



EPA Board Review

Public notification of environmental incidents



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Comments from the Board and Subcommittee chairs

On 29 October 2019, an ABC news report highlighted two incidents involving Nyrstar at Port Pirie; a sulfuric acid spill in January of that year, and a 2017 cadmium concentration in groundwater. While neither incident was considered to pose a risk to the community, concerns were raised about how information related to these incidents was provided to the community. In addition, questions were raised about the placement of information on the EPA public register, including its online public register directory.

Following these discussions, the Minister for Environment and Water wrote to the EPA Board requesting that the Board undertake a review of matters relating to proactive public notification protocols, and the application and accessibility of the EPA public register.

An initial assessment of the circumstances relating to the proactive notification of environmental matters, and placement of records on the EPA public register, highlighted some areas that would benefit from clarification or reform.

In its review of the matter the Board noted that the decision not to notify the community of the 2019 acid spill was made on a number of factors at the time the incident was reported to the EPA. These included that there was no public health risk; a formal EPA investigation had begun which created legal complexity regarding information that could form evidence in any future court proceedings; and aspects of the spill had been referred to another government agency. The Board also noted that while there was no public notification at the time, the earlier cadmium spill had been contained on site and was recorded on the EPA public register.

However, the Board agreed that, while the environmental and public health outcomes had not been compromised, the lack of public notification did not meet community expectations. The Board determined to focus its review on the gap around public notification protocols and practices as well as opportunities for making further areas of the public register available online.

The Board also noted that Nyrstar did not proactively notify the Port Pirie community, and asked that the review also consider how industry can be encouraged to take greater responsibility for keeping their neighbours, stakeholders and communities informed.

The Board appointed a subcommittee to conduct the review, comprising Dr Stephen Christley (chair), Ms Christine Trenorden and Dr Helen Macdonald.

Catherine Cooper
Presiding Member

Stephen Christley
Deputy Presiding Member
Chair, Public Notification Subcommittee

1 Review Subcommittee members

Dr Stephen Christley was appointed as Deputy Presiding Member on 28 June 2018. He was formerly the Chief Public Health Officer with SA Health. Since retiring from this position he has worked in a number of short-term roles, including as Interim Commissioner, SA Mental Health Commission and Member, Independent Inquiry Panel for Review of Plastics to Fuel proposal for the ACT Minister for Planning and Environment.

Dr Christley's experience and background in medicine, public health and business planning has seen him undertake numerous board and executive roles, including President, Australian Healthcare and Hospitals Association and member of the National Blood Authority Board.



Ms Christine Trenorden is currently a Visiting Professor at UCL Australia, and served as a Judge of the District Court in South Australia and the Environment, Resources and Development Court for 17 years, handling a number of EPA and environment protection cases. She adds further expertise to the Board on issues such as environmental policy, governance and regulatory design and enforcement. Ms Trenorden has been actively involved in environmental and natural resources law over many years and brings with her expertise in planning, environmental and local government law.

Her past experience includes chairperson of the Environmental Defenders Office SA, working in international development with International Union for Conservation of Nature in the South Pacific, and she represented South Australia and Australia on various national and international bodies, providing technical training to judges and government officers in Fiji, India, Indonesia, Laos, Thailand, the Philippines and Vanuatu.



Dr Helen Macdonald is currently the Chief Executive Officer of the Clare and Gilbert Valleys Council. She was the General Manager, Environment and Social Responsibility, for a mine project site in Ghana, where she directed and supervised the implementation of an environmental and social responsibility study program, and a land access and resettlement program. She has management, strategic planning and policy experience in sustainable development, environment, community relations and development, land access and resettlement, closure and reclamation, local and regional government relations, and communication and media relations.





2 About the review

2.1 Scope

To improve public notification, the Board Subcommittee focused its review on what can be practically achieved in the short term in three areas:

- more proactive and timely notification of environmental incidents
- how to encourage licensed industry to engage more effectively with their communities
- clarification of the public register and expanded availability of information through the online public register directory.

The review looked at existing EPA protocols and practices, and how incident notification is managed in other agencies including interstate EPAs. It also looked at the public registers of other EPAs nationally.

Terms of reference (attachment 1).

3 Key findings and recommendations

3.1 Public notification of environmental incidents

The EPA's Emergency Response Team (ERT) responds to a range of environmental pollution incidents such as fires, gas leaks and waste spills. The nature of these incidents varies in significance and includes those where the EPA is called to assist other agencies, such as fire services. The EPA frequently receives reports of a range of environmental issues via its call centre, or directly from licensees. Incidents reported can include topics such as odour or spills from an industrial facility, illegal dumping, or incidents requiring an emergency response. Reports are also received regarding matters outside the EPA's jurisdiction, and these are referred to the relevant authority, such as environmental nuisance issues, kerbside rubbish and litter, which are the responsibilities of councils.

