Guideline

Environmental Protection Act 1994

COMPLIANCE AND ENFORCEMENT

This guideline provides an overview of compliance and enforcement by the Department of Environmental, Science and Innovation (the department) under the Environmental Protection Act 1994 *(the Act).*

Table of Contents

Introduction

As the Queensland Government's environmental regulator, the department is responsible for managing and monitoring environmental risk through a range of assessment, compliance, investigation, and enforcement programs. The department achieves this by providing targeted, consistent, and transparent regulation that facilitates sustainable economic development in Queensland.

In fulfilling this role, the department is committed to meeting the expectations of the community to manage the health of the environment, as well as the expectations of industry to streamline approval processes and reduce the regulatory burden. It does this by administering a range of environmental regulations and laws, providing timely approvals, and ensuring compliance with those approvals.

The *Environmental Protection Act 1994* (the Act) is administered by the department and it regulates environmental impacts from development, specific industries and other activities. The aim of the Act is to protect Queensland's environment while allowing for ecologically sustainable development (ESD). ESD is development that improves the total quality of life now and into the future, while maintaining important ecological processes that all life depends on for survival.

The EP Act regulates environmental impacts from development and other activities by:

- requiring specific industries and activities with high environmental risk to obtain relevant permits and licences;
- imposing a general environmental duty (GED) on all persons to prevent or minimise environmental harm and a duty to notify of environmental harm.
- enabling the department to monitor and enforce compliance with the Act via:
    - entry, investigation and seizure powers for compliance officers;
    - using compliance tools, such as statutory notices, to require specific actions;
    - issuing penalty infringement notices (PINs); and
    - prosecution.

This guideline provides practical information and guidance about how the department enforces compliance with the Act.

Current departmental compliance planning and priorities are outlined on the website. For more information refer to Compliance and enforcement | Environment | Department of Environment and Science, Queensland (des.qld.gov.au)

Compliance and enforcement framework

The department's approach to ensuring compliance with its legislation is to:

1. Disrupt non-compliance through industry education, community and market engagement and proactive compliance programs.
2. Detect non-compliance by responding to community and industry notifications, conducting targeted inspections and monitoring industry through remote sending and other tools
3. Decide on appropriate compliance outcomes that are timely, fair and clearly understood by the entity it is being applied to.
4. Deter non-compliance through industry engagement and application of meaningful enforcement to positively influence compliance behaviour.

The department identifies the areas where non-compliance with legislation poses the greatest risk to the

environment and then takes targeted compliance action to reduce that risk. The department is transparent and publishes information about the areas it is focusing on and what it is doing about them.

The department acknowledges the growing importance of building an improved voluntary compliance culture within industry. To assist industry to improve its compliance practices, the department sets clear expectations about acceptable standards of environmental performance, as well as publishes guidance material and information about how to meet those expectations. This information assists industry to better understand its responsibilities in implementing good environmental practices and know what they need to do to meet their obligations.

For industry members who choose not to comply with their obligations, the department will be consistent in taking prompt, strong enforcement action. This action will demonstrate to industry and the broader community that there are consequences for poor performance. The department considers the performance of operators when planning for compliance programs each year. This information is combined with a range of other available information about the risks of particular activities to ensure that the department's proactive compliance activities are targeted.

Regular updates on the department's compliance activities will continue to be provided to the public via the department's website[1]. These updates highlight how the department has achieved its goals of protecting the environment, monitoring environmental performance, and enforcing compliance with the environmental laws. The department remains focused on its ongoing commitment to improve public accessibility to compliance information.

Regulatory Strategy 2022-2027

The department's Regulatory Strategy 2022-2027 (the Regulatory Strategy) outlines a regulatory approach that is risk-based, and outcome focused. The six focus areas for the Regulatory Strategy are:

1. regulate proportionate risk
2. assessment processes
3. targeted compliance
4. customer focus
5. partnership, science, and innovation
6. communication and engagement.

For more information, visit the Regulatory Strategy webpage: Regulatory Strategy | Environment | Department of Environment and Science, Queensland (des.qld.gov.au).

Enforcement guidelines

It is the goal of the department to build a culture of compliance where individuals, business and industry take responsibility for ensuring that their activities do not cause unlawful impacts to the environment. Nevertheless, some people fail to meet their obligations and commit a criminal offence against our environmental legislation. When the department finds that a person has broken the law, it will take action to bring the person back into compliance with its obligations. This may mean taking enforcement action in accordance with the department's enforcement guidelines.

