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Statutory provisions for the management of unauthorised liquid waste discharges to sewerage systems in non-metropolitan NSW

This circular outlines the application of the provisions of the *Protection of the Environment Operations Act (POEO Act) 1997* for the management of *unauthorised discharges* to the Local Water Utility's (LWU) sewerage systems in non-metropolitan NSW. The term '*unauthorised discharges*' in this circular refers to any liquid trade waste discharge that does not have the council's prior approval to discharge to the LWU's sewerage system including any discharges which fail to comply with the council's approval conditions.

The need to clarify the present provisions in the POEO Act in relation to the management of unauthorised discharges to an LWU's sewerage system has been raised by a number of LWUs and also at the September 2005 AWA Trade Waste Conference in Tamworth.

In response, DEUS has consulted the NSW Department of Environment and Conservation. The outcome of this consultation in relation to use of the provisions of the POEO Act for the management of unauthorised discharges to a LWU's sewerage system is set out below.

Each LWU is responsible for the management of liquid waste discharges to its sewerage system. Under section 68 of the *Local Government Act 1993*, a person is required to obtain approval from a council prior to discharging waste into the sewer of a council. Councils have powers under sections 124, 626, 627 and 628 of the *Local Government Act* for managing unauthorised discharges. Council can also use powers under the POEO Act. The *Liquid Trade Waste Management Guidelines, 2005 (Guidelines)* briefly outline the enforcement provisions in current legislation (pages 44 to 47). The Guidelines also set out non-regulatory tools for the management of liquid waste discharges. These include adoption and promotion of appropriate liquid trade waste policies, implementation of appropriate liquid trade waste and sewerage fees and charges, monitoring and education of dischargers.

Under the POEO Act, the local council is the Appropriate Regulatory Authority (ARA) for certain non-scheduled activities. Exercising this function includes issuing notices under the POEO Act, such as clean-up notices, prevention notices, penalty notices and noise control notices.

The power to issue notices is the key regulatory tool for councils under the POEO Act. Under section 120 of the POEO Act a person who pollutes any waters is guilty of an offence. Clause 55 of the *Protection of the Environment Operation (General) Regulation 1998* provides that section 120 does not apply if the discharger has the council's approval to discharge particular wastes into its sewerage system.

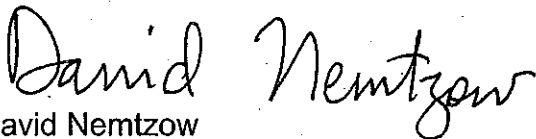
Council's power to issue notices under the POEO Act is in addition to its power to give orders under section 124 of the *Local Government Act 1993*.

Therefore, discharging of waste into an LWU's sewerage system without prior approval, including failure to comply with approval conditions, can constitute an offence under section 120 of the POEO Act as the exemption from this section conferred by cl.55 of the *POEO (General) Regulation* would not apply.

While there are regulatory provisions in NSW legislation for the management of liquid waste discharges to the LWU's sewerage system, LWUs are strongly encouraged to also make full use of non-regulatory provisions, as set out in the *Liquid Trade Waste Management Guidelines*.

LWUs are reminded that trade waste and sewerage charges can be imposed on trade waste dischargers whether or not the discharger has applied to the council for approval.

Any enquires in relation to the above matter should be directed to Padmini Vitharana on 8281 7429, padmini.vitharana@deus.nsw.gov.au. Thank you for your consideration of this matter.



David Nemtzow
Director-General
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