Licensees, like all people, also have a legal obligation to notify the EPA of any incidents that have caused or have the potential to cause serious environmental harm as a result of an activity that they have undertaken.

The Board noted that the EPA has a range of established practices for proactively providing information to the community on a range of matters, with examples including: seeking community input on new licence applications and changes to licence conditions; engaging direct with communities impacted by site contamination as part of its orphan sites program; providing a 24x7 pollution reporting line; consulting on policy development; making scientific information available online; and using its website to update on activities at major industrial sites. Information is also being made available faster and easier to access, through initiatives such as hourly air quality monitoring data, self-subscribe beach condition alerts, and an online interactive engagement platform for sites of high community interest.

The subcommittee's review identified that there has been significant commitment in this area in recent years, with a well-established and effective process for notifying and engaging with the community where there are known or suspected public health impacts.

However, the subcommittee considered there is a gap in the proactive notification of incidents, with incident response protocols not providing clear guidance on matters to be publicly notified beyond those with a public health impact. The subcommittee saw an opportunity to increase communication surrounding the EPA's response to environmental incidents where there is no immediate risk or where the risk has not yet been established, particularly where there is a high community interest. This would better meet growing community expectations for timely information on local and topical issues.

The Board has recommended that the EPA adopt an approach used successfully by other Australian EPAs, using digital channels such as website and social media to provide more timely information on a broad scale, while continuing to apply the EPA's 'resident first' principle, with residents who are directly impacted to be informed first where it is possible to do so.

To demonstrate the EPA's commitment to proactive notifications, engagement and transparency, a commitment statement has been developed which outlines the principles the EPA will apply to public notification, the circumstances in which limited or no information may be provided, and the reasons why, with the aim of providing information more proactively to the community.

These principles have also been incorporated into an updated draft Engagement Charter. Both documents will be made available for public comment before finalisation.

Recommendations

1. Reiterate the Board's commitment to public communication, community engagement, and making more information available online.
2. Endorse the draft Public Notification Commitment Statement and support its release for public comment.

3. Support integration of public notification principles into the draft Engagement Charter, to be released for public comment (Attachment 3).
4. Require the development of a procedure by the agency to give effect to the commitment statement, which:
 - (a) improves transparency of the principles used to determine public notification decisions, and
 - (b) extends notification to incidents where there is likely to be high public interest, with greater use of social media and local stakeholder engagement.

3.2 Public register

Section 109 of the *Environment Protection Act 1993* sets out a large range of records which the EPA must maintain on a public register. The public register is not a specific document, but rather a large collection of records held in databases, online systems and historical hard copy files to which the public has right of access outside of Freedom of Information processes. Fees for the public register were largely waived in 2011.

Since 2011, the EPA has been progressively making the public register more accessible by providing the most frequently requested data online. This includes environmental authorisations (licences), orders, prosecutions, and an index of site contamination including groundwater, land and soil contamination, searchable by suburb. The EPA receives approximately 600 direct requests for public register documents each year, compared to 125,000 page views of licences online and 53,000 views of site contamination records.

The administration of aspects of the public register is complex, with some categories of information requiring assessment on a case-by-case basis, often based on scientific criteria and thresholds. Whether a matter meets these criteria may also be the subject of court proceedings. Determining whether a matter is to be placed on the public register may therefore take some time. The register comprises a large volume of historical records and, while the most commonly requested information available online, access is mostly upon request. It is the Board's view that the form and function of the public register mean that it should not be relied upon as a mechanism for proactive public notification, and that immediate notification should occur through the mechanisms outlined under 3.1.


Nevertheless, the Board views the public register as an important tool to aid in transparency and access to government information, and maintains its support for further expansion of the online public register, with further major datasets planned for upload in 2020.

Further, the Board saw an opportunity to improve general awareness of what is available on the public register, particularly as not all public register records are available online, but can be provided on request. The Board committed to looking at short-term enhancements and improvements to the public register, and saw an opportunity to improve awareness among EPA licensees of their obligations regarding information that must be notified to the EPA, with updated and standardised process required to enable this information to be more easily provided online. (This is covered in greater detail below under "Role of Licensees in informing the community".)

Throughout the review process, it was noted that the public register provisions were developed in a pre-digital environment and that any future review of the Act would provide an opportunity to revisit and potentially modernise these provisions.

