

# **EPA POLLUTION EXTRACTS**

**February 2016**

## **Should you have a 'Spill Cleanup Plan'?**

It is advisable that your workplace develops a spill cleanup plan so that staff can be trained about cleanup procedures. Such a plan could be a simple one that indicates what staff members should do in the event of a spill.

In order for cleanup efforts to proceed successfully it is a good idea to store cleanup material (for example brooms, mops and absorbent material) in an accessible location within the workplace. The whereabouts of these items should also be included in your spill cleanup plan.

## **Definition of 'pollution incident'**

Pollution incident means an incident or set of circumstances during or as a consequence of which there is or is likely to be a leak, spill or other escape or deposit of a substance, as a result of which pollution has occurred, is occurring or is likely to occur. It includes an incident or set of circumstances in which a substance has been placed or disposed of on premises, but it does not include an incident or set of circumstances involving only the emission of any noise.

## **Examples**

### **Effluent overflow**

Part of your job is to manage an effluent treatment works. The works fail, resulting in an overflow likely to have an adverse affect on the ecosystem of a creek. You have a duty to notify your employer and the appropriate regulatory authority (ARA), the EPA if they are not the ARA, the Ministry of Health, the WorkCover Authority, the local authority if this is not the ARA and Fire and Rescue NSW.

## **Chemical leak**

A by-product of your company's manufacturing activity is a liquid chemical waste, which is stored in drums in a shed prior to collection by a waste contractor. There is no sign on the shed stating what to do if a leak occurs. A neighbour complains to the EPA about offensive odours and damage to vegetation near the shed. The EPA investigates, and finds leaking drums. The employees who knew about the leak believed that the waste contractor would attend to the problem, and did not advise company management and the relevant authorities. Your company is prosecuted for failure to notify the incident, in addition to other offences in relation to waste management. It is no defence that the relevant employees were ignorant of the duty to notify. Employers must take all reasonable steps, for example erecting a sign, to ensure that employees will notify them of incidents.

## **STORMWATER**

Stormwater runoff from your premises travels via gutters and stormwater drains to local creeks or canals, and eventually ends up in a river or harbour or on a beach. Anything that goes down a stormwater drain is not treated - that's why the stormwater system is meant to carry rainwater only.

### **Is stormwater pollution really a problem?**

You may think that the small amount of pollution from your business will have little effect on water quality, but with three million people living in Sydney and thousands of commercial and industrial premises, stormwater pollution is now the biggest source of water pollution in urban areas. For example, every year in Sydney:

- 3,000 tonnes of litter ends up in Sydney Harbour
- 60,000 litres of oil drop on to Sydney's roads and are washed down the stormwater drains after rainstorms
- tens of thousands of tonnes of dirt or sediment are washed into the drains
- smokers discard almost seven billion cigarette butts, of which around two billion are estimated to end up in our waterways.

### **Environmental Legislation - Clean Waters Act 1970**

It is against the law to place any material in a position that would allow it to flow into local waterways and cause pollution. Leaving pollutants in such a spot is the same as actually placing the substance directly into the waterway. You could be fined!

As the occupier of an industrial or commercial premises, you are legally responsible for any pollution that occurs, irrespective of whether it was caused by one of your employees or a subcontractor working temporarily on your site.

Since mid 1995 both the EPA and local council officers have been able to issue \$600 on-the-spot fines for minor incidents that cause water pollution. In more serious cases, legal proceedings can be brought against the business.

## Penalties

If you fail to report a pollution incident posing material harm to the environment as required under Part 5.7 of the Act, you commit an offence. **The maximum penalty is \$2,000,000 for corporations, or \$500,000 for individuals.**

### Environment protection offences

The Act has a three tier regime of offences.

#### Tier 1

Tier 1 offences are the most serious offences and cover certain disposals of waste, leaks, spillages and other escapes, and ozone depleting emissions. Tier 1 offences can be categorised as offences where there is:

- proof of wilfulness or negligence
- harm or likely harm to the environment.

*These offences carry maximum penalties of:*

- **\$5 million for corporations** and **\$1 million and/or 7 years imprisonment for individuals** where the offence is committed intentionally, and
- **\$2 million for corporations** and **\$500,000 and/or 4 years imprisonment for individuals** where the **offence is committed negligently.**

#### Tier 2

Tier 2 offences consist of all other offences under the Act and regulations, including water pollution, air pollution, land pollution and noise pollution offences. These offences are generally categorised as 'strict liability' offences, that is, the prosecution is not required to prove intent.

Tier 2 offences carry a **maximum penalty of \$1 million for corporations** and **\$250,000 for individuals**, and for continuing offences, **further daily penalties of up to \$120,000 and \$60,000 respectively.** The maximum penalty for the **general littering offence** is **20 penalty units (\$2, 200).**

The following offences were introduced by this Act:

- the emission of offensive odour from scheduled activities
- the unlawful transport of waste
- the failure to comply with a duty to notify certain pollution incidents.

### **Tier 3**

Tier 3 offences are not separate offences. They are Tier 2 matters that have been designated in the Regulations as being capable of being dealt with by way of penalty notice. The amount of the penalty is set by the Regulations and may not exceed the maximum penalty that can be imposed by a court for the offence. The *Protection of the Environment Operations (General) Amendment (Fees and Penalty Notices) Regulation 2014* substantially increased the amount of penalty notices for a number of the most serious Tier 3 offences.

