Environmental Defenders Office

Water, Air & Noise Pollution

Disclaimer: This factsheet is a guide only and is designed to give readers a plain English overview of the law. It does not replace the need for professional legal advice in individual cases. To request free initial legal advice on a public interest environmental or planning law issue, please visit our website.

While every effort has been made to ensure the information is accurate, the EDO does not accept any responsibility for any loss or damage resulting from any error in this factsheet or use of this work.

This factsheet was last updated on 24 June 2024.

Overview

Responsibility for regulating pollution in NSW rests primarily with the State government, through the NSW Environment Protection Authority (**EPA**). Local councils also have some responsibility for regulating pollution.

This fact sheet provides information about how, and to whom, to report a pollution incident, and explains the laws relating to water, air and noise pollution in NSW.

Protection of the Environment Operations Act 1997

The main law in NSW regulating water, air and noise pollution is the *Protection of the Environment Operations Act 1997* (NSW) (**POEO Act**) and associated regulations.

The Minister for Environment and the Minister for Climate Change are responsible for administering the POEO Act. [1] The EPA is generally responsible for implementing the POEO Act, although some responsibilities are shared with other government authorities, such as local councils.

N.B. The EPA is a statutory body which is responsible for the regulation of air emissions, contaminated land, dangerous goods and hazardous materials, noise, pesticides, forestry activities, waste and water quality and state of environment reporting.

[1] *Administrative Arrangements (Minns Ministry – Administration of Acts) Order 2023,* s 3 and Schedule 1.

The POEO Act is focused on protecting and reducing the risks posed to human health and the environment. The POEO Act:

- Vests the EPA with the power to issue Environment Protection Licences (**EPL's**) which permit the carrying out of 'scheduled activities';
- Creates a range of environmental offences and penalties;
- Allows regulatory authorities to enforce the POEO Act through investigations and enforcement measures;
- Allows criminal prosecution for environmental offences under the POEO Act and associated regulations; and
- Allows persons to take legal action to enforce the POEO Act.

The 'appropriate regulatory authority'

The POEO Act assigns responsibility for regulating pollution to the 'appropriate regulatory authority' (**ARA**).

The POEO Act sets a regime for assigning who is the ARA for a matter or activity under that Act.[2]

When is the EPA the ARA?

The EPA the ARA for most matters under the POEO Act. Importantly, the EPA is the ARA in relation to:

- Scheduled activities (listed in Schedule 1 of the POEO Act);
- The exercise of functions under Chapter 3 of the POEO Act (issuing EPL's);
- Premises the subject of an EPL (i.e. premises at which a scheduled activity is carried out);
- Activities carried out by the State or public authority; and
- Activities carried out by an authorised network operator.

Visit:	If the premises hold an EPL, the EPA is responsible for regulating those premises. You can find out if premises hold a EPL by clicking here. You can find a list of premises that are regulated by the EPA, but which are not licensed, by clicking here.

[2] POEO Act, s 6.

When is the local authority the ARA?

The relevant local authority (i.e. local council) is the ARA for non-scheduled activities (i.e. activities that do not require an EPL under Schedule 1 of the POEO Act).[3]

These are generally small-scale industrial activities as well as many non-industrial activities.

When is another public authority the ARA?

Other public authorities may be declared by the regulations to be the ARA.[4] For example Transport for NSW is the ARA for:

- Issuing noise control notices and noise abatement directions relating to boats and boat-related premises;[5] and
- Non-scheduled activities involving a non-pilotage vessel in navigable waters, including in a marine park (except in relation to some specified matters).[6]

Visit: The EPA has produced a list of contacts[7] to help people identify which organisation is the ARA for each matter or activity.

Scheduled activities and EPL's

What are scheduled activities?

Scheduled activities are activities listed in Schedule 1 of the POEO Act.

Such activities generally involve heavy or high-polluting industries, thus requiring regulation under an EPL so that the EPA can regulate and manage the carrying out of the activity to minimise potential risks to human health and the environment posed by the activity.

Schedule 1 includes criteria for determining whether an activity is a 'scheduled activity' based on the size or intensity of the activity being undertaken or the sensitivity of the receiving environment.

