Technical Fact Sheet: Evidence Collecting & Environmental Investigations

Last Updated: 2010

These Fact Sheets are a guide only and are no substitute for legal advice. To request free initial legal advice on an environmental or planning law issue, please visit our website[^1] or call our Environmental Law Advice Line. Your request will be allocated to one of our solicitors who will call you back, usually within a few days of your call.

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<thead>
<tr>
<th>Region</th>
<th>Contact Details</th>
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<tr>
<td>Sydney</td>
<td>02 9262 6989</td>
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<tr>
<td>Northern Rivers</td>
<td>1800 626 239</td>
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<td>Rest of NSW</td>
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Overview

Environmental investigations by community members or groups are important in the enforcement of environmental law, either to provide the basis for third party enforcement action, or to inform regulatory authorities of an environmental incident and to allow them to more fully investigate and take action.

The purpose of this Fact Sheet is to assist the community to collect evidence and undertake environmental investigations. The Fact Sheet identifies evidence collection techniques for undertaking an environmental investigation and describes the steps that should be followed in undertaking an investigation for:

1. Compliance with development consent conditions;
2. Illegal land clearing;
3. Forestry operations; and
4. Pollution incidents.

In each of these cases a range of techniques can be employed, including taking photographs and videos, collecting physical evidence, note-taking and collecting documentation relevant to the investigation.

EDO NSW has established Have Your Say to assist the community to play a role in ensuring compliance with permits and legislation in a range of environmental areas, including pollution, planning and development, land clearing, threatened species, mining, and marine conservation. Have Your Say is designed to equip the community with the appropriate tools and information to enforce the law or report environmental breaches to authorities. This Fact Sheet should be read in conjunction with Have Your Say.

EDO NSW also has information on accessing information under Freedom of Information legislation, which may be an important component of an environmental investigation. Read our Access to Information Fact Sheet for more information about access to information.

Evidence collection techniques

Photographs and video

Images are an important part of evidence as they allow other people to experience a site or event for themselves. They also strengthen other evidence such as observations and notes. They may be important in verifying the location where physical samples have been taken. In addition to the following points, the Citizen’s Guide to Environmental Investigations and Private Prosecutions may be of use.²

Photographs

When taking photographs in circumstances where the size of an object is important, try to include an object of a known size to establish the scale e.g. coin, vehicle, person, ruler. It is also very important to record the following details for each photo that you take:

- Unique photo number or code
- Time and date
- Name of photographer
- The location of the photo
  - A description such as ‘south-west corner of the XYZ reserve’
  - A mark on a topographic map; or
  - GPS coordinates
- The direction of the photograph e.g. NW, SSE, 250º
- The subject of the photograph

Some tips to improve the usefulness of your photos include;

- Ensure you take enough spare batteries and film or memory cards

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Check the camera settings before beginning. Make sure that the date and time are set to appear on photos and that this is set correctly.

You may need a tripod to improve the quality of the photos, particularly if light levels are low.

If you’re using a film camera, or develop digital prints, write the photograph number or code on the back of prints.

It is better to take too many photos rather than too few.

Take some general, wide angle photos to establish the overall scene, then take close-up pictures of specific features.

**Videos**

One of the benefits of recording video footage is that you can provide a narration. It is important to describe what you can see but remain factual and don’t state opinions.

For example; Good commentary ‘there is a pile here of ten trees, with large cut marks on the trunks, and track marks on the ground leading up to a parked bulldozer, with number plate XYZ’

Bad commentary ‘Mr Brown has pushed these trees over illegally with his tractor – he should be in gaol!’

Some tips to make videos more effective include;

- Use a tripod to give a steadier shot
- Make sure that you pan slowly – fast panning will give a blurry picture
- If you need to zoom, do it between shots, as doing it while recording may make the viewer feel queasy. It’s usually best to stop a recording, zoom in or out, and then start recording again.

**Taking notes**

Taking notes and recording your observations is an important complementary method to be used with all the other methods.

Tips for note taking

- Use a waterproof pen or a pencil
- Number the pages
- If you type out your notes after field work, ensure that they are the same (i.e. use exact same words) as your field notes
- It might be a good idea to do a template so that you don’t forget any information needed at each site e.g. for a water pollution incident, water temperature, dissolved oxygen, salinity, air temperature, wind conditions, time, date, etc
- Write down your observations objectively. Write down what you see, not what you think has happened:
e.g. ‘water is turbid, with dirt track dissecting creek at XYZ location’ is much better than ‘the forestry commission has built a really bad road and is polluting the water with sediment and other pollutants, probably killing fish and other animals downstream’.

