Industry Regulation fact sheet

Industry Regulation fees

This fact sheet provides an overview and guidance on the Department of Water and Environmental Regulation's (DWER) methods for calculating licensing and works approval fees for premises prescribed under the *Environmental Protection Act 1986* (EP Act) and the *Environmental Protection Regulations 1987* (EP Regulations).
Any premises where an activity listed in Schedule 1 of the EP Regulations is carried out at, or above, the specified production or design capacity are prescribed premises and regulated by DWER under Part V of the EP Act.
Prescribed premises require a works approval for construction and either a licence or a registration to operate, and fees are levied in relation to those instruments.

Fee components

Regulation 5DA of the EP Regulations specifies the requirements for payment of licence fees. These must be paid annually and in advance before the anniversary date[1] and for the duration of the licence.
Schedule 4 of the Regulations specifies the annual licence fee units[2] for:

- Part 1 - Premises component;
- Part 2 - Waste; and
- Part 3 - Discharge component.

Regulation 5D(1a) specifies that the annual licence fee is the sum of the Part 1 - Premises component and for a combination of the Part 2 - Waste and Part 3 - Discharge components. Lower discharge quantities will result in a lower annual licence fee. This provides a financial incentive for licensees to reduce their discharge quantities.

General

Applications for a licence, works approval, amendment, registration or transfer are required to be accompanied by the prescribed fees. It is the obligation of the applicant or licence holder to calculate those fees. DWER will validate (and adjust) the applicant's fee calculations as required.

Licence application fees

The fee for the first year of application is paid at the time of lodging the application, but the fee period does not commence until the licence is granted. The date of granting the licence becomes the anniversary date in each year, and a new annual fee is required in advance of the anniversary date in each year for the coming annual fee period.
Since annual licence fees must be paid in advance, their calculation is necessarily based on forward estimates. To ensure that licensees are only charged for actual production and discharge quantities (see also Refunds):

- licensees should ensure their forward estimates are accurate and realistic which will reduce the administrative burden of subsequently claiming refunds for reduced discharges;

[1] This is the annual anniversary of the date of the grant of the licence from the licence commencement date.
[2] Fee amounts are expressed as units or fractions of units, one unit is equivalent to the amount specified in column 2 of the tables in regulation 4(5), 4(6) and 4(7) of the EP Regulations, for the specified financial year.

- where uncertainty prevails in forward estimates licensees should select conservative (higher) values; and
- where a premises is in care and maintenance, it will not be required to amend the licence to avoid normal production or discharge fees. However, the lowest fee units for the Part 1 - Premises component for a specific category will apply, and the waste and discharge components will be waived.

Works approval application fees

Regulation 5BA requires works approval fees be determined from the cost of the works as detailed in Schedule 3, including all costs associated with the construction and establishment of the prescribed premises infrastructure, but excluding:

- the cost of land; or
- the cost of buildings to be used for purposes unrelated to the purposes in respect of which the premises are, or will become, prescribed premises; or
- consultancy fees paid or to be paid in relation to those works.

Amendment application fees

The EP Regulations set the prescribed fees for amendments to works approvals or licences (regulation 5BB). The amendment fee for a licence or works approval is a one-off fee to be paid when submitting the amendment application. In determining the fee, DWER will:

- consider a request for multiple amendment to a works approval or licence as a single amendment where submitted in a single application;
- apply the design capacity of the category of the prescribed premises for works approval and licenses to calculate the fee; and
- where a works approval or licence has multiple prescribed premises categories, the higher unit number will be used to calculate the fee in accordance with regulation 5BB(1)(b).
- No fee will be applicable for amendments as prescribed in section 59 (1) (e), (f), (h), (i) and (j) of the EP Act; and
- no fee will be applicable when an amendment is initiated by the Chief Executive Officer (CEO) or a Delegated Officer

Registration fees

While the registration process is similar to licensing, no fee calculation is necessary because regulation 5B(2) specifies 24 fee units for a registration application unless the occupier of the premises holds a licence in respect of the premises.