[3] POEO Act, s 6(2).
[4] POEO Act, s 6(3).
[5] POEO Act, s 263, 275; See definition of 'marine authority' in the Dictionary to the POEO Act. Note that the Minister administering the *Ports and Maritime Administration Act 1995* may also be the ARA.
[6] General Regulation, s 6.
[7] http://www.epa.nsw.gov.au/pollution/

If an activity reaches the threshold prescribed under Schedule 1 for that activity, it will be a scheduled activity. For example, the storage of more than 1,000 tonnes or 1,000 cubic metres of waste in a regulated area is a scheduled activity requiring an EPL.[8]

Visit:	The EPA's detailed Guide to Licencing is designed to help people determine whether they need an EPL, and if so, how to apply for one.

Premises bases and non-premises based scheduled activities

Scheduled activities are separate into two categories:

- Premises-based activities;[9] and
- Activities not premises-based.[10]

Premises at which a premises-based scheduled activity is carried out are referred to as 'scheduled premises'. Examples of premises-based scheduled activities are:

- Chemical production and storage;
- Extractive activities;
- Livestock intensive activities;
- Mining for coal and other minerals;
- Petroleum exploration, assessment and production;
- Sewage treatment;
- Resource recovery; and

Waste disposal, processing, and storage. Non premises-based scheduled activities are those carried out not at a specific premises, and include mobile waste processing and the transportation of trackable waste.[11]

Scheduled activities require an EPL

- Scheduled activities require an EPL to be carried out.[12]

[8] POEO Act, Sch 1, cl 42.
[9] See POEO Act, s 48.
[10] See POEO Act, s 49.
[11] POEO Act, Sch 1, Part 2.
[12] POEO Act, ss 48 and 49.

- EPL's are issued by the EPA under Chapter 3 of the POEO Act.[13]
- It is an offence to carry out a scheduled activity without an EPL – see **Table A.**

Do new EPL's require environmental assessment?

There is no legal requirement for a new EPL to undergo any form of environmental assessment (e.g. an environmental impact statement).

Instead, the environmental impacts of the activity will be assessed under the planning system,[14] as new EPL's are often issued in conjunction with a development consent or activity approval (although not always), and these types of developments may require an environmental impact statement.

Read: How to have your say in development across NSW.

What must the EPA consider when granting an EPL?

The EPA must consider many factors when determining to grant an EPL (or not).

The factors are set out in s 45 of the POEO Act and include, but are not limited to the objectives of the EPA, any protection of the environment policies, the pollution likely caused by the activity and the impact of the pollution, and any practical measures that can be taken to prevent or reduce the pollution.

Public register

The EPA keeps a public register containing information about EPL's and other matters regulated by the POEO Act.[15]

The EPA must publish the details of each EPL application it receives on its public register.[16]

Anyone can make a submission to the EPA on an application for a EPL, and the EPA must consider these submissions when deciding whether to grant a licence. This includes any public submissions made under the development assessment process.[17]

Visit: The EPA public register to view this information.

[13] POEO Act, s. 6(2)(a).
[14] *Environmental Planning and Assessment Act 1979* (NSW), Parts 4 and 5.
[15] POEO Act, s. 308.
[16] POEO Act, s. 308(2)(a).
[17] POEO Act, s. 45(l).

Public may seek a statement of reasons regarding EPA determination

Anyone can write to the EPA requesting a statement of reasons as to why the EPA granted or refused an EPL application (including applications for transfers or variations), and the EPA must provide these reasons.[18]

The reasons must set out the significant environmental and other issues that the EPA took into account, and the outcomes, standards or requirements that the EPA considered applicable and took into consideration in making its decision on the application.[19]

Appeals by EPL applicant

The applicant for an EPL can appeal the EPA's decision to refuse a licence or to impose conditions on the issue of a licence (including in relation to decisions to vary, revoke, or surrender licence).[20]

The appeal must be brought within 21 days of the applicant receiving notice of the EPA's decision.[21]

> Read: For more information, see Fact Sheet on the Land and Environment Court.

Can the public appeal?

Yes, but only where there is a legal error in the way the EPA was issued. The public has no right to bring a merits appeal.

An appeal based on legal error is known as judicial review.[22] This is a challenge against the validity and legality of the decision-making process that the EPA followed in granting a licence. For example, an appeal may be brought by a member of the public regarding a complaint that the EPA failed to take into account a relevant consideration in arriving at its decision.