**Collecting relevant documentation**

This should occur throughout your environmental investigation, and will be an important step in informing the direction of your inquiries and what you will do with your physical or photographic evidence once you have collected it.

Initially, you should collect all the consent documents, licences and permits related to the matter that you are investigating. In addition to websites and agencies referenced in this section, Have Your Say will be a useful information source.

**Trespassing**

You should never trespass onto private property while collecting evidence. You may be prosecuted, or if the matter goes to court, your evidence may be inadmissible. This is because in the event your evidence is cross-examined the extent to which you have adhered to proper procedure will determine reliability and weight given to your evidence. It is thus important to ensure that you comply with the law at all times while collecting any evidence or making observations. It is not a defence to trespass to say you did not know you were trespassing.

If you need to go onto someone’s property to get evidence and the owner or occupier will not give you permission, you may be able to seek Court orders that you be given access to that property after Court proceedings have commenced.

**Evidence collecting for court proceedings**

When you take court proceedings the other side will try and show that your evidence should not be taken into account or given weight by the Court. They also have the right to cross examine you about your evidence. The Court will not give your evidence very much weight and may exclude your evidence altogether if it can be shown that your evidence was either unreliable or obtained illegally.

Therefore, if you think that your evidence may later be used in court proceedings, e.g. if you plan to take a developer to court for non-compliance with a consent condition, then it is important to keep the following things in mind when you are collecting evidence.

**Reliability**

The reliability of your evidence will be tested in Court by the other side. This means they will look for any errors in the way you collected the evidence or analysed the testing results. Some factors that should be kept in mind to ensure that your evidence is reliable include:

- The details about how you collected the evidence need to be accurate. You should take detailed notes/photos to show exactly where and when you collected any evidence. If you are unsure about these things, it may appear that your evidence is not reliable. For example, if you
have seen a dirty substance being released into a river, but you cannot
show exactly where on the river this was occurring, it will be difficult to
prove who is causing the water pollution.

- If you are using any equipment to collect evidence, you must be able to
give evidence that the equipment was working at the time. For example, if you are using a camera that records the dates and times a
photograph was taken, you should check that the date and time on the
camera is right before you take the photo.

- You also need to be able to show that you used the equipment
properly. For example, if you take samples of water to show water
pollution is occurring, you need to make sure the bottles you used were
sterilised beforehand. If you are using more complicated equipment
you may need to establish that you are qualified to use it. For example,
if you are using a GPS to show the location of something, you must be
able to establish that you are trained in using a GPS, so that the results
you get from using it are reliable.

- If you take samples, you need to ensure you are careful about the
chain of custody of those samples so that there is no issue about
whether the samples tested are the same as the ones collected, or that
the samples have been tampered with.

- Reliability also relates to the witnesses themselves. A reliable witness
is someone who has a good memory of what they witnessed and is
likely to tell the truth. For example, an angry ex-employee who has
been fired recently by a company that is causing pollution may not be
the most reliable witness in relation to that company’s practices.

- Evidence from witnesses will also be more reliable if they can show
that they clearly heard or saw something. For example, a witness who
saw someone illegally clearing native vegetation and was a long
distance away from where the clearing was occurring may not be able
to give reliable evidence about who was doing the clearing.

**Legality**

You must obtain evidence by lawful means. If it can be shown that the
evidence you collected was obtained illegally, the Court might refuse to
consider that evidence as part of your case. Examples of illegally obtained
evidence include evidence you obtained when trespassing, or a recording of
conversation you had with someone without first telling them that you were
recording them.

**Steps in undertaking an environmental investigation**

**Compliance with consent conditions**

**Relevant legislation and regulatory authority**

Where it is required, development consent is given under the *Environmental
Planning and Assessment Act 1979* (NSW) (EP&A Act). The authority
responsible for enforcing compliance with consent conditions is the consent
authority, which may be the Council or the Minister for Planning.
The Minister for Planning is the consent authority for major projects (generally large scale developments or developments in sensitive coastal areas), while Council is the consent authority for most other developments (generally smaller developments).

