

# Environmental Monitoring Information Disclosure Policy

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## Purpose

To set out the policy approach to the:

- exercise of the discretion by the Director, Environment Protection Authority to release environmental monitoring information pursuant to section 23AA of the *Environmental Management and Pollution Control Act 1994* (the Act); and
- active disclosure of information collected under Part 5A of the Act and/or the *Underground Petroleum Storage Systems Regulations 2020* by the Director, Environment Protection Authority as Principal Officer.

## Definitions

**Active Disclosure** means the disclosure of information by a public authority or a Minister in response to a request made otherwise than under Division 2 of Part 2 of the *Right to Information Act 2009*.

**Disclosing relevant information** means providing relevant information by:

- (i) publication; or
- (ii) providing it to members of the public or a person or a body; or
- (iii) making it available for viewing by members of the public or a person or body.

**Relevant information** means information that:

- (a) results from, or relates to, monitoring of the environmental effects of an activity, including but not limited to any of the following:
  - (i) the results of any type of test or measurement of any emissions, discharge or deposition of a substance;
  - (ii) reports as to the condition of the environment at the place where the activity occurs or that is in the proximity of that place;
  - (iii) any interpretation, or analysis, of such results or reports;
  - (iv) any photographs, visual recordings, audio recordings or audio-visual recordings; and
- (b) is required, under an environmental licence, environment protection notice, permit, environment protection policy or under environmental standards, to be collected; and
- (c) is provided under the *Environmental Management and Pollution Control Act 1994*, or another prescribed Act, to the Board or the Director, otherwise than in accordance with a requirement imposed on a person under section 43 or section 92.

**Excluded Information** refers to relevant information the Director considers, pursuant to section 23AA(4), to be information related to the business affairs of a person, other than a public authority, which, if it were information of a public authority, would be exempt information within the meaning of the *Right to Information Act 2009*.

**Pollutant** includes –

- (a) a gas, liquid or solid;
- (b) an odour;
- (c) an organism (whether alive or dead), including a virus;
- (d) energy, including noise, radioactivity and electromagnetic radiation; or
- (e) a combination of pollutants –

that may cause environmental harm.

**Public Authority** means –

- (a) an Agency, within the meaning of the *State Service Act 2000*;
- (b) the University of Tasmania;
- (c) the Police Service;
- (d) a council;
- (e) a statutory authority;
- (f) a body, whether corporate or incorporate, that is established by or under an Act for a public purpose;
- (g) a body whose members, or a majority of whose members, are appointed by the Governor or a Minister of the Crown;
- (h) a Government Business Enterprise, within the meaning of the *Government Business Enterprises Act 1995*;
- (i) a council-owned company; and
- (j) a State-owned company.

## Scope

This policy covers:

- The process for providing and/or publishing relevant information pursuant to section 23AA of the Act; and
- The process for the active disclosure of information collected under Part 5A of the Act and/or the *Underground Petroleum Storage Systems Regulations 2020*.

This policy does not cover:

- The release of information that does not meet the definition of relevant information. The release or otherwise of this type of information is covered by the provisions of the *Right to Information Act 2009*, as section 23AA of the Act does not override or replace the operation of the *Right to Information Act 2009*.

- The release of information relating to environmental assessments under sections 25 and 27, the release of this information is required by section 74.

## Principles

The principles underlying this policy are:

- Transparency of environmental monitoring information for activities regulated by the EPA [aligns with schedule 1, Part 2-3(f)];
- Informed participation by the Tasmanian community in the environmental management processes of the EPA [aligns with schedule 1, Part 2-3(f)];
- Accountability of the EPA for its decisions and actions;
- Facilitate the provision of environmental monitoring information [aligns with schedule 1, Part 2-3(f)].

## Accountabilities

Section 23AA provides the Director with the power to publish, provide or make available for viewing relevant information in a manner and form that they think fit. Therefore, it is the Director who makes the determination as to whether relevant information should be released and in what form. The Director may delegate this function to the Executive Director Environmental Assessments, Director – Finfish Compliance, Director Environmental Regulation, Branch Managers or Section Managers of the EPA under section 16 of the Act.

The active disclosure of information collected under Part 5A of the Act and/or the *Underground Petroleum Storage Systems Regulations 2020* to parties making a request will be determined by the Director. The Director may delegate this function to the Executive Director Environmental Assessments, Director Environmental Regulation, Branch Managers or Section Managers of the EPA.

## Staff Requirements

Only the Director (or delegate) has the power to release information under this policy.