> Read: For more information on judicial review proceedings, see Fact Sheet on the Land and Environment Court.

EPL conditions

An EPL may be issued unconditionally, or subject to conditions.[23]

---

[18] POEO Act, s. 61.
[19] General Regulation, s 63.
[20] POEO Act, s 287.
[21] POEO Act s. 287.
[22] See POEO Act, s. 252, and *Land and Environment Court Act 1979* (NSW), ss. 20(1)(c), 20(1)(cia).
[23] POEO Act, s. 63.

Examples of common conditions include:[24]

- Limits on the types and amounts of pollution that can be discharged;
- Monitoring and reporting obligations;
- Conditions for financial assurances;
- Conditions for remediation work; and
- Community consultation (e.g. regular meetings) and complaint mechanisms (e.g. a complaints register).

It is an offence to not comply with the conditions of an EPL – see **Table A.**

Duration and review of EPL's

Once an EPL is issued, it remains in force indefinitely until it is suspended, revoked, or surrendered by the holder.[25]

However, the EPA must review each licence at least once every 5 years.[26]

N.B. You can find out the review date for a particular EPL by checking the POEO Licence List.

The EPA must give the public notice of its intention to review a licence at least one month, and not more than 6 months, before the review by publishing a notice on the EPA website.[27]

Anyone can make a submission to the EPA on the review of an EPL.[28]

Visit: The EPA website to view instructions on making a submission.

Other EPA powers in relation to EPL's

The EPA has the power to, at any time:

- Vary an EPL or its conditions;
- Suspend an EPL; or
- Revoke an EPL.

[24] POEO Act also lists some other common conditions: see Part 3.5.
[25] POEO Act, s. 77.
[26] POEO Act, s. 78(1).
[27] POEO Act, s. 78(2).
[28] http://www.epa.nsw.gov.au/licensing/POEOreview.htm

Before varying an EPL, the EPA must invite submissions from the public if:

- The variation will authorise a significant increase in the environmental impact of the activity; and
- The proposed variation has not been the subject of environmental assessment and public consultation under the *Environmental Planning and Assessment Act 1979.* [29]

Water pollution

The Dictionary to the POEO Act defines 'water pollution' broadly, including the general and specific circumstances that amount to water pollution.

At its most general, water pollution means introducing any matter into waters which changes the physical, chemical or biological condition of the water. It also includes placing any matter where it might fall, descend, be washed, be blown or percolates into any waters (e.g. soil which might washed into a waterway).[30]

Schedule 5 of the General Regulation includes a list of specific substances (prescribed matter) which, if they are introduced onto or into waters, are automatically assumed to constitute pollution of waters. For example, animal matter, soil, thermal waste and any matter that contains coliforms, pesticides.

It is an offence under the POEO Act to pollute waters – see **Table A.**

Visit: The EPA's list of contacts to work out who you should call if you wish to report a water pollution incident.

Air pollution

Air pollution is the emission into the air of any impurity, including dust (including fly ask), smoke, cinders, solid particles, gases, fumes, odour, mists and radioactive substances.[31]

Air pollution offences

Unlike water pollution, there is no general prohibition on causing air pollution.

An air pollution incident will only give rise to an offence if it is a result of:

- A person carrying out a scheduled activity without an EPL;[32]

[29] POEO Act, s. 58(6).
[30] See the full definition of 'water pollution' in the Dictionary to the POEO Act.
[31] Dictionary to the POEO Act.
[32] See POEO Act, ss 48 and 49.

- A breach of an EPL or its conditions;[33]
- The commission of one or more of the offences listed in the POEO Act,[34] including but not limited to:
  - failing to maintain or operate industrial plant or equipment in a proper and efficient manner;[35]
  - failing to carry out maintenance work on plant in a proper and efficient manner;[36]
  - failing to deal with materials in a proper and efficient manner (e.g. allowing raw materials, by-products or waste to cause air pollution);[37] and
  - carrying out an activity or operating plant so as to emit pollution in excess of prescribed rates or concentrations.[38]

In the absence of a relevant air pollution standard, the occupier must carry on the activity in a way that minimises or prevents air pollution.[39]

> Visit: The EPA's list of contacts to work out who you should call if you wish to report an air pollution incident.