The Minister for Planning is required to make information publicly available in relation to development applications for major projects. The website of the Department of Planning and Environment contains three registers of major projects, which are:

1. A register of major projects – this lists all major projects for which approval is being sought.
2. A register of projects on exhibition – this lists all major projects where environmental assessment documents are currently on exhibition to the public.
3. A register of notices of determination – this lists the determinations made for all major projects and identifies the conditions of approval for each project.

Similarly, local councils are required to keep a register of development applications (DAs), which also identifies the determinations of these DAs. The register must be available for public inspection at the Council office. Some Councils also provide access to these registers via their websites. Also, Councils are required to make certain information available to the public upon request, including development applications and associated environmental assessment documents. If you are refused access to this information, you can make a complaint to the Director General of the Department of Premier and Cabinet, Division of Local Government or to the New South Wales Ombudsman.

For further information on the law relating to development consent, see Have Your Say.

- **Step 1: Collect relevant documentation**

The development consent, including the conditions will be an essential document to determine if consent conditions are complied with. This can be obtained from the Local Council or the Department of Planning and Environment, whoever was the consent authority. It may also be important to obtain the original documentation that was lodged as part of the development application in order to obtain accurate maps of the site and see what environmental protection measures that the proponent committed to when lodging on the application.

Often consent conditions will include ‘the proponent will carry out the activity in accordance with the Environmental Assessment, response to submissions, the statement of commitments and these consent conditions’. This means that it is important to have a copy of what was committed to in the EIS, or Environmental Assessment and any other written commitments made by the proponent as part of the development application.

- **Step 2: Collect evidence**
Consent conditions may be quite varied and so the methods used to investigate compliance with them may also be varied e.g. conditions may relate to setback distance from the road, buffer zones for clearing around watercourses, work to be undertaken between certain hours, noise levels not to exceed certain limits.

Photos

Take photographs of the area and of the notes to accompany them. Make sure photos are marked with time and date, particularly if the condition relates to the time that an activity is undertaken. See section on taking photographs in this Fact Sheet for more information.

Physical evidence

If the consent condition being breached relates to noise levels you may need specialist equipment to measure noise levels. You should collect as much information as possible e.g. use a tape recorder or Dictaphone to record the noise in a particular location, and then notify the consent authority of the breach. They may then choose to investigate further and will have access to the specialised equipment required. Alternatively you could employ a consultant to undertake monitoring on your behalf.\(^3\) This may be expensive.

For other conditions where no specialised equipment is needed, e.g. setback distance or height restrictions, you may be able to measure the distance yourself and provide photographic evidence to the consent authority so that they may enforce compliance.

- **Step 3: Contact relevant regulatory authority**

If the consent authority chooses not to take action on a breach of consent, any person may bring an action in the Land and Environment Court to enforce a breach of the EP&A Act, which includes the enforcement of development consent conditions.\(^4\) You will need to obtain legal advice if you wish to enforce conditions in the Land and Environment Court.

Land clearing

*Relevant legislation and regulatory authority*

If land has been cleared, and you suspect that it has been cleared illegally, it is important to check if approval has been obtained for the clearing.

*Urban land*

If the land clearing has occurred on urban land, the relevant legislation is the EP&A Act and the regulatory authority will be either the Department of Planning and Environment or Council. See section of this Fact Sheet on compliance with consent conditions for further information on consent authorities for different projects.

To check if an approval has been obtained for the clearing, you will need to make inquiries with the Department of Planning and Environment or Council.

\(^3\) EDO NSW may be able to refer you to some consultants to undertake this work. Call the EDO NSW Environmental Law Advice Line 1800 626 239 for assistance.

\(^4\) *Environmental Planning and Assessment Act* 1979 (NSW), s. 123.
To ensure that the land where the clearing is occurring is the same as that covered in the development consent, you may need to check with the Department of Lands for the location of the Lot and DP numbers covered by the consent. You can usually do this through their website and a fee may be charged.\(^5\)

For further information on the law relating to land clearing compliance on urban land, see Have Your Say.

