

EMERGENCY POLLUTION AND ORPHAN WASTE CLEAN-UP PROGRAM

Guidelines for applying for Environmental Trust funds
towards clean-up costs



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Introduction

The Environmental Trust

The Environmental Trust is an independent statutory body established by the NSW Government to support exceptional environmental projects that do not receive funds from the usual government sources. The Trust is empowered under the *Environmental Trust Act 1998* and its main responsibility is to make and supervise the expenditure of grants. The Trust is administered by the Department of *Environment and Climate Change NSW (DECC)*.

(See Glossary on page 7 of this document for definitions of all words in italics)

Role of the Emergency Pollution and Orphan Waste Clean-Up Program

One of the programs that the Environmental Trust funds is the “Emergency Pollution and Orphan Waste Clean-up Program” (the “Program”), as provided for in s.16 of the *Environmental Trust Act 1998*.

The maximum amount that the Trust can expend on the Program in any one financial year is \$0.5 million. It therefore may not be possible to fund every instance of emergency pollution or orphan *waste*. Only those instances that meet the Program eligibility criteria can be funded. In addition, payment of Trust funds may be subject to a review in the case of multiple claims from a single applicant to ensure equitable access to funds for all applicants.

The Program objective is to help avoid significant risk to the *environment* or *public health* by contributing funds towards the:

- removal, dispersement or mitigation of serious pollution, when measures need to be taken immediately (i.e. emergency pollution); and
- removal and management of materials that have been placed or disposed of on *premises* unlawfully that may have the potential to pose a risk to the *environment* or *public health* (i.e. orphan *waste*).

The Program is intended for use where the *responsible party* cannot be identified or there is uncertainty about the likely payment of *clean-up costs* by the *responsible party*, so that environmental harm and *public health* impacts resulting from delays in *clean-up* can be avoided or minimised.

Funds granted under the Program are intended as assistance for those individuals/organisations who have obligations to participate in the management of emergency pollution and orphan *waste* situations (e.g. emergency service organisations, local councils and government agencies) when the *responsible party* is unknown or is unlikely to pay for *clean-up* within the timeframe required. The Program is for funding assistance, not cost replacement for the organisation’s obligations to respond to emergency pollution and orphan *waste* situations. That is, the funds may only be used for costs over and above those operational costs normally incurred by an organisation when responding to an emergency pollution or orphan *waste* incident.

The Trust has delegated to nominated officers of the DECC the power to authorise the spending of Trust funds under this program.

Purpose of these Guidelines

The Guidelines are intended for use by applicants for Environmental Trust funds for *clean-up* of emergency pollution or orphan *waste*.

The Guidelines explain the type of situations that are eligible for funding. It is not possible to identify every scenario that can be funded, therefore a set of criteria (page 3) has been developed against which individual situations can be assessed.

Pages 4 to 6 of the Guidelines outline the application process.

The remainder of the Guidelines help to contextualise the criteria and to assist with their interpretation and application. It is important to recognise that there is often a limited timeframe available to respond to orphan *waste* and particularly emergency pollution situations. Therefore funding decisions may need to be made based on limited information. In such situations the principles outlined in the Guidelines should be applied as thoroughly as possible without constraining the need to make quick decisions.

It is recommended that applicants who often deal with emergency pollution and orphan *waste* situations, spend the time to read the Guidelines in full and contact their DECC regional office or the Environmental Trust with any questions. Following the guidelines will enable applicants to apply for funding quickly and efficiently when the need arises.

General Assessment Criteria

The following criteria must be satisfied before Environmental Trust funds will be granted for the *clean-up* of **emergency pollution or orphan waste incidents**:

1. The proposed *clean-up* measures are safe, environmentally sound and cost effective. Cost effectiveness should be assessed within the context of the necessity to respond within a limited timeframe.
2. There is, or is likely to be, undue delay in starting the *clean-up* because:
 - There are substantial difficulties in establishing who is the *responsible party* for the *clean-up* costs.OR
 - There is major uncertainty about the likely payment of *clean-up* costs by the *responsible party*.