Burning of fires and smoke

Authorised officers

The EPA and local councils can appoint people as 'authorised officers'.[40]

All authorised officers must carry an identification card and must produce it if asked to do so.[41]

> Visit: Powers of Authorised Officers - A guide to your powers under environment protection legislation on the EPA website to understand who is an authorised officer and what powers authorised officers have to respond to pollution incidents.[42]

---

[33] POEO Act, ss 48, 64.
[34] See Part 5.4 of the POEO Act which contains a number of specific air pollution offences.
[35] POEO Act, s 124.
[36] POEO Act, s 125.
[37] POEO Act, s 126.
[38] POEO Act, s 128; *Protection of the Environment Operations (Clean Air) Regulation 2022* (NSW) (**Clean Air Regulation**), Part 5, Division 2; Schedule 2, Parts 2 and 3.
[39] POEO Act, s. 128(2).
[40] The Dictionary to the POEO Act defines 'authorised officer' as a person appointed under s 187 by an ARA.
[41] POEO Act, s 189.
[42] http://www.epa.nsw.gov.au/licensing/powersao.htm

Orders / notices the EPA can issue in relation to air pollution

The POEO Act vests certain persons / authorities to issue orders / directions in relation to air pollution. These are set out in the table below.

Order / direction	Who can issue it? And when?	Effect
Order prohibiting the burning in open air or incinerator.[43]	The EPA, **if** the weather conditions are such that burning while those conditions persist will contribute, or will be likely to contribute, to air pollution to such an extent that the order is warranted. The order must be published in a daily newspaper, broadcast on the radio or television, or be published in such other manner that will bring the order to the attention of the persons to whom the order applies.[44]	Prohibit the burning of fire in the or in incinerators. It is an offence not to comply with such an order- see **Table A.**
Order to extinguish fire immediately.	Authorised officer, **if** the fire is prohibited by an order of the EPA, or air pollution from the fire is injuring the health of somebody or is likely to cause serious discomfort or inconvenience to someone.[45]	Requires the occupier of the premises or person apparently in charge of the premises or fire to extinguish fire immediately. Failure to comply with such notice is an offence – see **Table A**.
Smoke abatement notice.	Authorised officer, **if** it appears to the officer that excessive smoke is being, or has at any time within the past 7 days, been emitted from a chimney on or in the premises.	Requires an occupier of a residential premises to ensure that excessive smoke is not emitted from the chimney.

[43] POEO Act, ss 133(1) and (2).
[44] POEO Act, s 133(4).
[45] POEO Act, ss 134(1).

		Failure to comply with such notice is an offence – see **Table A.**

Burning prohibited in certain local government areas

The burning of vegetation and other matter is generally prohibited in most local government areas without approval from the EPA or local council.[46]

> Visit: The *Protection of the Environment Operations (Clean Air) Regulation 2022*, Schedule 1 to view a list of local government areas to which this prohibition applies.

Offensive odours

An 'offensive odour' is an odour which because of its strength, nature, duration, character or quality, or the time at which it is emitted, is harmful (or is likely to be harmful) to a person who is outside the premises from which it is emitted.

Offensive odours are also those which interfere unreasonably (or is likely to interfere unreasonably) with the comfort or repose of a person outside the premises from which it is emitted, or that is prescribed by the regulations.[47]

It is an offence to cause or permit the emission of an offensive odour at a scheduled premises – see **Table A.**

There is no specific offence prohibiting the emission of offensive odours from non-scheduled premises. However, in some cases, emitting odours may fall within one of the other general air pollution offences.[48]

> For example, failing to operate plant in a proper and efficient manner or to maintain the plant in an efficient condition.

Smoky vehicles

There is a limit on the amount of exhaust which a vehicle is permitted to emit.[49]

---

[46] Clean Air Regulation, s 12.
[47] POEO Act, Dictionary.
[48] POEO Act, s. 124.
[49] POEO Act, s. 154(2) defines 'emits excessive air impurities'.

A motor vehicle must not emit exhaust (i.e. air impurities which are in excess of a certain standard of concentration) which is visible for a continuous period of more than 10 seconds.[50]

It is an offence for an owner of a motor vehicle to emit excessive air impurities while the vehicle is being used – see **Table A.**

If an authorised officer reasonably suspects that a motor vehicle emits excessive air impurities, they can issue the vehicle owner a notice in writing requiring the owner to service or repair the vehicle within the period specified on the notice.[51] It is an offence to not comply with such notice – see **Table A.**

N.B. Vehicles that emit exhaust which is continuously visible for more than 10 seconds can be reported to the EPA's Environment Line on 131 555 or online.