**Rural land**

If the land clearing has occurred on rural land (including land zoned ‘rural residential’), the relevant legislation is the *Native Vegetation Act 2003* (NV Act) and the regulatory authority will either be the Minister for Environment or Local Land Services (LLS) (where the Minister has delegated a LLS his or her functions under the Act).\(^6\)

Under the NV Act, clearing requires approval through either a Property Vegetation Plan (PVP) or a development consent unless it is permitted under other legislation or is a Routine Agricultural Management Activity (RAMA).\(^7\) Importantly, broad-scale clearing cannot be approved under the NV Act unless it will improve or maintain environmental outcomes.\(^8\)

The Minister for Environment is required to make information available in relation to PVPs and development consents. The OEH contains a register of approved clearing under PVPs and development applications under the NV Act.

[Click here](https://lpi-online.lpi.nsw.gov.au/cgi-bin/lpis/menu.pl) to get the latitude and longitude of a parcel of land and match this to the area where you have seen clearing occurring.

For further information on the law relating to land clearing compliance on rural land, see Have Your Say.

- **Step 1: Collect relevant documentation**

Relevant documents include development applications (including associated environmental assessment documents), development consents (including conditions of approval), and Property Vegetation Plans.\(^9\)

If a significant area has been cleared you may wish to obtain aerial photos to indicate that the area was vegetated at a particular date, and has now been

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\(^6\) *Native Vegetation Act 2003* (NSW), s. 48.

\(^7\) These include the construction, operation and maintenance of rural infrastructure, removal of noxious weeds, control of noxious animals, the collection of firewood, harvesting of other clearing of native vegetation planted for commercial purposes, lopping of vegetation for stock fodder, traditional aboriginal cultural activities, the maintenance of public utilities, any activity reasonably considered necessary to remove or reduce an imminent risk of serious personal injury or damage to property; *Native Vegetation Act 2003* (NSW), s. 11

\(^8\) *Native Vegetation Act 2003* (NSW), s. 14(3).

\(^9\) The OEH public register where all approved clearing information is contained is found at [www.environment.nsw.gov.au/vegetation/publicregister.htm](http://www.environment.nsw.gov.au/vegetation/publicregister.htm)
cleared without approval. Some photos can be accessed online\(^{10}\) or from the Office of Finance and Services – Department of Land and Property.\(^{11}\)

- **Step 2: Collect evidence**
  
  Take photographic records of the area where clearing has occurred, accompanied by clear notes. Information and tips on taking photographs is under the ‘tips on evidence collection techniques’ section of this Fact Sheet.

- **Step 3: Contact relevant regulatory authority**

  If the clearing was not authorised report the matter to the Office of Environment and Heritage (OEH) 131 555.\(^{12}\) The more information that you are able to provide, the easier it will be for OEH to proceed with the matter. As a minimum you should include:

  a. Time, date and location of activity
  b. Description, registration numbers and type of any vehicles or plant involved
  c. An estimate of the size of the cleared area
  d. Any other information that you think is relevant.

  Any information that you provide to OEH will be treated confidentially.

  If OEH decide not to pursue the matter, any person may take action in the Land and Environment Court to enforce a breach of the EP&A Act\(^{13}\) or the NV Act.\(^{14}\)

**Forestry operations**

**Relevant legislation and regulatory authority**

The main laws that relate to the regulation of forestry operations in NSW are the *Forestry Act 2012* (NSW) and the *Forestry Regulation 2012* (NSW).

The *Forestry Act 2012* (NSW) establishes State forests and sets out a system of licences for carrying out logging on Crown-timber lands whether they are covered by a forest agreement or not.

The *Forestry Regulation 2012* (NSW) creates special offences that apply within Crown-timber lands, such as causing an obstruction on a roadway or interfering with logging operations.

There are many regulatory authorities for forestry matters, depending on the type of issue or particular impact. For matters relating to Integrated Forest Operations Approvals and harvest plans (such as buffer distances and exclusion zones), OEH is the regulatory authority. For water pollution the EPA is the regulatory authority, for threatened species issues the OEH or the Federal Environment Department is the regulatory authority (depending on

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\(^{10}\) Google Earth. Downloadable from [http://earth.google.com/](http://earth.google.com/)


\(^{12}\) The OEH website has useful tips on the information that you should provide to them [http://www.environment.nsw.gov.au/vegetation/illegalclearing.htm](http://www.environment.nsw.gov.au/vegetation/illegalclearing.htm)

\(^{13}\) Environmental Planning and Assessment Act 1979 (NSW), s. 123.

\(^{14}\) Native Vegetation Act 2003 (NSW), s. 41.
whether the species are listed in NSW or Federally), for fisheries issues, the
Department of Trade and Investment, Division of Primary Industries (Fishing
and Aquaculture) is the regulatory authority.