Emergency Pollution Assessment Criteria

As well as satisfying the 'General Assessment Criteria' above, the following criteria must also be satisfied before Environmental Trust funds can be granted for the *clean-up* of an **emergency pollution incident**:

3. There is an actual or imminent leak, spill or other escape of a substance, as a result of which, taking into account the particular circumstances of the situation, there is serious pollution, or a high risk of serious pollution, which poses a significant risk to the *environment* or *public health*.
4. Measures to remove, disperse or mitigate the pollution need to be taken immediately.

Orphan Waste Assessment Criteria

As well as satisfying the 'General Assessment Criteria' above, the following criteria must also be satisfied before Environmental Trust funds can be granted for the *clean-up* of an **orphan waste incident**:

5. The circumstances of the dumping suggest that the *waste* may pose a significant risk to the *environment* or *public health*.
6. The *waste* has been placed or disposed of on the *premises* unlawfully and the owner/*occupier* of the *premises* has no association with the *waste*.

Application Process

Who can apply for Environmental Trust Clean-up Funds?

Any individual or organisation, except those listed below, can apply for Environmental Trust funds for *clean-up* of emergency pollution or orphan *waste*:

- the person who dumped or caused the material to be dumped, or caused the pollution;
- the person responsible for the material (e.g. the transporter of the material) or the owner of the material;
- the owner or *occupier* of the *premises*, if directly involved in the dumping / pollution; or
- the *clean-up* contractor.

How to apply for funds

Follow these steps when applying for *clean-up* funds:

AUTHORISATION

Step 1

Endeavour to identify and locate the *responsible party* and obtain agreement that they will *clean-up* the material and rehabilitate the site if necessary. Consider issuing a statutory order or direction if required. If agreement cannot be obtained with the *responsible party* within the timeframe dictated by the need to minimise risk to the *environment* or *public health*, proceed to step 2.

Note, the DECC expects that a more thorough investigation will be undertaken to identify the *responsible party* for orphan *waste* situations than for emergency pollution situations due to the differences in the urgency of the two types of situations.

If you cannot identify or locate the *responsible party* within the limited timeframe, proceed to step 3.

Step 2

If you are not authorised to issue a statutory order or direction to the *responsible party*, requiring them to carry out the necessary *clean-up* work, then contact the DECC or Council to discuss whether an order / direction can be issued. Contact the DECC either by:

- speaking with the DECC officer at the scene, if one is in attendance; or
- telephoning the DECC 'Environment Line' (ph:131 555, available 24 hours) who will transfer you to an appropriately authorised officer who can deal with your inquiry.

If an order / direction cannot be issued or if the *responsible party* fails to comply with the order / direction, proceed to step 3.

Step 3

Identify what action(s) are required for *clean-up*, plan the *clean-up* and obtain a cost estimate for the *clean-up* action(s). Consult with the DECC / NSW Fire Brigades if necessary.

Step 4

Assess the situation against the relevant assessment criteria presented above (page 3) (either Emergency Pollution; or Orphan *Waste*). If you believe that your situation is eligible for funding proceed to step 5.

Step 5

Contact the DECC and ask for spending authorisation either by:

- speaking with the DECC officer at the scene; or
- telephoning the DECC 'Environment Line' (ph: 131 555, available 24 hours).

Prior to authorising the funds, the DECC officer will ask you to explain how the situation satisfies the relevant assessment criteria and will ask you for a cost estimate. **You must provide this information before the funds can be authorised.**

Where the time taken to seek prior spending authorisation from a DECC officer would cause the potential for serious pollution, you may proceed with the *clean-up* and subsequently apply to claim costs from the Environmental Trust. In these circumstances, the onus is on you, the applicant, to prove to the DECC's satisfaction that the criteria used by the DECC officers for authorising spending for the Program apply. You will also need to demonstrate that genuine attempts were made to contact a DECC officer or provide a reason as to why contact was not attempted.

Step 6

If the DECC officer assesses that funding is justified, they will issue you with an authorisation number which applies to an upper limit of agreed funding. Once you have this authorisation number, the Environmental Trust is obliged to pay for the agreed *clean-up* provided the applicant abides by the "Conditions of Funding" which are outlined on page 8. If these Conditions are breached, the Environmental Trust may withhold payment.