Noise pollution

Noise pollution is the emission of offensive noise.[52]

There is no general blanket prohibition on causing noise pollution. However, it is an offence to:

- carry out a scheduled activity without an EPL.[53]
- breach a condition of an EPL.[54] An EPL may contain conditions which deal specifically with noise, such as the level of noise and times during which noise is permitted;
- sell an article of a class prescribed by the regulations if, when in use or operation, the article emits noise that, when measured at any point specified in or determined in accordance with the regulations, is in excess of the prescribed level.[55]
- sell an article a class prescribed by the regulations if the article is not fitted in the prescribed manner with noise control equipment of a prescribed class.[56]
- sell an article a class prescribed by the regulations if the noise control equipment with which it is fitted has not been maintained in accordance with the regulations.[57]

[50] Clean Air Regulation, s 20.
[51] POEO Act, s. 161(1).
[52] POEO Act, Dictionary.
[53] POEO Act, ss 48 and 49.
[54] POEO Act, ss 48, 64.
[55] POEO Act, s 136.
[56] POEO Act, s 137(1).
[57] POEO Act, s 137(2).

- cause noise if the noise is caused by a failure to properly maintain plant or to operate the plant efficiently.[58]
- cause noise from industrial premises that deals with materials (e.g. raw materials) because of a failure to deal with those materials in a proper and efficient manner.[59]

The maximum penalties for these noise offences are:[60]

- For a corporation - $1 million and $120,000 for each day the offence continues; and
- For an individual - $250,000 and $60,000 for each day the offence continues.

N.B. View the EPA's list of contacts to work out who you should call if you wish to report a noise pollution incident.

Notices and orders to stop noise pollution

To control noise, a noise control notice[61] or a noise abatement order may be issued.[62] Further details about these notices / orders is in the below table.

Order	Who can issue it?	Effect
Noise control notice.[63]	ARA (generally the EPA or the local council).[64]	Prohibits the occupier or operator of any premises from causing, permitting or allowing noise in excess of a specified level on specified days and at specified times.[65] A person who receives a noise control notice can appeal against the notice to the Land and Environment Court within 21 days after service of the

[58] POEO Act, s 139.
[59] POEO Act, s 140.
[60] POEO Act, s 141.
[61] See POEO Act, Part 8.6, Div 1.
[62] See POEO Act, Part 8.6, Divs 2 and 3.
[63] POEO Act, s 264.
[64] POEO Act, s 264.
[65] POEO Act, ss 264(1) and (2).

		notice[66] or 7 days if it concerns an animal.[67] It is an offence to not comply with such order – see **Table A.**
Noise abatement direction.[68]	Authorised person (police officer or authorised officer) may issue a noise abatement direction, if it appears that offensive noise has been emitted from a premises at any time within the past 7 days.[69]	Directs the person whom the authorised person believes to be the occupier of the premises to cause the emission of the offensive noise to cease, or direct any person whom the authorised person believes to be making or contributing to the making of the noise to cease making or contributing to the making of offensive noise. Failure to comply with such an order is an offence – see **Table A**.
Noise abatement order.[70]	A person who is affected by offensive noise[71] within their own premises can apply to the Local Court for an order that the offensive noise stop (a noise abatement order).[72]	A noise abatement order issued by the Local Court directs the respondent to abate the offensive noise within the time specified in the order, or to prevent the recurrence of the offensive noise. Failure to comply with such an order is an offence – see **Table A**.

[66] POEO Act, s. 290.
[67] General Regulation, s 136.
[68] POEO Act, s 276.
[69] POEO Act, s. 276.
[70] POEO Act, s 268.
[71] The Dictionary in the POEO Act defines 'offensive noise' as noise which is harmful to a person who is outside the premises, or which interferes unreasonably with the comfort or repose of a person who is outside the premises from which it is emitted.
[72] POEO Act, s. 268.