Read our Forestry Fact Sheet for further information on the legal aspects of
forestry regulation.

- **Step 1: Collect relevant documentation**

  **Areas covered by a forest agreement**

  If the area where the forestry operation is occurring is in an area covered by a
Regional Forest Agreement (generally east of the Great Dividing Range), and
a Forest Agreement, then there will be an Integrated Forest Operations
Approval (IFOA) and harvest plan that applies to the particular area being
harvested.

  The IFOA will outline all the conditions of forest approval including related to
threatened species and water pollution. The IFOA should be read in
conjunction with the harvest plan, that is prepared for each forest
compartment (average 250 ha). The harvest plan is available for viewing at
the local Forests NSW office\(^\text{15}\) and the IFOA for the harvesting operation is
available on the OEH website.

  **Other areas**

  For those forest areas that are not covered by an RFA there are different
documents that you should collect. These include the relevant threatened
species licences, environment protection licences and the harvest plan and
operational map for the area. Threatened species licences for forest
operations are available on the OEH website and Environment Protection
Licences are also publicly available on the EPA website however if you can’t
find EPLs associated with forestry contact the Office of Environment and
Heritage.\(^\text{16}\)

  The Forests NSW Codes of Practice may also be a useful document to read.
These contains information on operational controls to maintain occupational
health and safety requirements, environmental standards and the delivery of
forest products.

- **Step 2: Establish area of focus**

  Find out where logging will be occurring in your area. The local Forests NSW
office should have harvesting plans for the next month that are available for
inspection.

  You will require permission from Forests NSW to enter a logging site while
logging is in progress. It’s an offence to approach within 100m of timber
harvesting or hauling equipment while it is being operated, unless you have
Forests NSW approval.\(^\text{17}\) Forests NSW may erect notices prohibiting access
to a forest area. It is an offence to enter a forestry area in contravention of
such a notice without prior written permission of Forests NSW.\(^\text{18}\)

\(^\text{15}\) For office locations see [http://www.forests.nsw.gov.au/about/contact-us](http://www.forests.nsw.gov.au/about/contact-us)

\(^\text{16}\) info@environment.nsw.gov.au or 131 555.

\(^\text{17}\) Forestry Regulation 2012 (NSW), cl. 47.

\(^\text{18}\) Forestry Regulation 2012 (NSW), cl. 6.
Forestry officers, police officers and other persons authorised by Forests NSW may request, in certain circumstances, that you leave a forestry area. Failure to comply with a lawful request is an offence.\(^{19}\)

Good areas to target within a logging operation that is not active are:

a) Watercourses  

b) Known threatened species habitat areas and other modified harvest zones such as special protection zones  

c) Boundaries of the harvest area and modified harvest zones.

Before you go into the field it is a good idea to look at the harvest plan and operational map to focus your investigation and alert you to particular threatened species conditions.

- **Step 3: Pre logging investigations**

It is a good idea to visit a forest before logging commences because it may enable you to:

a) identify flora or fauna requiring protection that have not been found by Department of Trade and Investment, Division of Primary Industries (DPI). Note that if you are not licensed to survey for wildlife, only opportunistic surveys can be undertaken. For example, if a Superb Parrot flies across your path or you come across a koala scat, these are opportunistic sightings and should be reported to the OEH. You'll need to know the location on a map in order to have the sighting recorded.

b) identify areas that should not be logged which may not have been marked on the harvest plan, e.g. where endangered ecological communities are located. See the threatened species website\(^ {20}\) for a full list of EECs that can be searched by the location that you’re interested in.

c) check the tree markings for compliance with the harvest plan (in the areas that have already been marked up).

d) Note that all boundaries marked on the operational map, except State forest and compartment boundaries, are indicative only. Accordingly, actual boundaries established in the field have precedence. For example where a River Red Gum forest extends, beyond the area shown on the operational map, any conditions applicable to that forest type apply to the entire area on the ground and not just the River Red Gum forest area shown on the map.

- **Step 4: Investigations during logging**

Active logging sites can potentially be monitored after hours or from the boundaries of the harvest area. Remember that it is an offence to approach

\(^{19}\) *Forestry Regulation 2012 (NSW)*, cl. 4.  
within 100m of harvesting or hauling equipment while it is being operated, and that you must obey exclusion notices erected by Forests NSW.