Transfer fees

The transfer fee is specified as a fixed dollar value for transfer of a works approval or licence under section 64(1)(b) of the Act.

Late payment

Fees paid within one month after the licence anniversary date must pay an additional late fee of 10 fee units in accordance with regulation 5DA(4).
A licence will cease to have effect if fees are not paid within one month after the licence anniversary date in accordance with regulation 5DA(5). DWER will formally notify the licence

holder that the licence has ceased. Application for a new licence will be required if the licence holder wishes to continue activities resulting in discharges from the prescribed premises. To operate or discharge from a prescribed premises without a licence may constitute an offence.

Discharge of harmless waste onto land

Under Regulation 5F, an amount of 25 fee units for the annual period may be paid in respect to waste discharged onto land if the Chief Executive Officer is satisfied that the method of discharge renders the waste harmless to the environment.

Refunds

Annual licence fees can be refunded in full or in part at the discretion of DWER on application. Refund of annual licence fees can be sought for:

- the premises component if the premises ceases to be prescribed during the period of the licence; and/or
- the difference in the discharge component where the quantity of waste discharged from the premises during the fee period ('the actual discharge') is less than the quantity used to determine the licence fee that was paid for that period.

Where a licence holder or applicant believes they are being charged more than once for the same kind of waste in a discharge or where the two kinds of waste do not have the potential to cause a different environmental impact, they may also be eligible for a refund. Refund applications must provide sufficient information and reasoning to justify the claim.
As fees are charged in advance (for which discharge quantities need to be estimated), any subsequent reduced production can result in less discharge than initially estimated; a licensee can then apply for a refund under Regulation 5H.
Regulation 5O gives the CEO authority to reduce, waive, or refund fees relating to works approvals, licences, or registrations.
If an application is withdrawn during validation, declined, or the application fee is overpaid, the applicant or licensee can apply for a refund.

Disputes

In accordance with Regulation 5I of the EP Regulations, any question (dispute) relating to the calculation of fees, including the quantity or type of waste discharged, will be determined by the CEO.

Calculation of Part 1 – Premises fees

Part 1 - Premises component fees are based on the production or design capacity of the category specified on the licence; these categories are listed in Schedule 1 of the EP Regulations.
For licences with multiple categories, the higher or highest amount payable must be applied as prescribed by regulation 5D(2). Fee units payable for different production or design capacities for each category are prescribed in Schedule 4 Part 1 of the EP Regulations.
The licensees may nominate one of the following for DWER to determine the Premises component:

(a) actual production of the preceding year as reported in the licensee's Annual Audit Compliance Report;
(b) the production or design capacity specified in the licence;
(c) where the forecast production is uncertain, but exceeds that of the preceding year, an average of the preceding year and the maximum licensed production or design capacity; or

(d) where a premises is in care and maintenance, either an estimated production or the lowest fee units for the Part 1 - Premises component for a specific category in Schedule 4 of the EP Regulations will apply and the discharge component will be waived. Note that for premises in care and maintenance status, satisfactory evidence of this status must be provided with the annual licence fee application.
(e) Where the licensee does not nominate one of the above DWER will base the Premises component fee assessment on either:
    - (a); or
    - (b) - in the absence of the information required for (a).

Calculation of Part 2 - Waste fees

Regulation 5D(1a)(b) specifies which categories of prescribed premises may be subject to Part 2 - Waste fees, namely: categories 5, 6, 7, 8, 9, 12, 14, 44, 46, 53, 54A, 70, 80 and 85B.
Part 2 wastes are specified in Regulation 5D(6) and include tailings, bitterns, water to allow mining of ore (dewatering effluent), flyash, and waste water from a desalination plant (brine).
Part 2 specifies the fee units for the mass load of discharge in tonnes per annum. Each Part 2 waste fee component is assessed independently and cumulatively.

