ALBURY NSW 2640

Phone: 6022 0600
Fax: 6022 0610

Queanbeyan

Department of Environment, Climate Change and Water
PO Box 622
QUEANBEYAN NSW 2620

Phone: 6122 3100
Fax: 6299 3525

Griffith

Department of Environment, Climate Change and Water
PO Box 397
GRIFFITH NSW 2795

Phone: 6969 0700
Fax: 6969 0710

Waste Operations

Department of Environment, Climate Change and Water
PO Box A290
SYDNEY SOUTH NSW 1232

Phone: 9995 5000
Fax: 9995 5930

Regulatory and Compliance Support Unit

Department of Environment, Climate Change and Water
PO Box A290
SYDNEY SOUTH NSW 1232

Phone: 9995 5700
Fax: 9995 5922