EPA officers and the staff of certain other public authorities have been authorised to issue penalty notices. However, the EPA may direct that a penalty notice be withdrawn if it considers it appropriate to do so.

### **Instituting proceedings**

The EPA may institute proceedings for any offence under the Act or Regulations. Certain other authorities such as local authorities, Water Supply Authorities, the Maritime Authority of NSW or police officers may also institute proceedings for certain offences. Any person may institute proceedings for an offence against the Act or the Regulations in the Land and Environment Court if the Court grants the person leave to do so. Any person may bring proceedings in that Court for an order to remedy or restrain a breach of the Act or Regulations.

The EPA Board determines whether the EPA should bring proceedings for Tier 1 offences after receiving advice from the 'Environmental Counsel'.

### **Proceedings for offences**

Tier 1 offences may be dealt with before the Land and Environment Court or the Supreme Court. If proceedings are brought in the Land and Environment Court, the maximum period of imprisonment the court can impose is two years.

Proceedings for all other offences may be dealt with before a local court or the Land and Environment Court. If proceedings are brought in a local court, the **maximum penalty that can be imposed is \$110,000.**

The Act sets out a number of orders that the court can make where an offence is proved. For example, the court can require the guilty party to publicise their offence or to carry out an environmental project for the public benefit.

## Duty to notify pollution incidents

There is a duty to report pollution incidents under section 148 of the [Protection of the Environment Operations Act 1997 \(POEO Act\)](#). This is a guide to the duty, in simple terms. Consult the POEO Act for details.

Important changes have been made to the duty to notify provisions as a result of the [Protection of the Environment Legislation Amendment Act 2011](#) (Amendment Act). Those changes commence on 6 February 2012, and are designed to ensure that appropriate authorities have the information they need to respond within an appropriate time.

## What must be notified?

Pollution incidents causing or threatening material harm to the environment must be notified.

**A 'pollution incident' includes a leak, spill or escape of a substance, or circumstances in which this is likely to occur.** ['Pollution incident'](#) is defined in the Dictionary to the Act and is reproduced at the end of this document.

**'Material harm to the environment'** is defined in section 147. **Material harm includes on-site harm, as well as harm to the environment beyond the premises where the pollution incident occurred.**

## Who must notify?

Under the [Protection of the Environment Operations Act 1997](#) (POEO Act), the following people have a duty to notify a pollution incident occurring in the course of an activity that causes or threatens material harm to the environment:

- a. **the person carrying on the activity**
- b. an employee or agent carrying on the activity
- c. an employer carrying on the activity
- d. the occupier of the premises where the incident occurs.

Notification must be given immediately, i.e. promptly and without delay, after the person becomes aware of the incident.

You do not have to report if you know that all relevant authorities have already been notified by the licensee: section 151.

**Only persons engaged in the activity resulting in the pollution incident**, and occupiers of the land where the incident occurs, have a duty to report the incident.

If you are concerned about pollution, and an approach to the person causing the problem is not possible or is unlikely to be successful, please raise the concern with the relevant authority.

## What information must you provide?

In general terms, sufficient detail of the incident must be reported to enable appropriate follow-up action. The information required is listed in section 150. Any required information that is not known when the incident is notified must be notified immediately once it becomes known.

## Incriminating information

**A person must notify even though the notification might incriminate the person.**

However the notification is not admissible in evidence against the person for an offence. This qualification does not relate to any evidence obtained following or as a result of the notification. The relevant provision is section 153.

## Checklist

**Could a spill or leak associated with your activity harm the environment?** If so:

- are the people carrying out the activity, including casual or shift workers, or contractors, aware of their duty to notify?
- do they know who to notify?
- is the need for notification signposted or otherwise incorporated into operation and emergency procedures?

## Penalties

If you fail to report a pollution incident posing material harm to the environment as required under Part 5.7 of the Act, you commit an offence. The **maximum penalty is \$2,000,000 for corporations, or \$500,000 for individuals.**

## Housekeeping

Maintaining a clean premises, especially in the workshop and storage areas, will help prevent pollution of the stormwater system. For example, **oils, greases, paint residue, solvents and other materials - including sand and sediment - should be cleaned up from around your premises.** Your customers and staff will also appreciate a clean and tidy work area.

### Storage areas

If you have bulk storage of liquids on your premises (including substances such as oil, paint, sand, soil, chemicals or liquid wastes) you should:

- locate storage areas away from stormwater drains
- provide bunding around the perimeter of liquid storage areas, including drums or tanks, to contain any leaks and spills
- store dry, loose materials (such as sand, soil, coal, mulch or woodchip) that are outside under a roof and within a bunded area. For short term storage of these materials, keep them under plastic cover and/or use a temporary bund or filter (such as filter fencing, sandbags or hay bales) around the stockpile.
- sweep or vacuum around storage areas regularly.

### Spills

Clean up leaks, drips and spills quickly with dry absorbent material and then dispose of the material correctly with other waste. It is important to keep cleanup equipment on site in the event of an accidental spill. (See Solutions to Pollution for Spills.)

If a spill causes or threatens to cause environmental harm, local council or the EPA should be notified as soon as possible so that any necessary remedial action can be undertaken.