For example, a prescribed premises licenced for Categories 5, 6, and 54A would be charged fees for the quantity discharged or deposited for:

- **tailings; and**
- **water to allow mining of ore; and**
- **wastewater from a desalination plant.**

Example 1

For Part 2 Waste types that are in solid or solid slurry form, ie tailings and flyash, and deposited to a containment structure such as a tailings storage facility, Part 2 Waste fees apply. For solid or solid slurry tailings or flyash deposited outside of a containment structure to land or water, Part 3 wastes apply.
Liquid volumes are relatively easily measured, but their mass load is not. Therefore, the mass load of liquid wastes discharged may be calculated from reliable measurements of the discharged volume and its average density over the previous year.
For new premises, estimates or data from similar plants of comparable capacity may be submitted in the first instance.
All evidence of the data, estimates and methodology used should be submitted, and also retained for future reference.
Since fees are charged for the mass loading per annum of waste in the form in which it is discharged, fees are charged for tailings or flyash discharged as slurry on the total wet weight as deposited.
Regulation 5D(6) defines five waste types to which Schedule 4 Part 2 applies. These are discussed in more detail below:

Tailings

Tailings is material left over after separating the valuable mineral fraction from ore, regardless of the separation process employed. Tailings from physical comminution and separation processes such as waste fines, sand fractions or clay slimes are considered as Part 2 wastes.

Waste fees apply to all tailings that are disposed into dedicated containment facilities (apart from backfill of underground workings as discussed below). Tailings disposal methods which attract a fee include:

- tailings that are dry stacked;
- tailings slurries and dry tailings that are deposited into containment structures regardless of the containment's hydraulic conductivity;
- tailings or any component applied to land for soil amelioration or land rehabilitation purposes; and
- tailings discharged into pit voids or valley impoundments.

Part 2 waste fees are not applied where tailings are stabilised through the addition of thickeners and cementing agents and are used to backfill and stabilise underground workings providing the stabilisation process effectively renders the tailings geochemically[3] and geotechnically stable.
Part 2 waste fees are not applied where tailings are discharged directly into the environment. In these circumstances Part 3 discharge component fees apply, based on the composition of the tailings.

Bitterns

Bitterns are the concentrated salt solution remaining after solar evaporation of seawater or brine has precipitated the desired salts. Fees apply to the discharge of bitterns from evaporative processes including waste from solar halite, potash and gypsum production (Category 14). Fees are charged for bitterns directly discharged to the environment such as via channels or infiltration ponds.
Fees also apply to the volume of bitterns indirectly discharged via seepage from solar salt operations. These should be assessed on a case by case basis in consultation with DWER. Evidence of the data and methodology used to calculate discharge should be documented and retained.

Water extracted to allow mining of ore

Fees apply to dewatering water extracted from the ground through bores, pits or sumps to allow mining to occur where that water is subsequently discharged back into the environment. Fees are not charged for any water used on the premises for dust suppression or mineral processing activities. Nor are fees charged for water stored in an impermeable[4] containment pending re-use elsewhere.
Discharge may occur directly through pipes or channels or indirectly through infiltration ponds, trenches or fields.
Fees are charged for water discharged into mine voids unless reliable evidence is submitted that the hydraulic conductivity of the pit floor and walls is less than 1×10^{-9} m/s and there is an absence of fractures in the pit walls. These should be assessed on a case by case basis in consultation with DWER. Evidence of the data and methodology used to demonstrate hydraulic conductivity should be documented and retained.
Where water is temporarily discharged into one pit, then pumped to another pit, Part 2 fees may apply for each destination where the water remains. Factors to be considered include:

- in-pit residence time;

[3] Prior tests should prove that the stabilised tailings are not prone to leaching under a range of pH conditions from pH 2 to pH 12.
[4] For the purpose of fee calculation, impermeable is defined as having a demonstrated hydraulic conductivity of less than 1×10^{-9} m/s.

- water quality;
- the receiving environment; and
- the likely changes to water quality during the in-pit residence time before being transported to the final destination void.