Appeals against noise control notices and noise abatement orders

A person given a noise control notice or against whom a noise abatement order is made can appeal against the order to the Land and Environment Court within 21 days after service of the notice or the making of the order.[73]

Restrictions on the use and sale of noisy items

There are noise emission standards for certain items of equipment.[74]

It is an offence to sell equipment (including cars and car accessories) that emits noise in excess of the noise levels set for that particular item.[75]

Time restrictions on the use of noisy articles

There are a range of restrictions on certain noisy items, including set time limits (e.g. not before 8am, or after 8pm) during which noisy things must not be used.

The restrictions apply to power tools and other equipment, musical instruments and sound equipment, air conditioners and heat pump water heaters, and burglar alarms.[76]

Categories of pollution offences

Pollution offences are classified into 3 categories:[77]

- Tier 1 - most serious offences and involve wilful or negligent activities which harm, or are likely to harm, the environment;
- Tier 2 - serious, mid-range offences; and
- Tier 3 - least serious, including 'on-the-spot' penalty notices.

Tier	Maximum penalty	Examples	Defence
Tier 1 – offences under Part 5.2 of the POEO Act.	The maximum penalties for Tier 1 offences are:[78] • For a corporation: $5 million (wilful offence) or	Examples include wilfully or negligently: • Disposing of waste in a manner that harms or is likely to	It is a defence to a Tier 1 offence if the person establishes that they had no control over the causes of the event and that they took reasonable precautions and

[73] POEO Act, s. 290(1).
[74] POEO Act, s. 136; *Protection of the Environment (Noise Control) Regulation 2008* (NSW), pt. 4, div. 1.
[75] POEO Act, s. 136.
[76] Noise Control Regulation, Part 4
[77] POEO Act, s. 114.
[78] POEO Act, s. 119.

	$2 million (negligent offence). For an individual: $1 million or 7 years' imprisonment, or both (wilful offence) or $500,000 or 4 years' imprisonment, or both (negligent offence).	harm the environment. • Allowing a substance to leak, spill or otherwise escape in a manner that harms or is likely to harm the environment. Emitting an ozone-depleting substance in a manner that harms or is likely to harm the environment.	exercised due diligence to prevent the event.[79]
Tier 2 – serious offences which are not Tier 1 offences.[80]	The maximum penalties for Tier 2 offences are:[81] • For a corporation: $1 million, and a daily penalty of up to $120,000. • For an individual: $250,000, and a daily penalty of up to $60,000.	Examples include: • Carrying out an activity on scheduled premises without an EPL. • Failing to comply with an environment protection notice. • Polluting waters. • Permitting land to be used unlawfully as a waste facility.	It is a defence to a Tier 2 offence if the commission of the offence was an honest and reasonable mistake.[82]

[79] POEO Act, s. 118.
[80] POEO Act, s. 114(2).
[81] See POEO Act, ss 123, 132, 141, 142A.
[82] *He Kaw Teh v The Queen* (1985) 157 CLR 523.

Tier 3 – least serious tier of offences. Tier 3 offences are Tier 2 offences for which a penalty notice can be issued.[83] The enforcement factsheet for further information about penalty infringement notices.	Penalties vary for Tier 3 offences, with the maximum penalty being $15,000 for both individuals and corporations and the minimum penalty being $80 for individuals and $300 for corporations.[84]	Penalty notices offences are listed in Schedule 6 of the *Protection of the Environment Operations (General) Regulation 2022.* They include: • Carrying out a scheduled activity without an EPL. • Failure to comply with an EPL condition. Failure to comply with a clean-up notice or prevention notice.	Tier 3 offences are absolute liability offences, for which there are no defences.

Case study: Polluter sentenced to 12 months imprisonment

EPA v Gardner [1997] NSWLEC 169

Charles Gardner was convicted of wilfully disposing of waste in a manner likely to harm the environment.

Over a period of about 2 ½ years, Gardner had secretly pumped out about 130,000 litres per week of untreated sewerage from his caravan park into the Karuah River on the NSW North Coast.

He did this to avoid the cost of lawfully disposing of the waste (about $140,000).

[83] POEO Act, ss. 114(2).
[84] General Regulation, Sch 6.

The Court fined him the maximum amount (at that time) for an individual of $250,000, sentenced him to 12 months' imprisonment, and ordered him to pay the Prosecutor's costs of $170,000.

Enforcement of pollution offences

There are three different enforcement mechanisms for pollution offences:

- Environment protection notices;
- Criminal prosecutions; and
- Civil action.