CLEAN-UP

Step 7

Proceed with and complete *clean-up* as agreed with the authorising DECC officer. The applicant must pay for the *clean-up* at this stage. You will be reimbursed after steps 8 – 11 are complete.

Step 8

Organise authorisation from the DECC for any cost variations.

PAYMENT

Step 9

If the limited timeframe did not allow for investigation at Step 1, endeavour to identify and locate the *responsible party* and seek reimbursement of *clean-up* costs from the *responsible party*. If the *responsible party* cannot be identified or payment is not received proceed to step 10. Generally it is expected that additional investigation would be undertaken after the situation has been cleaned-up. That is, additional investigation should have occurred since step 1. Failure to adequately investigate may affect future approvals under the program.

Step 10

Complete and submit the 'Form For Seeking Payment Of Trust Funds' to the DECC authorising officer. You must attach all supporting documentation e.g. invoices evidencing your payment of clean up costs and other requested information. **Any invoices you raise seeking reimbursement must be billed to the Environmental Trust, PO Box 644, PARRAMATTA 2124, (not the DECC or EPA).** The funds will be paid to the applicant directly. Funds will not be paid to individual sub-contractors. The completed form and supporting documents should be submitted to your DECC authorising officer who will forward all paperwork to the Trust for processing and payment.

Step 11

After the DECC authorising officer and Environmental Trust have verified the information provided in the form, and are satisfied that the application meets all the funding requirements, payment will be made to the applicant.

A Guide to Activities that can be Funded

Environmental Trust funds can be considered for, but not limited to, the following *clean-up* actions (provided the situation satisfies either the Emergency Pollution or Orphan *Waste* assessment criteria, page 3):

- Sampling, analysis and identification of the material, including transport costs to an approved laboratory.
- Removal, storage, treatment and disposal of the material including the cost of collection, treatment, transport to, and disposal of the material at an appropriate *waste* facility.
- Temporary storage of materials, but only when:
 - the authorising DECC officer is of the opinion that it is not practical or lawful to store the materials in existing storage facilities provided by public authorities (including council) or emergency service organisations; or
 - the Fire Brigade deems the materials to be unsafe to store at storage facilities provided by public authorities (including council) or emergency service organisations; or
 - the owner of the existing storage facility is not satisfied that the facility is appropriate for the storage of the materials.
- The *clean-up* of orphan asbestos *waste* that satisfies the Orphan *Waste* assessment criteria.
- The *clean-up* of material if it has been voluntarily accepted by a third party with prior approval for funding from the DECC. For example, the following would generally be funded only with prior approval from the DECC: material accepted through Council collection campaigns; *waste* facility acceptance of materials; and police accepting materials presented at police stations. The DECC can approve a third party to voluntarily accept the material only if it is on a temporary basis, acceptance is required to prevent risk to the *environment* or *public health* and the party responsible for the material cannot be contacted. If approval from the DECC is not obtained prior to acceptance of the material then the onus is on the applicant to prove to the DECC's satisfaction that the criteria used by the DECC officers for authorising spending for the Program apply, as well as demonstrate that genuine attempts were made to contact a DECC officer, or provide a reason as to why contact was not attempted.

Activities that cannot be Funded

Environmental Trust funds cannot be used for the following:

- Salaries, equipment or infrastructure of public authorities (including councils) or emergency response organisations.
- *Clean-up* actions that are required only to satisfy *occupational health* and safety issues of an organisation or individual or their employees.
- *Clean-up* actions that are used to assist an organisation or individual in fulfilling their general, day-to-day legal responsibilities in the management for their *waste*.
- *Clean-up* actions responding to circumstances involving only the emission of noise or odour or only aesthetic pollution.
- *Clean-up* of materials that are found on lands that were on those lands prior to the owner purchasing the lands. For example, a new land owner may find, in due course, drums of contaminated material. In such a situation, the new owner of the land becomes the owner of the material and must bear any disposal costs.

Issues the DECC Considers when Authorising Funding

Funding is generally granted if the relevant assessment criteria are satisfied (either Emergency Pollution or Orphan *Waste*). Refer to page 3 for the assessment criteria.