A detailed water balance should be provided demonstrating the volume of water extracted and subsequently discharged to the environment. The water balance should include any additional water sources (such as process water or stormwater) that are mixed and discharged with the abstracted water and any water re-used, as well as water lost through infiltration and evaporation; fees will be charged on the total amount finally discharged.

Flyash

Flyash is a solid (but powdery or particulate) residue predominantly from coal combustion and waste incineration. Flyash materials are often converted to slurry for ease of handling and storage in ash dams; note that the addition of water affects the total waste quantity. Fees apply to flyash and other solid combustion products collected and discharged to the environment and includes:

- flyash captured from flue gas prior to its discharge to air such as from baghouses or electrostatic precipitators (ESPs); and
- bottom ash, the residue that collects at the base of a fire or combustion chamber.

Fees apply to:

- flyash (either dry or slurry) deposited into containment structures regardless of the containment's permeability (i.e. hydraulic conductivity);
- the flyash component of any mixed material such as flyash mixed with mine overburden to backfill mine voids; and
- the flyash component of any material that is applied to land for soil amelioration or land rehabilitation purposes.

Fees do not apply to flyash stabilised through inclusion in engineered materials such as bricks or concrete providing the stabilisation process effectively renders the flyash geochemically and geotechnically stable.

Waste water from a desalination plant

Fees apply to wastewater from desalination plants, which is the concentrated salt solution following the production of freshwater from brackish or saline water by any means, including reverse osmosis (RO) and thermal processes. Fees apply to desalination plants which are prescribed as Category 54A[5] or Category 85B[6] .
Discharge may occur directly through pipes or channels or indirectly through infiltration or seepage.
Fees are not charged for waste water stored in an impermeable[7] containment cell pending re-use or transport to another location.
Fees will be charged on the total amount of wastewater discharged including any additional waters (such as process or cooling water or stormwater) that are mixed and discharged with the wastewater.

[5] if the wastewater is discharged into marine waters and is of greater density than the ambient density of the receiving marine waters.

[6] if the waste water is discharged onto land or into waters (other than marine waters).

[7] For the purpose of fee calculation, impermeable is defined as having a demonstrated hydraulic conductivity of less than 1×10^{-9} m/s.

Part 3 - Discharge components

The waste types that constitute the Part 3 - discharge component are set out in Table 1 and Table 2 of Schedule 4 Part 3 of the EP Regulations. Table 1 specifies discharges into air and Table 2 specifies discharges onto land or into waters.

- Tables 1 and 2 include wastes that can be components of other wastes listed in the tables.

Heavy metals discharged to air (Item 6 in Table 1) may also constitute part of the total particulates discharged to air (Item 2 in Table 1); phosphorus discharged to water (Item 2(a) in Table 2) may also be a component of the total suspended solids in the discharge (Item 3(a) in Table 2)

Example 2

- A separate discharge component fee is payable for every kind of waste specified in Part 3 that poses a different risk to the environment.

Heavy metals discharged into waters can impact the environment through potential accumulation in the environment or living tissue, and can impact the environment by physically altering the characteristics of the naturally occurring water body.

Example 3

- A discharge component fee is payable for both the presence of the heavy metals in the discharge, and the total suspended solids in the discharge (of which the heavy metals are a component) to reflect the different risks to the environment.

Calculation of Part 3 – Discharge component fees

Fee calculations for the Part 3 discharge component of annual licence fees is based on the quantity of waste permitted to be discharged during the licence period averaged over the licence period. This rate can be based on the following:

- accurate measurements of waste discharged from the premises in the year immediately preceding the licence period; or
- accurate estimations of the quantity of waste to be discharged during the licence period, provided that the licence holder has put in place appropriate procedures for the accurate measurement of the waste quantity being discharged.

The extent to which quantities of discharged waste have been accurately measured and/or calculated for the purpose of fee calculations will be determined by DWER.

Particulates in air

Annual fees are payable for the discharge of particulates in air, and for each individual kind of waste listed in Table 1, which may be a component of the particulate matter. (See example 2.)