Read: The enforcement factsheet for further information about penalty infringement notices.

Tips for complaining about a pollution incident

If you are concerned about a pollution incident, you should first contact the individual or company causing the pollution and request an explanation and ask that they fix the problem.

N.B. If you are concerned about a pollution incident, you should report the pollution incident to the EPA's Environment Line on 131 555 or online. Keep notes of your discussion and record the name of the person who takes your call. Keep notes of your discussion and record the name of the person who takes your call.

N.B. If the EPA does not resolve the problem to your satisfaction, you should:

- Obtain a copy of the development consent for the premises from your local council or the Department of Planning and Environment and check whether the conditions of consent include pollution control;
- Obtain a copy of the EPL for the premises from the EPA's public register, and check whether the licence authorises the pollution and, if so, to what extent;

- Obtain copies of any monitoring reports which the polluter may have submitted to the EPA's public register and compare them with the pollution levels permitted under the EPL;
- Contact environmental groups who are interested in preventing pollution, such as the Total Environment Centre in Sydney; and
- Contact our free Environmental Law Advice Line on (02) 9262 6989 or 1800 626 239 and obtain some legal advice about your other options

Duty to notify pollution incidents

Polluters have a legal obligation to immediately report all pollution causing or threatening material harm and all relevant information about it to each relevant authority.[85] Relevant authorities are:[86]

- the ARA;
- if the EPA is not the ARA – the EPA;
- if the EPA is the ARA – the local authority for the area in which the pollution incident occurs;
- the Ministry of Health;
- SafeWork NSW; and
- Fire and Rescue NSW.

The types of incidents which must be reported are those that cause or threaten to cause material harm to the environment.[87]

The duty to notify applies to the person carrying out the activity, the occupier of premises, employers and employees, including their agents (who must notify their employer, and then the EPA if their employer cannot be contacted).[88]

It is an offence to fail to notify the ARA of a notifiable event – see **Table A**. A person must notify even if they may incriminate themselves or make the person liable to a penalty, however any such notification is not admissible in evidence against the person for an offence or for the imposition of a penalty.[89]

[85] POEO Act, s. 148.
[86] POEO Act, s. 148(8).
[87] POEO Act, s 148(1).
[88] POEO Act, s. 148.
[89] POEO Act, s. 153.

Table A – Table of pollution offences under the POEO Act and regulations[90]

Read: The EPA website contains more information about the duty to notify pollution incidents including who to notify, when to notify, and examples of notifiable events.

Offence	Maximum penalty	Defence [91]
Carry out a scheduled activity without an EPL.[92]	The maximum penalties are:[93] • For a corporation - $1 million and $120,000 for each day the offence continues. For an individual - $250,000 and $60,000 for each day the offence continues.	Honest and reasonable mistake of fact.
Failure to comply with the conditions of an EPL.[94]	The maximum penalties are:[95] • For a corporation - $1 million and $120,000 for each day the offence continues, and For an individual - $250,000 and $60,000 for each day the offence continues.	The holder of a licence is not guilty if the holder establishes that: (a) the contravention of the condition was caused by another person; and (b) that other person was not associated with the holder at the time the condition was contravened, and

[90] Note that this table includes some, but not all, pollution offences under the POEO Act. There are further offences under the legislation not included in this table.
[91] Also generally consider the defences for Tier 1 and 2 offences in the above table.
[92] POEO Act, s. 48, 49.
[93] POEO Act, ss. 48(2), 49(2)
[94] POEO Act, s. 64.
[95] POEO Act, s. 64.

		(c) the holder took all reasonable steps to prevent the contravention of the condition. A person is associated with the holder for the purposes of paragraph (b) (but without limiting any other circumstances of association) if the person is an employee, agent, licensee, contractor or sub-contractor of the holder.[96]
Pollution of waters.[97]	The maximum penalties are:[98] • For a corporation - $1 million and $120,000 for each day the offence continues, and • For an individual - $250,000 and $60,000 for each day the offence continues.	A person who has polluted water will not be guilty of polluting waters if: • the pollution was authorised by an EPL, and the conditions of the licence were not breached;[99] or • that type of water pollution is exempt.[100] For example, sewage discharge, discharges from vessels is exempt.
Failure to comply with order	The maximum penalty is $3,300.[102]	If the person has a reasonable excuse for