Other matters may also be considered where multiple claims have been applied for by a single applicant. This could include a review of the adequacy of the programs and activities currently employed by the applicant to prevent and deter illegal dumping before the payment of additional Trust funds are approved. For example, the authorised officer may request a copy of a policy or written explanation of Council's investigation protocols regarding illegal dumping. As a general rule, an organisation's ability to claim will be reviewed after five orphan *waste* incident claims have been made by the one organisation or previously approved funds have reached a total of \$25,000 during the current financial year.

Glossary of Definitions

Appropriate waste facility: premises used for the storage, treatment, reprocessing, sorting or disposal of waste, that are lawfully able to accept the waste under consideration.

Clean-up: in relation to a pollution incident, includes:

- action to prevent, minimise, remove, disperse, destroy or mitigate any pollution resulting or likely to result from the incident, and
- ascertaining the nature and extent of the pollution incident and of the actual or likely resulting pollution, and
- preparing and carrying out a remedial plan of action.

It also includes (without limitation) action to remove or store *waste* that has been disposed of unlawfully.

Environment: means components of the earth, including:

- (a) land, air and water, and
- (b) any layer of the atmosphere, and
- (c) any organic or inorganic matter and any living organism, and
- (d) human-made or modified structures and areas,

and includes interacting natural ecosystems that include components referred to in paragraphs (a)–(c).

Occupational health: The health of people working with the material involved, employed by the company responsible for the situation or the agencies responding to the situation.

Occupier: of premises means the person who has the management or control of the premises.

Premises includes:

- a building or structure, or
- land or a place (whether enclosed or built on or not), or
- a mobile plant, vehicle, vessel or aircraft.

Public health: Non-occupational health.

Responsible party can be any of the following:

- the person who dumped the material, caused the material to be dumped, or caused the pollution;
- the person responsible for the material or the owner of the material; or
- the owner or occupier of the site or premises, if directly involved in the dumping / pollution.

Waste: As defined in the Protection of the *Environment Operations Act 1997*.

Further Information

To organise authorisation of Trust funds speak with the DECC officer at the scene or contact the DECC Environment Line on 131 555 (available 24 hours).

For further information about the Emergency Pollution and Orphan Waste Clean-up Program please contact the Environmental Trust.

Further copies of this brochure are available from www.environmentaltrust.nsw.gov.au

Environmental Trust

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Disputing a funding decision

If you would like to dispute a decision regarding payment of Environmental Trust funds for this Program please contact the authorising officer's manager, in the first instance. If you would like to take the matter further you can write to the Environmental Trust (details above).

Conditions of Funding

When spending Environmental Trust funds under this program, you must abide by the following conditions. If these conditions are breached the Environmental Trust may withhold payment:

- The funds can only be used for services / activities that protect the *environment* or *public health*.
- The funds can only be used for services / activities authorised by the delegated DECC officer. Under no circumstances can the funds be used for:
 - costs that would normally be incurred by an organisation or individual in fulfilling their general, day-to-day legal responsibilities in the management for their *waste*;
 - salaries, equipment or infrastructure of public authorities (including councils) or emergency response organisations; or
 - clean-up actions that are required only to satisfy *occupational health* and safety issues of an organisation or individual or their employees.
- The funds will be paid to the applicant directly. Funds will not be paid to individual sub-contractors.
- The applicant must make all fair and reasonable efforts to identify, locate and seek payment from the responsible party before Environmental Trust funds will be paid.
- All services / activities being funded must be undertaken by appropriately qualified and experienced people and be carried out in a competent manner.
- All *wastes* must be transported by appropriate *waste* transporters and disposed of at *appropriate waste facilities*.
- Funds will only be paid on receipt of a correctly completed *Form for Seeking Payment of Trust Funds* (with relevant supporting information that includes a Tax invoice made out to the Environmental Trust).
- The Trust reserves the right to withhold payment until a site inspection is undertaken by a DECC officer and the officer is satisfied that the authorised works were appropriately undertaken and have been adequately completed. The decision to undertake a site inspection is for the Environmental Trust or DECC to make.
- The authorisation of Trust funds is based on the information available at the time. A refusal is not intended to provide a guarantee that the material is safe.
- The NSW Crimes Act 1900 contains a number of provisions which make it a criminal offence to dishonestly obtain money.