

Pollution and Contaminated Land

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These fact sheets are a guide only and are not substitute for legal advice.

Overview

This fact sheet was prepared for staff of Local Councils and Local Land Services as part of EDO NSW's 'Environmental Law for Environmental Decision-Makers' project. They complement a series of full day professional development workshops on environmental laws held in 2016. This project was supported by the NSW Government through its Environmental Trust.

For more information about EDO NSW's Professional Programs, please contact education@edonsw.org.au.

This fact sheet provides information on the following issues:

- Pollution and waste management
- Compliance and enforcement
- Contaminated land management

Pollution and waste management

- Scheduled activities are 'activities for which a licence is required'. They are set out in Schedule 1 to the *Protection of the Environment Operations Act 1997* (POEO Act): **POEO Act, ss 5, 43, Sch 1**.
- The EPA is generally the regulatory authority for scheduled activities. This covers activities covered by an environment protection licence (EPL) and activities carried out by public authorities: **POEO Act, s 6**.
- Local Councils and other local authorities are generally the appropriate regulatory authority (ARA) for non-scheduled activities: **POEO Act, s 6**.
- Depending on the scale of the activity, Local Councils are the regulatory authority for most noise, odour pollution, waste and litter, water pollution and illegal dumping issues that arise from residential use, smaller scale industrial/commercial use, motor vehicle use, construction and road traffic: **POEO Act, Sch 1**.
- If the activity isn't Scheduled, doesn't have an EPL and is not carried out by a public authority, the Local Council is generally the ARA unless there is another declared ARA: **POEO Act, s 6**.

Compliance and enforcement

- ARAs may appoint authorised officers to undertake functions under the POEO Act: **POEO Act, s 187**.
- An ARA may direct an owner or occupier of property or person who is reasonably suspected to have caused a pollution incident to take a specified clean-up action by giving written notice: **POEO Act, s 91**.
- If an activity causes or threatens material harm to the environment, the duty falls on the person, employee, employer, occupier, agent, or principal carrying on the activity to notify each relevant authority of the incident and all relevant information about it immediately after the person becomes aware of the pollution incident: **POEO Act, s 148**.
- Local Councils can recover costs incurred on monitoring and clean-up activities if a clean-up or prevention notice has been issued: **POEO Act, ss 104, 105**.
- Local Councils can recover costs and expenses incurred on prevention, control, abatement or mitigation of any harm to the environment caused by the commission of an offence proved in a court, or making good any resulting environmental damage caused by the offence as proven. These costs and expenses can be recovered in the Land and Environment Court: **POEO Act, s 247**.
- Local Councils can enforce development consent under the *Local Government Act 1993*, s 124 and the *Environmental Planning and Assessment Act 1979*, s 121B.

Contaminated land management

- Where contamination is significant, the EPA regulates contaminated sites: **Contaminated Land Management Act 1997 (CLM Act), s 6**.
- Contaminated sites not regulated by EPA are managed by Local Councils through land-use planning: **State Environmental Planning Policy No 55 – Remediation of Land (SEPP 55)**.
- The EPA must inform the Local Council for the area in which land is situated as soon as practicable after land is declared to be significantly contaminated or a management order in relation to the land is issued or revoked: **CLM Act, s 59**.
- Local Councils must include information regarding contamination on planning certificates: **Environmental Planning and Assessment Act 1979 (EP&A Act), s149**.