## Information Release Categories

The relevant information to be released under this policy can broadly be categorised into four release categories –

- (1) public release via publication on a website;
- (2) direct provision to a person or body upon request;
- (3) made available to a person or body for viewing either via a website, in person at EPA offices or via secure email link;
- (4) excluded from release under section 23AA.

## Website Publication

Relevant environmental monitoring information that the EPA holds will be published, or able to be requested, on its website. This includes management plans (except site rehabilitation plans that are not active), annual environmental reports and other monitoring reports and data required to be provided to the EPA, by a proponent under an environmental licence, environment protection notice, permit, environment protection policy or an environmental standard.

Publication of this type of relevant information will be added to the website as soon as practicable after the EPA has received the information and made the determination that it complies with the requirements of the legal instrument under which it was provided and is to be published on the web. Information of this nature will generally only be available for a period of three years, with archived information available on request.

## Direct Provision

There are some forms of relevant environmental monitoring information that the EPA holds that is sensitive or is in a form that is not suitable for web publishing and the routine disclosure of that information may not be appropriate or of widespread interest. This includes but is not limited to:

- Air quality data reports following smoke complaints;
- Environmental quality data for inactive or rehabilitated sites; and
- Sound recordings collected during noise surveys.

In this instance, the EPA will disclose this information directly to an individual on request.

Information that is directly provided to the individual requesting it essentially becomes publicly released, and the EPA will arrange, where practical and feasible, to also publish the information on its website. An exception to this is where the person who requested the information is the owner, or purchaser of the land to which the report relates.

Where the information is in the form of an audio record, the person requesting the information will need to arrange a time to come into the EPA offices (Hobart, Launceston or Devonport) to listen to the recording.

## Active Disclosure

When the EPA receives a request for information including records of contamination on specific certificate of titles via the Contaminated Land Search Request form, the information will be actively disclosed provided the individual requesting the information has a personal or professional link to the property to which the information relates. A personal or professional link includes:

- being the owner of the property;
- a person who is seeking to purchase the property;
- a consultant undertaking a follow-up assessment of the property who would like to access previous reports to better understand the context of the property; or
- a neighbour living within close proximity of the property.

Information that is actively disclosed to an individual requesting it may be considered likely to be publicly released and where practical and feasible, the EPA will also publish the information on its website. An exception to this is where the person who requested the information is the owner, or purchaser of the land to which the information relates.

## Available for Viewing

The EPA will make video environmental monitoring data available for viewing via a secure email link. The interested party will request access to a particular video(s) via an online form, and a secure link to the videos requested will be provided via return email. The link will remain active for 30 days post sending to the applicant, and if the person requires access to the link for longer than 30 days they can resubmit their request. This function will be available early 2024.

## Excluded from Release under Section 23AA

Environmental monitoring information within the scope of the definition of relevant information will be excluded from release under this policy and section 23AA of the Act if the Director forms the view that the information in question would be exempt from release under the *Right to Information Act 2009*. In order to form this view the Director must consider whether the information in question is related to the business affairs of a person, other than a public authority, which, if it were information of a public authority would be exempt from release under that Act. In other words, the Director has the discretion to decide whether the relevant environmental monitoring information being considered for release, if it had been prepared by a public authority, would be exempt from release under the *Right to Information Act 2009*.

To be exempt from release under the *Right to Information Act 2009* the information of a public authority the meets the requirements of section 38 of the *Right to Information Act 2009*. Namely the information must fit into one of the following categories–

- (a) a trade secret; or
- (b) information of a business, commercial or financial nature that would, if disclosed, be likely to expose the entity to competitive disadvantage.

Where the information consists of the result of scientific or technical research the information must –

- (a) be research that could lead to a patentable invention; or
- (b) where the disclosure would release results in an incomplete state this would be likely to expose a business, commercial or financial undertaking unreasonably to disadvantage; or
- (c) where the disclosure of results before the completion of the research would be likely to expose the entity or the person carrying out the research unreasonably to disadvantage.

It is unlikely that the final category will be applicable to environmental monitoring information held by the EPA, as it involves information that is:

- (a) contained in a submission by a student in respect of an examination, an examiner's report or any such similar record; and
- (b) the use for which the record was prepared has not been completed

Note section 38 of the *Right to Information Act 2009* is one of the exemptions that is subject to the public interest test, for which the matters that are considered relevant when assessing public interest are contained in schedule I of that Act. In effect a determination needs to be made that the release of the potentially exempt information under section 38 is not in the public interest. For further information on case law around this matter, refer to the Ombudsman's website ([Ombudsman Tasmania](#)).

A determination by the Director that information is excluded from release under this policy and section 23AA does not preclude an application for release under the *Right to Information Act 2009*. If

an application is made under the *Right to Information Act 2009* the information will be assessed for release under the provisions of that Act by a designated Right to Information Officer and a separate decision regarding its exemption from release will be made.

Information provided in accordance with a requirement under section 43 or section 92 of the Act is not relevant information. Environmental monitoring information that is not relevant information will not be released under section 23AA of the Act. However, this information is still subject to the provisions of the *Right to Information Act 2009* and as such, a person may make an application for this information under that Act. The assessment of the information and a decision made as to its release will be made by a designated Right to Information Officer in accordance with the provisions of the *Right to Information Act 2009*.

## Information to be released

Information of the following types will be routinely released or released upon request includes but is not limited to:

- Annual Environmental Reviews;
- Site specific environmental monitoring reports that relate to approved discharges of pollutants beyond the area of the land/site;
- Environmental Management Plans required to be submitted to the Director by permit, environment protection notice or licence condition;
- Environmental surveys undertaken as a requirement of a management plan or condition, where the parameter being surveyed is beyond the area of the land/site or water;
- Environmental monitoring reports required to be completed following the release of a pollutant beyond authorised discharge limits;
- Environmental monitoring information requested and submitted under an environment protection notice types 44(1)(a), (b), (c), (e), 44(1A) and 44(1B).
- Environmental monitoring and assessment information requested and submitted under a request to vary a permit by way of an environment protection notice types 44(1)(d);

## Information not to be released under section 23AA

Under this policy the EPA will not be releasing the following forms of information under the provisions of section 23AA. An application for the following types of information may still be made and determined under the *Right to Information Act 2009*

### Within Property Boundary

Relevant information collected by an individual or company whilst undertaking environmental monitoring within the boundary of the site (either terrestrial or marine) as required by an environmental licence, environment protection notice, permit, environment protection policy or under an environmental standard that is not related to the release of a pollutant that leaves the site and which is not included in an Annual Environmental Review.

Whilst it is acknowledged that this type of information may fall within the definition of relevant information, the environmental effects that it is monitoring are wholly contained within the boundary of the site and the information is for the purposes of ensuring that the individual or

company is aware of and manages the environmental footprint of the activity within the property boundary.

Whilst information collected from environmental monitoring within the property boundary will not be released under this policy, it should be noted that this information is still subject to the provisions of the *Right to Information Act 2009* and may be released, if not deemed exempt, under that Act.

## Information Provided as part of an Assessment

Environmental monitoring information provided to the EPA as part of a proposal assessment process under section 25 and 27 or the authority of section 74 is provided so that the EPA can undertake its statutory function of assessing the potential environmental impacts of a proposal, with a focus on minimising environmental harm, nuisance and pollution relating to noise, air quality, water quality and natural values.

Information provided as part of the assessment of a proposal is publicly released in accordance with the requirements of Division 1A of the Act, and therefore there is no need to include consideration of this information for release under section 23AA of the Act.

## Trade Secrets

Information relating to a trade secret used in any undertaking or equipment that has been obtained or provided to the EPA will not be released under this policy or the provisions of section 23AA of the Act. The restrictions on the release of trade secrets contained in section 23 of the Act remain in place.

## Procedure for Disclosure

Environmental monitoring information within the scope for release pursuant to section 23AA will be released in the following manner:

- Website – routine information released on the website will be released throughout the year and will occur once the relevant information has been determined to meet the requirements of the environmental licence, environment protection notice, permit, environment protection policy or environmental standard;
- Direct Provision – will be provided directly to a person on request. Once released to the person, the relevant information may also be released on the EPA website;
- Active Disclosure – will be provided directly to a person on request made on the Contaminated Land Search Request Form and may also be released on the EPA website;
- Available for Viewing – will be provided on request via secure email link. Requests can be made via the EPA website or the Salmon Portal.

Information that may be excluded information will be provided to the Director for a determination as to whether it is excluded as defined by the requirements of section 23AA. If the information is not excluded it will be released in one of the four ways mentioned above.

## Accessing information in other formats

Consistent with the accessibility requirements, if it is necessary to provide information in a format other than electronic or written, arrangements can be made for hard copy documents to be available for viewing and/or advice will be sought on methods and software to convert text to audio.

## Relevant Legislation

- *Right to Information Act 2009*
- *Personal Information Protection Act 2004*
- *State Service Act 2000*
- *Archives Act 1983*
- *Environmental Management and Pollution Control Act 1994*

## Publishing Information

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