[1] Visit www.des.qld.gov.au

Enforcement action can include warnings, statutory notices, PINs, Enforceable Undertakings and prosecutions. Where necessary to stop unlawful harm to the environment, the department will require someone to do, or not do, certain things to prevent harm from occurring. This may include stopping an activity or suspending an approval until the department is satisfied that the activity will be properly managed.

The *Enforcement Guidelines* (ESR/2021/5549[2]) apply to all legislation administered by the department and have been developed to ensure that the enforcement responses of the department are:

- proportionate to the conduct involved;
- consistent with past responses to similar conduct; and
- completed in a timely fashion.

These guidelines assist the department in choosing an enforcement response and inform those regulated by the department about the standards that are expected when their activities affect Queensland's natural assets.

For more information, visit the Compliance and Enforcement webpage: Compliance and enforcement | Environment | Department of Environment and Science, Queensland (des.qld.gov.au).

Obligations under the Act

The Act outlines obligations and duties to prevent environmental harm, nuisances, and contamination.

The two primary duties that apply to everyone in Queensland are:

- **general environmental duty** – which means a person must not carry out any activity that causes or is likely to cause environmental harm, unless measures to prevent or minimise the harm have been taken; and
- **duty to notify of environmental harm** – to inform the administering authority and landowner or occupier when an incident has occurred that may have caused or threatens serious or material environmental harm.

*Note: A '*person*' includes a body of persons, whether incorporated or unincorporated.

Environmental harm
Section 14 of the Act defines this as any adverse effect, or potential adverse effect (whether temporary or permanent and of whatever magnitude, duration, or frequency) on an environmental value, and includes environmental nuisance. It may be caused by an activity whether the harm is a direct result of the activity or whether the harm results from the activity alone or from the combined effects of the activity and other activities or factors. An 'environmental value' is defined in section 9 of the Act to be: • a quality or physical characteristic of the environment that is conducive to ecological health or public amenity or safety; or • another quality of the environment identified and declared to be an environmental value under an environmental protection policy or regulation.

[2] This is the publication number. The publication number can be used as a search term to find the latest version of a publication at www.des.qld.gov.au

Material environmental harm

Section 16 of the Act defines *material environmental harm* as environmental harm (other than environmental nuisance):

- that is not trivial or negligible in nature, extent, or context; or
- that causes actual or potential loss or damage to property of an amount of, or amounts totalling, more than the threshold amount but less than the maximum amount; or
- that results in costs of more than the *threshold amount* but less than the maximum amount being incurred in taking appropriate action to—
    - prevent or minimise the harm; and
    - rehabilitate or restore the environment to its condition before the harm.
- The chief executive ensures the threshold amount calculated under this definition *threshold amount*[3], is published on the department's website during the financial year to which it relates.

Serious environmental harm

Section 17 defines this *serious environmental harm* as environmental harm (other than environmental nuisance):

- that is irreversible, of a high impact or widespread; or
- caused to an area of high conservation value or special significance, such as the Great Barrier Reef World Heritage Area;
- that causes actual or potential loss or damage to property of an amount of, or amounts totalling, more than the *threshold amount;* or
- that results in costs of more than the *threshold amount* being incurred in taking appropriate action to:
    - prevent or minimise harm; and
    - rehabilitate or restore the environment to its condition before harm.
- The chief executive ensures the threshold amount calculated under this definition *threshold amount*[4], is published on the department's website during the financial year to which it relates.

[3] ***threshold amount*** means—

(a) for the financial year ending 30 June 2023— $10,000; or

(b) for a later financial year—the threshold amount for the financial year immediately preceding the later financial year (the ***previous financial year***) increased by the consumer price index for the previous financial year.

[4] ***threshold amount*** means—

(a) for the financial year ending 30 June 2023— $100,000; or

(b) for a later financial year—the threshold amount for the financial year immediately preceding the later financial year (the *previous financial year)* increased by the consumer price index for the previous financial year.

Investigation and enforcement

Compliance inspections play an important role in helping the department monitor compliance with the Act. A compliance inspection is a systematic, independent and documented assessment of an activity or incident, and may include:

- physical inspections of various parts of a site;
- recording of observations, such as photos, video, audio or GPS locations;
- collection of evidence, such as taking samples of water/soil/contaminants for further analysis or copies of documents and records relevant to the activity; and
- in-field interviews conducted by an authorised person, in relation to alleged offences under the Act.