[96] POEO Act, s 64(2).
[97] POEO Act, s 120.
[98]POEO Act, s 123.
[99] POEO Act, s. 122
[100] See General Regulation, Chapter 6, Part 1.
[102] POEO Act, s 135.

prohibiting burning in open air or incinerator.[101]		not complying with the order.
Failure to comply with a notice to extinguish a care immediately.[103]	The maximum penalty is $3,300.[104]	If the person has a reasonable excuse for not complying with the order.
Failure to comply with smoke abatement notice.	The maximum penalty is $3,300.[105]	If a person has a reasonable excuse for not complying with the order.
Occupier of any premises at which scheduled activities are carried on under an EPL to cause or permit the emission of any 'offensive odours'.[106]	The maximum penalties are:[107] • For a corporation - $1,000,000 and $120,000 for each day the offence continues. • For an individual - $250,000 and $60,000 for each day the offence continues.	It is a defence in proceedings for this offence if the defendant establishes that the emission is identified in the EPL as a potentially offensive odour and the odour was emitted in accordance with the licence conditions, or the only persons affected by the odour were the persons engaged in the management and operation of the premises.[108]
Owner of a motor vehicle to emit excessive air	The maximum penalties for a corporation is $44,000,	It is a defence to a prosecution for the offence if the owner proves:

[101] POEO Act, s 133; 135.
[103] POEO Act, ss 134; 135.
[104] POEO Act, s 135.
[105] POEO Act, s 135C.
[106] POEO Act, s 129(1).
[107] POEO Act, s 132.
[108] POEO Act, s 129.

impurities while the vehicle is being used.[109]	and for an individual it is $22,000.[110]	(a) the motor vehicle was, at the time of the commission of the offence, stolen or illegally taken or used, or (b) the motor vehicle— (i) has been constructed or modified solely for use in motor racing or off-road motor sport, and (ii) as a result of the construction or modification— (A) is not capable of being registered, or (B) is only capable of being registered conditionally, and (iii) was, at the time of the commission of the offence, being used in a motor sport event or in a journey to or from the event.[111]

[109] Clean Air Regulation, s 21.
[110] Clean Air Regulation, s 21.
[111] Clean Air Regulation, s 21(2).

Failure to comply with notice requiring repair of vehicle.[112]	The maximum penalty of $6,600.[113]	Honest and reasonable mistake of fact.
Failure to comply with noise control notice.[114]	The maximum penalties are:[115] • For a corporation - $60,000 and $6,000 for each day the offence continues. • For an individual - $30,000 and $600 for each day the offence continues.	A person is not guilty of the offence unless if it established that the alleged offence resulted in the emission, from the premises to which the alleged offence relates, of noise that was able to be detected or perceived outside those premises without the aid of an instrument, machine or device.[116]I
Failure to comply with noise abatement directions.	The maximum penalty is $3,300.	If a person has a reasonable excuse for not complying with the direction.
Failure to notify the ARA of a notifiable event.[117]	The maximum penalties are: [118] • For a corporation – $2 million and $240,000 for each day the offence continues. • For an individual –	Honest and reasonable mistake of fact.

[112] POEO Act, s. 161(1).
[113] POEO Act, s. 161(4).
[114] POEO Act, ss 264(1) and (2).
[115] POEO Act, s. 265.
[116] POEO Act, s 265(2).
[117] POEO Act, s 152.
[118] POEO Act, s. 152.

	$500,000 and $120,000 for each day the offence continues.	

Glossary

ARA means Appropriate Regulatory Authority.

Minister means the Minister for the Environment and the Minister for Climate Change.

EPA means the NSW Environment Protection Authority.

EPA Act means the *Environmental Planning and Assessment Act 1979* (NSW).

General Regulation means *Protection of the Environment Operations (General) Regulation 2022.*

POEO Act means the *Protection of the Environment Operations Act 1997* (NSW).

EPL means environment protection licence.

Regulations means any one or more of the regulations made under the POEO Act.

EDO welcomes feedback on this factsheet. Your feedback will help us ensure we are providing useful information.

If you have any concerns or suggestions regarding this factsheet, please fill out the Legal Resources evaluation form by clicking here or scanning the QR code below: