

Factsheet

26. Air pollution

There are a number of activities that can impact on air quality – emissions from transport and industry, smoke from fires and wood stoves, dust from land clearing, and spray drift from chemical applications. The effects of poor air quality include damage to human health and environmental degradation.

This fact sheet explains the laws protecting air quality in Western Australia, and identifies the bodies responsible for their management. For information on noise, see **Fact Sheet 25: Noise**.

What is “air pollution”?

In this Fact Sheet, “air pollution” means the introduction of any impurity into the air. This includes dust, smoke, particles, gases, fumes, odours and radioactive substances.

National air quality standards have been agreed to by all States and Territories. These standards (called the “National Environment Protection Measure for Ambient Air Quality”, or Air NEPM) set limits on six pollutants which must be met by 2008. The six pollutants that are currently subject to the NEPM are carbon monoxide, ozone, sulfur dioxide, nitrogen dioxide, lead and particles.

Who regulates air pollution?

The chief controls on air pollution are through the *Environmental Protection Act 1986*. This Act contains general controls on activities causing pollution and other forms of environmental harm. The Act is administered by the Department of Environmental Protection.

Environmental Protection Policies (EPPs) created under the *Environmental Protection Act* are also relevant for controlling polluting activities in relation to a particular area or industry. EPPs are developed by the Environmental Protection Authority and approved by the Minister for the Environment. Once they become law, they are usually enforced by the Department of Environmental Protection.

Other laws that are relevant include health laws (in relation to pesticide use and nuisances), land degradation laws (which control activities leading to wind erosion), planning laws (which may require developments are carried out to reduce dust), and occupational health and safety laws (which require employers to provide a safe work environment).

What controls apply to air pollution?

Offence of causing pollution or environmental harm

Under the *Environmental Protection Act*, it is an offence for a person to cause pollution or to allow an unreasonable emission from any premises unless the pollution or emission was:

- permitted under a “works approval” or “licence”;
- as a result of an emergency or other exempt activity; or
- permitted under an approval granted by the Minister for the Environment.

“Pollution” is defined to include any direct or indirect alteration of the environment to its detriment or degradation arising from a discharge of waste or emission of noise, odour or electromagnetic radiation. An “unreasonable emission” means an emission of noise, odour or electromagnetic radiation which unreasonably interferes with the health, welfare, convenience, comfort or amenity of any person.

Important disclaimer:

This Fact Sheet is for general information purposes. Important legal details have been omitted to provide a brief overview of this area of the law. If you require legal advice relating to your specific circumstances you should contact the Environmental Defender's Office WA (Inc) or your solicitor. The EDO takes no responsibility for any loss or damage resulting from any error in this Fact Sheet.

The penalty for intentionally causing pollution is \$500,000 for an individual or \$1 million for a company.

Full details of the general controls on pollution and environmental harm are available in [Fact Sheet 27: Pollution and environmental harm](#).

Environmental Protection Policies

Kwinana atmospheric wastes

Special controls apply to managing sulphur dioxide and particulate emissions in the Kwinana industrial area south of Fremantle. These controls are by way of the *Environmental Protection (Kwinana) (Atmospheric Wastes) Policy 1999*.

Under the Policy, the Chief Executive Officer (CEO) of the Department of Environmental Protection (DEP) may determine the maximum permissible quantities of atmospheric waste that can be discharged in the area. The area is divided into three areas (Areas A, B and C), being the industrial area, the buffer area and the rural/residential area.

The Policy sets the limits for both sulphur and suspended particulates in each of the three areas, with stricter limits imposed in respect to the rural/residential area. The Policy is enforced through the CEO issuing an environmental protection notice or by conditions placed on licences or works approvals. Penalties apply to persons failing to abide by the terms of a notice or conditions in a licence or works approval (see [Fact Sheet 27: Pollution and environmental harm](#)).

Goldfields sulphur dioxide emissions

Sulphur dioxide emissions from mining operations in the vicinity of Kalgoorlie-Boulder are subject to control under the *Environmental Protection (Goldfields Residential Areas)(Sulphur Dioxide) Policy 2003*. Under this Policy, the residential areas of Kalgoorlie-Boulder, Kambalda, Coolgardie and Kurrawang Aboriginal Reserve are identified and ambient air quality limits are imposed. The Policy sets a maximum permitted sulfur dioxide concentration within the protected areas. This level is set at 0.35 parts per million (ppm) in 2003, falling to 0.25ppm for each year from 2005. The limit is enforced as a condition of licences or works approvals issued to sulfur dioxide emitting industries in the area. Failure to comply with a condition in a licence or works approval is an offence and subject to a fine of \$62,500 for an individual or \$125,000 for a company. The CEO can also issue an environmental protection notice where an emission does not comply with the Policy. For more information on enforcement options, refer to [Fact Sheet 27: Pollution and environmental harm](#).

The Minister may review the Policy where the sulphur dioxide concentration in residential areas exceeds 0.20ppm on more than a set number of days per year. For 2003, the number of days set is three, reducing to one day per year from 2008.

Clean fuel standards

Since 1 March 2001, all diesel fuel sold in Western Australia must contain less than 500mg of sulphur for every kilogram of diesel. This is a reduction in the previous standard of 5,000mg of sulphur per kilogram of diesel.

The following controls apply with respect to petrol sold in Western Australia:

- benzene not to exceed 1% v/v of fuel from 2001;
- methyl tertiary-butyl ether (MTBE) not to exceed 0.10% v/v from 2001;
- petrol sold in summer must meet a specified evaporation limit to prevent pollution;
- fuel distributors or suppliers must not sell unleaded petrol which contains more than 1.3mg of phosphorous per litre;
- leaded fuel banned from 1 January 2000.

Vehicle emissions

It is an offence for a person to interfere with or fail to maintain a device on a vehicle that is used to control or prevent discharges to the environment. It is also an offence for a person to drive a vehicle on a road that causes nuisance to others, without its emission control devices operating, or which does not comply with relevant vehicle standards.

Smoke

Wood stoves

A major contributor to winter haze in urban areas in the south of the State is the use of wood-burning stoves. Two legal controls have been introduced to address the problem.

First, all wood stoves sold in Western Australia (whether new or secondhand) must comply with the emissions standard AS4013. Failure to comply with this law is an offence, the maximum fine for which is \$5,000.

Second, a person must not sell firewood with a moisture content of greater than 20% in the Perth metropolitan area (including the Shire of Serpentine-Jarrahdale and the City of Mandurah) without a permit from the CEO of the DEP. Nor can firewood be sold anywhere in the State where it has been chemically treated, painted or coated with plastic. Penalty for either of these offences is a maximum fine of \$5,000.

Note that smoke from residential chimneys is not subject to the nuisance provisions of the *Health Act 1911* (see below).

Backyard incinerators; burning leaves

Many local governments have introduced local laws (formerly called “by-laws”) to restrict burning refuse or garden material in residential areas. For example, the Town of Claremont’s *Health Local Laws 1997* prohibit a person burning rubbish or refuse without the approval of the environmental health officer. Such local laws are made under the *Health Act*, which (among other things) permits local laws to be made for the prevention of nuisances.

Burning off must also comply with the *Bush Fires Act 1954*, but this Act is directed primarily at fire safety rather than preventing nuisance or environmental damage from fires and smoke.

Check with your local government to ascertain current burning restrictions in your area.

Burning on agricultural and pastoral land

Many farmers burn stubble on agricultural land to reduce the risk of disease in winter crops, whilst pastoralists burn native vegetation to promote pasture growth. This practice can cause significant localised air pollution and increases the risks of erosion. The *WA State of the Environment Report 1998* stated that stubble burning “is unacceptable and should be discouraged”.

There are few controls on burning on agricultural and pastoral lands. It is open to local governments to pass local laws controlling the practice, but few (if any) have done so. A local government may also order a landholder to cease the practice where it is causing a nuisance to other people within the area (see ‘Nuisances under the Health Act’ below). Where burning poses a risk of erosion, the Commissioner of Soil and Land Conservation can issue a soil conservation notice to prevent the activity continuing, but this is not directly related to air quality concerns (see [Fact Sheet 32: Land degradation](#)).