If you are on the boundary of the forest area, remember that entering private property without permission may be trespass. When you enter and inspect an active logging operation with permission, DPI is required to hold a safety induction, a hard hat and vest must be worn by visitors and logging contractors must be notified of the inspection. Licence breaches are often found in the presence of DPI staff and when this occurs they have to formally acknowledge this.

A formal inspection is also useful:

a) in learning how harvest plans are implemented and what understanding staff has of the licence conditions;

b) for letting DPI know that the community is knowledgeable about licence conditions; and

c) to force DPI to be prepared with their safety plans – a requirement under Work Cover.

- Step 5: Investigations after logging

If you visit a forest soon after logging operations have ceased you may be able to:

a) identify areas that have been logged but should not have been, eg. endangered ecological communities;

b) identify trees that have been logged but should not have been, given their type or size (based on stumps), eg. River Red Gum greater than 150cm diameter at breast height, River Red Gum greater than 100cm diameter at breast height in habitat corridors, habitat and recruitment tree retention, mistletoe carrying trees required for retention;

c) identify threatened species that were not identified/recorded, but which should have triggered some protection measures, eg. koala high use tree, nest/roost sites for threatened owls, raptors, parrots or bats.

d) check that sufficient ground cover has been maintained to ensure the on-ground residue status is the same as it was prior to logging (photographs of on-ground residue are usually provided in the relevant harvest plan);

e) check the condition of waterbodies and trees not harvested.

The most common things to look for

The most common breaches of environment protection licences (EPLs), or IFOAs are water pollution in the form of erosion and illegal snig tracks that have been placed on too steep a slope and/or cause too much erosion. Snig tracks are the pathways along which logs are moved to log dumps. The most common location of breaches of EPLs are stream crossings, eg. roads and snig tracks.

Water pollution prosecutions are the most common form of prosecution in relation to logging operations. It's likely that water pollution has happened or will happen as a result of logging operations if you see any of the following:
• a landslip or land and tree slide, the collapse of a part of a road, road cutting, or embankment.
• an erosion gutter or drain wash out on an exposed road surface.
• logging within 10 metres of a drainage line (or within 20 metres of a larger creek).
• bulldozer or other machinery tracks crossing a drainage line.
• logging on land over 30 degrees slope.
• soil exposed after a post logging burn within 10 metres of a drainage line.
• turbid (muddy) water running from a road or track into a forest creek.
• long stretches of dirt road where run-off water is not guided off the road by humps or road camber.
• “plugs” of soil or sediment in watercourses.
• spills of engine oil, diesel or other fuels.

**Tips for collecting evidence in the field**

Always note in writing the date, time and place of your observations. It is particularly important to record your location with as much accuracy as possible – preferably by marking it on a map.

Make records in as many ways as possible - written notes, photographs, tape recordings, video footage. Ask yourself - who, what, when, where, why.

Record what you saw, heard, felt, smelt and/or tasted. For example:

- record visual observations of flora and fauna, water pollution and/or individuals’ actions.
- record aural identification of fauna (eg. conversations with forestry staff, bird calls).

Where possible, take measurements or make estimates of size or distance, e.g. tree stump measurements where you think the cutting diameter limit has been breached. Don’t forget to note down not only the measurement, but how you took it, e.g. at what height did you measure/estimate tree stump diameter and what instrument did you use (naked eye, tape measure, ruler etc).

Where possible, seek independent witnesses and if you are in a group have more than one person record their observations.

Where possible collect physical evidence, e.g. soil or water samples, plant or animal specimens. Remember:

- certain activities require licences or permits, e.g. threatened species surveys.
- to keep written notes and record the location of the sample on a map and if possible, photograph or video sampling process.

For every photograph include an object of known size for scale (eg. person, vehicle, ruler, notebook, coin) and make sure to record:
• photograph number
• location of photograph (description, map, coordinates)
• direction of photograph
• subject of photograph.

• **Step 6: Contact the appropriate regulatory authority**

If you identify a breach occurring call your local NSW Forests Office to report it.\(^{21}\) If it is a matter that is regulated by OEH e.g. related to threatened species or water pollution you should also inform OEH through the pollution line (131555).