Recommendations

5. Amend the public register section of the EPA website to clarify the context and role of the public register, what is available online and what is available on request from the EPA.
6. Expand the online index to include notifications from licensees relating to serious or material environmental harm once this information is available in a suitable format.
7. Note the ongoing policy commitment to enhance the online public register and the addition of new datasets scheduled in 2020.

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8. Provide in principle support that any future review of the Environment Protection Act 1993 incorporate consideration of options to modernise the public register provisions.

3.3 Role of licensees in informing the EPA and the community

Any persons, including licensees, are required to notify the EPA of a range of matters under the provisions of the *Environment Protection Act 1993*, including actual or threatened serious or material environmental harm and harm to groundwater (underground aquifer water). Licensees may also, through condition of licence, be required to conduct monitoring activities and make results available on their websites or engage with their local communities.

In addition to these provisions, the EPA actively encourages licensees to engage with their local communities and has developed tools such as an *Industry Guideline for Community Engagement* to facilitate better engagement.

The Board supports the concept that industries require a 'social licence to operate' from their communities, beyond any mandatory provisions that the EPA may be able to enforce through regulation, enforcement or guidance.

The Board has recommended several initiatives to reinforce this concept.

Recommendations

9. Remind and educate licensees on their mandatory reporting obligations under the *Environment Protection Act 1993*, and to make reporting easier and more consistent.
10. Note that an internal policy will be developed to create a more standardised approach to recording of reports received under Recommendation 6.
11. Promote the importance of a social licence to operate to regulated industries and encourage them to keep their communities informed of activities at their sites.
12. Incorporate public notification principles in a new induction kit for licensees, as well as through an update of the *Industry Guideline to Community Engagement* and *Site Contamination Guideline to Community Engagement*.
13. Endorse the amended Engagement Charter and support its release for public comment.
14. Note the planned communication and engagement initiatives.

Summary of recommendations

Public notification of environmental incidents

1. Reiterate the Board's commitment to public communication, community engagement, and making more information available online.
2. Endorse the draft Public Notification Commitment Statement and support its release for public comment.
3. Support integration of public notification principles into the draft Engagement Charter, to be released for public comment (Attachment 3).
4. Require the development of a procedure by the agency to give effect to the commitment statement, which:
 - (a) improves transparency of the principles used to determine public notification decisions, and
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Public register

5. Amend the public register section of the EPA website to clarify the context and role of the public register, what is available online and what is available on request from the EPA.
6. Expand the online index to include notifications from licensees relating to serious or material environmental harm once this information is available in a suitable format.
7. Note the ongoing policy commitment to enhance the online public register and the addition of new datasets scheduled in 2020.
8. Provide in principle support that any future review of the *Environment Protection Act 1993* incorporate consideration of options to modernise the public register provisions.

Role of licensees in informing the EPA and the community

9. Remind and educate licensees on their mandatory reporting obligations under the *Environment Protection Act 1993*, and to make reporting easier and more consistent.
10. Note that an internal policy will be developed to create a more standardised approach to recording of reports received under Recommendation 4.
11. Promote the importance of a social licence to operate to regulated industries and encourage them to keep their communities informed of activities at their sites.
12. Incorporate public notification principles in a new induction kit for licensees, as well as through an update of the *Industry Guideline to Community Engagement* and *Site Contamination Guideline to Community Engagement*.
13. Endorse the amended Engagement Charter and support its release for public comment.
14. Note the planned communication and engagement initiatives.

Attachment 1 Terms of reference

To undertake a review of the EPA's provision of information to the public as it relates to environmental incidents, including public notification processes and the provisions of the public register.

The Committee will report its findings and specific recommendations for reform to the Board, with reference to the following:

Objectives

1. Review the criteria of when and how the EPA should proactively notify the public of environmental incidents.
2. Review policies and protocols regarding the recording of information on the public register under section 109(3)(h) including where there are potential evidentiary or natural justice obligations as part of a pending EPA investigation or prosecution.
3. Identify opportunities to improve access to the public register.
4. Identify mechanisms and thresholds for placing a legal obligation on licensees to notify their local community of environmental and/or public interest incidents.
5. In the context of the review, consider how ongoing improvements can be made in engagement with local communities, residents and businesses.

Governance

The Subcommittee will be chaired by a Member of the Board, Dr Stephen Christley.

The Subcommittee will comprise three Board members – Dr Christley (chair), Christine Trenorden and Helen Macdonald. A reference group will be formed including members with expertise in public notification practices from government agencies with similar notification functions.

The Subcommittee will be supported by dedicated resources from the Agency.

Draft findings and recommendations of the Committee will be presented to the Board by February 2020. A report detailing final recommendations is to be presented to the Board at its March 2020 meeting.

The report will be submitted to the Minister for his consideration and published on the EPA's website.