

New Commonwealth Auditing Procedures for environmental approvals

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The Australian Department of Environment and Water released in February 2007 *EPBC Act – Compliance Auditing*. This follows the announcement last year that the Department will be carrying out compliance audits during 2007 of about 10% of projects with environmental approvals that are subject to conditions, with the audit findings to be made publicly available.

Audits are proposed to be conducted on projects across all industries, including mining and petroleum.

The outline of the auditing procedure is as follows:

'1. Once a project has been selected for auditing, a Departmental audit officer will contact the project's proponent or auditee to arrange a suitable time for an on-site visit. The officer will outline the audit process and explain any additional requirements.

2. An on-site assessment of the extent of compliance will be conducted.

3. At the completion of this assessment the findings will be discussed with the proponent.

4. Following the audit, a summary report will be provided to the proponent outlining the findings of the audit and any necessary corrective actions.

5. Audit officers will be available throughout the audit process to discuss any questions or concerns that may arise.

6. All audit activity and report summaries will be posted on the Department's web site. Selected cases will also be publicised through environmental industry and general media. This is to encourage best practice behaviour within the regulated community.'

Any project with a Commonwealth environmental approval should give priority to checking compliance now, so that any issues can be addressed in advance of any audit.

The auditing process underway needs to be understood in the context of the important amendments to the *Environment Protection and Biodiversity Conservation Act*

that commenced on 19 February 2007. Some of the amendments relevant to compliance issues include:

- Many offences have now become strict liability offences
- Numerous penalties have increased.
- The privilege against self-incrimination was removed, for failing to provide information or documents (Refer to new Section 486J).
- The holder must take all reasonable steps to ensure that any person undertaking any part of the action is aware of, and complies with, any relevant approval conditions. Conversely, if a non-holder such as a contractor is in breach of conditions but has not been informed about the conditions, this will be a defence. (This has obvious implications for the need for a document trail to demonstrate adequate systems of informing contractors and employees.)
- A related issue is that 'landholders' are proposed to be liable for the actions of other persons on their land for a series of civil penalty provisions and offences. The term 'landholder' includes a lessee or occupier. Landholders may be liable in circumstances where the landholder failed to take reasonable steps to prevent the contravention, and where it had the capacity to influence directly the conduct of the principal offender. (Refer to new Division 18A of Chapter 6 Part 17, particularly Section 496A.)
- Managers at an operational level can be personally liable for offences by their companies, rather than just directing minds of the body corporate. The defence is that they took reasonable precautions or exercised due diligence. (Refer to Section 493.)

The publication is available on the Department's website at <http://www.environment.gov.au/epbc/publications/pubs/compliance-auditing.pdf>