For forests where there is an IFOA, there is no third party right of enforcement for any conditions of approval.\(^{22}\)

**Pollution incidents**

If the pollution is a one off event and serious, you should immediately notify the OEH through the pollution line (131555 – this is operational 24 hours a day). If the pollution is from a non-scheduled activity (such as pollution from a building site) OEH will direct your call to your local council, who are responsible for ‘non-scheduled’ discharges (under the POEO Act). If the pollution is ongoing and you have more time to collect evidence then the following steps may be useful to follow.

**Relevant legislation and regulatory authority**

Pollution in NSW is regulated through a system of licences. Environment Protection Licences (EPLs) are required where works and activities are listed in the *Protection of the Environment Operations Act 1997* (POEO Act). These are called *scheduled activities*.\(^{23}\) Local councils have responsibilities for regulating pollution from non-scheduled activities.

EPLs are usually granted with conditions attached. These conditions are designed to prevent/minimise pollution and environmental degradation. Licence conditions relate to pollution prevention and monitoring, and cleaner production through recycling and reuse and the implementation of best practice.

Holders of EPLs are also required to lodge annual returns. The Annual Return is completed by a licensee in order to provide feedback to the EPA about its environmental performance. It requires completion of a monitoring summary and certification that it has complied, or has not complied, with the conditions attached to the licence. Details of non-compliances that occurred during the reporting period must be provided in the Annual Return.


\(^{22}\) See EDO NSW Forestry Fact Sheet for further information on the regulation and enforcement of forestry legislation.

\(^{23}\) Scheduled activities are defined in Schedule 1 *Protection of the Environment Operations Act 1997*. 
The Environment Protection Authority (EPA) is the pollution regulator in NSW. It has been integrated into the Office of Environment and Heritage (OEH), which is responsible for the administration of this legislation.

For further information on the law regulating pollution, see Have Your Say.

- **Step 1: Collect relevant documentation**

  EPLs are available on the [EPA website](http://www.edonsw.org.au/about_environmental_law) so you should see if the premises that you’re concerned with has an EPL and if they do, which pollutants they are licensed to discharge.

  Licence returns are submitted to OEH annually, and are available by applying under the *Freedom of Information Act 1989*. See our [Access to information Fact Sheet](http://www.environment.nsw.gov.au/prpoeo/index.htm) for more information on using Freedom of Information legislation to access information. Self-reported non-compliances with licence conditions are available on the [public register](http://www.edonsw.org.au/pollution).

  Other documents that may be useful are the ANZECC Water Quality Guidelines to compare any pollution occurring at a site with recognised guidelines for ecosystem protection, drinking water or stock and domestic use. Our [Water Quality Assessment Fact Sheet](http://www.edonsw.org.au/pollution) may also be of use.

  For air quality issues our [Air Quality – Dust Monitoring Fact Sheet](http://www.edonsw.org.au/pollution) will be useful.

- **Step 2: Collect evidence**

  Take notes and photographs/video footage of the area where the incident is occurring.

  **Physical evidence**

  Take any physical samples that may be necessary to prove what you’re alleging e.g. if you think that a particular factory is emitting a certain type of water pollution, you will need to test the river upstream and the river downstream and if possible the discharge point from the factory to prove that it is the source of pollution. See our [Air Quality – Dust Monitoring Fact Sheet](http://www.edonsw.org.au/pollution) for more information on particulate matter pollution i.e. dust. The Citizen’s Guide to Environmental Investigation and Private Prosecution provides useful advice on the collection of water samples and how to document air pollution incidents.

  Samples should be taken in accordance with recognised guidelines or procedures to ensure that the results are accurate. This also includes being analysed in a NATA accredited laboratory. If you need assistance interpreting

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29 [Environmental Bureau of Investigation. Citizen’s Guide to Environmental Investigation and Private Prosecution](http://www.eprf.ca/ebi/guide/chapter5.html), Available online at [http://www.eprf.ca/ebi/guide/chapter5.html](http://www.eprf.ca/ebi/guide/chapter5.html). Note that this publication is Canadian, and so references to legal frameworks are not applicable to NSW.
30 See Water Quality and Dust factsheets for appropriate methodologies that should be used. Available online at [http://www.edonsw.org.au/pollution](http://www.edonsw.org.au/pollution)
your results the EDO NSW Scientific Advisory Service may be able to help you. Contact the legal advice line.31

Plan and collect samples (physical evidence)

Get a detailed map of the area, particularly of the waterway and its catchment. Consider the catchment, the suspected pollution, and spend some time making a plan before you commence sampling.