Controlled burns of State forests and conservation areas

Controlled burns conducted by the Department of Conservation and Land Management (CALM) in autumn and spring can cause major haze problems in the south west of the State. The management of State forests and conservation areas is largely governed by the *Conservation and Land Management Act 1984*. Under this Act, CALM is required to manage the land in accordance with a management plan, or in the absence of a management plan, in accordance with the general provisions of the Act. Further information on the management of CALM land can be found in [Fact Sheet 10: State forests and timber reserves](#) and [Fact Sheet 11: Conservation reserves](#).

Burning on CALM land that causes pollution is likely subject to the general pollution controls under the *Environmental Protection Act* (discussed above).

Asbestos dust

As a general rule, it is an offence to use, sell or supply an asbestos product without approval of the Executive Director of Public Health. It is also an offence for a person to handle asbestos products without taking reasonable measures to prevent asbestos fibres entering the atmosphere. “Reasonable measures” includes using water to keep airborne material containing asbestos to a minimum, using only vacuum cleaning equipment designed to collect asbestos fibres or wetting the area before sweeping up material containing asbestos. For further information on asbestos, see [Fact Sheet 30: Contaminated sites](#) and [Fact Sheet 31: Waste management](#).

Chemical spray drift

A person must not use pesticides or herbicides in a way which endangers human health. Aerial spraying must also be carried out in a way which does not damage sensitive crops. For more information on the use of pesticides and herbicides, refer to [Fact Sheet 28: Pesticides](#).

Nuisances under the *Health Act*

Note that under the *Health Act*, an environmental health officer of a local government may order a person causing a “nuisance” to cease the activity. Failure to comply with a direction is an offence, and is subject to a maximum fine of \$10,000.

The type of nuisances regulated by the Act include sanitary conditions within a house, condition of animals kept at a property or where rats are likely to breed. Note however that the definition of nuisances does not include nuisance from smoke being emitted from a private residence.

Common law

Persons affected by air pollution may have a claim for damages under the common law – especially where the pollution is on-going and results in actual physical harm. For more information, see [Fact Sheet 2: Common law](#).

How can you become involved?

If you are concerned about air pollution, you can take the following action:

- bring the matter to the attention of the person causing the pollution and ask them to alter their activities;
- if the pollution continues, report the matter to the DEP (see [Fact Sheet 27: Pollution and environmental harm](#));
- monitor local government agendas for development proposals that could cause air pollution (see [Fact Sheet 4: Development controls](#));
- refer development proposals likely to lead to significant environmental harm to the Environmental Protection Authority for an environmental impact assessment (see [Fact Sheet 5: Environmental impact assessment in WA](#) and [Fact Sheet 6: Commonwealth environmental impact assessment](#)).

Contacts and further information

For emergency pollution reports, telephone the DEP on (08) 9222 7123 or after hours 1800 018 800

Environmental Protection Authority, Perth	Tel: (08) 9222 7000
Department of Environmental Protection, Perth	Tel: (08) 9222 7000
Department of Health, East Perth	Tel: (08) 9222 4222
For copies of WA legislation considered in this fact sheet, contact the State Law Publisher	Tel: (08) 9321 7688

The Environmental Defender’s Office WA (Inc)

The Environmental Defender’s Office WA (EDO) is a community legal centre specialising in public interest environmental law.

The objects of the EDO include:

- ◆ to provide community groups and individuals with legal advice and representation to help protect the environment;
- ◆ to promote law reform that improves environmental protection; and
- ◆ to provide community education about environmental law.

The EDO is a non-profit, non-government organisation. The EDO receives its principal funding from the Federal Attorney-General’s Department. However, these funds are limited and donations from the public provide a vital source of funds for many of our activities. Donations over \$2 are fully tax deductible. The EDO also welcomes people with a commitment to the environment to join as members.

If you require legal advice on an environmental issue or wish to find out more about the EDO, please contact us at the following address:

Environmental Defender’s Office WA (Inc)
Second Floor, Kings New Office Tower
533 Hay Street, PERTH WA 6000

Tel: (08) 9221 3030 Fax: (08) 9221 3070

Email: edowa@edo.org.au Web: www.edo.org.au/edowa

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