Total Suspended Solids, Phosphorus and Total Nitrogen onto land or into waters

Annual fees are payable for the discharge of phosphorus and total nitrogen onto land or into waters, and for total suspended solids in liquid waste discharged onto land or into waters.(see example 3.)

Total Dissolved Solids (TDS)

TDS is a measure of the combined content of all inorganic and organic substances dissolved in a liquid.
Where waste in Table 2 is found in solution and is a component of TDS, annual fees are payable for the TDS of the discharge onto land and into waters, and for the individual ions that make up the TDS, if they pose different risks to the environment.

Liquid waste that can potentially deprive receiving waters of oxygen, and surfactants

Item 1 in Table 2 specifies 'liquid waste that can potentially deprive receiving waters of oxygen'. BOD[8], COD[9] and TOC[10] are different analytical methods to quantify the oxygen demand (expressed as kilograms per day) in receiving waters.
Annual fees are payable for the discharge of liquid waste that has the potential to deprive receiving waters of oxygen. Only the parameter that is the most appropriate for the waste stream, as justified by the licence holder and agreed to by the Department attracts the fee.
Where a discharge with high oxygen demand also contains surfactants, the potential environmental effect of depriving waters of oxygen and of discharging surfactants into water are different.
In this case, annual fees are payable for the discharge of liquid waste that has the potential to deprive receiving waters of oxygen, and for the discharge of liquid waste containing surfactants.

Maximum fee amounts

Regulation 5G sets out maximum annual licence fee amounts (fee caps). These caps vary depending upon whether:

a) the calculated Part 3 discharge fee amount is predominantly attributable to discharges to air or onto land; or

b) the calculated Part 3 discharge fee based predominantly on discharges to air or onto lands, is subject to a 50% increase due to an applicable standard (discussed further below); or

c) the calculated Part 3 discharge fee amount is predominantly attributable to discharges into waters; or

d) the calculated Part 3 discharge fee amount is equally attributable to discharges to air, onto land or into waters;

When initially calculating fee amounts, applicants/licence holders should disregard the maximum amounts listed under Regulation 5G. DWER will apply the relevant fee cap when validating the application.

[8] BOD is the Biochemical (also known as Biological) Oxygen Demand of the waste
[9] COD is the Chemical Oxygen Demand of the waste
[10] TOC is the Total Organic Carbon in organic compounds found in the waste.

Approved Policies

Regulation 5E(4) specifies that, where an applicable standard exists for the discharge of a particular kind of waste, then a 50% increase in the Part 3 discharge component fee shall apply.
The approved policies relevant to this section are the:

- Environmental Protection (Goldfields Residential Areas) (Sulfur Dioxide) Policy 2003; and
- Environmental Protection (Kwinana) (Atmospheric Wastes) Policy 1999 and Environmental Protection (Kwinana) (Atmospheric Wastes) Regulations 1992.

Exemptions

Regulations 5D(3) and 5D(4) specify Part 3 fees are not payable in relation to:

- bitterns discharged from category 14 premises; and
- the water discharged from category 6 premises.

These discharges are subject to Part 2 waste fees.

Best Practice Criteria

Regulation 5EA allows the CEO to waive the Part 1 premises component, Part 2 waste component, and Part 3 discharge component of a licence fee if best practice criteria have been specified and the environmental performance of the premises conforms to the criteria.
Best Practice Criteria are described by Regulation 4(1) as:
criteria specified by the Chief Executive Officer that require the establishment and implementation of —

a) an environmental policy; and
b) environmental performance objectives; and
c) continual improvement programmes; and
d) environmental management and audit plans; and
e) *other measures that the Chief Executive Officer considers necessary for good environmental performance and management.*

There are currently no best practice criteria established.

More Information

For further information, please contact (DWER Regulatory Services (Environment) on 6364 7000.

Legislation

This document is provided for guidance only. It should not be relied upon to address every aspect of the relevant legislation. Please refer to the State Law Publisher (SLP) for copies of the relevant legislation, available electronically from the SLP website at www.slp.wa.gov.au.