Secure a number of clean sampling containers or bottles (contact local authorities or EDO NSW Scientific Advisory Service). The number and type of bottles will depend on the type of suspected pollution, the intended analysis and your sampling plan. Clean bottles are often provided by analytical laboratories.

It would be ideal to also use a portable water quality meter (used to measure water attributes such as pH, electrical conductivity, dissolved oxygen, temperature and turbidity). Ensure that it is calibrated, and keep the calibration records. The top priority is your own health and safety and your sampling plan should take account of any sampling hazards, such as traffic, steep slopes, overgrown vegetation, deep water, snakes etc. Rivers are generally isolated localities and it is not safe to sample alone. It is sensible to alert friends and colleagues of your activities.

Sampling location

Visit the waterway above and below the suspected pollution and take notes of conditions (with photographs) to establish the exact source and the extent of the contamination. Investigate practical sampling issues such as how to access the waterway. Identify safe localities such as parks, bridges and walking tracks. Do not enter private land without the owner's permission.

Then produce a sampling plan for the incident. In most cases it would be appropriate to sample at one or two sites upstream of the suspected pollution (two sampling sites would be better than one). This is essential to establish the state of the waterway before the suspected pollution enters. Also collect samples of the suspected pollution source at the most visually affected site. If the pollution appears to be widespread, collect multiple samples downstream, with the objective of assessing the ‘zone of impact’ from the contamination. In general, it is appropriate to collect from two sites downstream. If the waterway is tidal, consider the effect of tides and collect samples within a single tidal cycle.

Take multiple ‘replicate’ samples at each site on each occasion. Results from a single sample at a site may be regarded as a chance occurrence. If possible, take two or three samples at each site over a minute or two. This will greatly improve the quality of the data. Also take photographs and sampling notes (see previous section).

When you sample, try and collect samples from running water in the centre of the river or stream. A bridge can be a great help. A bucket and rope can be very helpful sampling apparatus. Bring a supply of clean water and rinse all sampling gear between sampling sites. Also rinse the bucket in the stream.

31 EDO NSW operates a free hotline for environmental legal advice, and scientific advice. Contact 1800 626 239.
before filling the sample bottle. Try and get the sample from below the water surface if possible.

Security of the samples is paramount. Keep them under your control, and ideally, lodge them with a NATA endorsed laboratory for analysis on the same day. Keep control of the samples as ‘chain-of-custody’ may be critical in a prosecution. A sampling esky is ideal for secure transport of samples at the appropriate temperature.

When organising for sample analysis, get advice on the type of analytical tests to run. They can be very costly. For assistance with the range of tests and interpretation of the data, contact the EDO NSW Scientific Advisory service. Other groups that may help include your local water authority, local council, catchment management authority, conservation group or Streamwatch.

If the pollution is a long-term problem, you may need to consider conducting regular sampling. This may be a very substantial undertaking, but regular sampling can produce very powerful evidence. Such activities are supported by Streamwatch, but there is often a waiting list, and they expect a strong ongoing commitment.

- **Step 3: Contact relevant regulatory authority**

If the results indicate that pollution is occurring that is not allowed by the EPL then you should report your results to the regional OEH office.\(^{32}\)

If OEH do not wish to further investigate, or pursue the matter, any person is able to enforce a breach of an EPL in the Land and Environment Court.\(^{33}\) You should obtain legal advice if you wish to do this.

**Further information/Useful Contacts**

Office of Environment and Heritage
59-61 Goulburn St, Sydney
9995 5000
Pollution line 131 555 (24 hours)

Forestry Corporation of NSW
121-131 Oratava Ave, West Pennant Hills
9872 0111

\(^{32}\) A list of OEH regional offices can be found at [http://www.environment.nsw.gov.au/contact/](http://www.environment.nsw.gov.au/contact/)
You should contact a OEH office, not a national parks office.

\(^{33}\) *Protection of Environment Operations Act 1997 (NSW)*, ss. 219, 252.

Department of Planning and Environment
23-33 Bridge St, Sydney
9228 6111
Major Developments Strategy – 9228 6379
Major Infrastructure Strategy – 9228 6349
Urban Assessment/Coastal Assessment and Hazards – 9228 6335
Website http://www.planning.nsw.gov.au