For activities that are licensed under the Act, such as an environmentally relevant activity (ERA) authorised under an environmental authority (EA), compliance inspections are carried out to determine if licence conditions or other legal obligations are being complied with and to monitor performance of how the environmental risks of the activity are being managed.

There are a number of other reasons why the department carries out compliance inspections, including the following:

- Inspections can reveal strategic or systemic issues with a particular industry or operation and can allow the department to address those issues before they become larger problems.
- They increase the department's profile in the community and demonstrate that the department is actively managing activities that pose a threat to environmental values. This increased profile can also deter other people from breaching their obligations.

Compliance inspections are fact-finding exercises, which aim to gather information that allows the department to fulfil its regulatory role. Inspections are not tools designed to penalise bad behaviour however enforcement action may result from an inspection where operators are not complying with their environmental standards.

Compliance inspections are either proactive or reactive.

Proactive compliance inspections are planned in advance and focused on monitoring and education. Proactive inspections are not typically expecting to identify non-compliance; however, if non-compliance is identified and an authorised person has formed a reasonable belief (e.g. based upon their knowledge, observations and/or available information) that an offence has been committed, the relevant individual/s legally responsible for the activity must be given a caution at that point in the inspection. This will only apply where the entity being inspected is an individual and may not apply where the entity is a corporation.

Reactive compliance inspections are carried out when there is reasonable suspicion that an offence has been committed, for example in response to receiving a complaint from the community. Reactive inspections are focused on evidence gathering in relation to the alleged offence and therefore an authorised person should caution the relevant person/s legally responsible for the activity or incident as soon as arriving at site. Right to silence obligations do not apply when an authorised person is using legislative powers that require a person to answer questions about suspected offences.

Authorised persons

Under the Act, an *authorised person* is a person who has been appointed by the chief executive of the department under section 445, enabling them to perform certain functions and exercise particular powers under the Act. For simplicity, throughout this guideline an *authorised person* will be referred to as an *authorised officer* (AO), as the department recognises this is a commonly used term within the community.

An AO can be:

- an appropriately qualified public service officer;
- an employee of the department; or
- another person declared by regulation.

Appointments are only made if the chief executive is of the opinion that the person has the necessary expertise or experience. The powers of an AO under the Act are limited to the individual AO's instrument of appointment, which is the legal document that sets out the powers the individual AO has been authorised to exercise under the Act and any conditions or limits on those powers.

In addition to any powers granted by Chapter 9 of the Act, AOs retain the same rights as a member of the public, including liberty to go where a member of the public can go, and the freedom to speak to people. This includes the right to enter and be on public land and private land, provided a business is being conducted on the private land which is open to the public (e.g. a shopping centre). In relation to private premises, in the absence of an indication (e.g. a sign) that the public are not to enter, persons can lawfully enter the property, but not enter any dwelling, in order to attempt to contact the occupiers of the property (i.e. a person may walk up to the front door of a house and knock).

AOs are issued with identity cards. Before exercising a power under the Act, the AO must first produce their identity card for inspection by the person they are speaking to or have their identity card displayed so that it is clearly visible. If, for any reason, it is not practicable to produce or display their identity card, the AO must produce the identity card for inspection by the person at the first reasonable opportunity.

An AO (or another person acting under an AO's direction) is protected from civil liability provided they act honestly and without negligence under the Act.

For more information on the general powers of entry, investigation and seizure that can be exercised by AOs under the Act, please refer to the *Powers of Authorised Persons Guideline* (ESR/2016/2276)[5].

AOs have additional powers in an emergency. An AO may direct any person to take specified reasonable action within a specified reasonable time, or take the action, or authorise another person to take the action if they are satisfied on reasonable grounds that an emergency exists. For further information on the powers of AOs in emergencies, see the Emergency powers section of this guideline.

For more information, please see the *Powers of Authorised Persons Guideline* (ESR/2016/2276)[6].

Warnings

The department has a wide range of enforcement measures available for managing compliance with the legislation it administers. These enforcement measures include the discretion to issue verbal warnings and warning letters in response to breaches of legislation.

The majority of minor non-compliances can be dealt with by way of educating the community and industry regarding their environmental obligations. Warnings are an effective means to ensure that a person is made aware of their responsibilities. A warning is suitable for minor instances of non-compliance where the warning is likely to encourage voluntary and prompt compliance. To determine the seriousness of the non-compliance, the

[5] This is the publication number. The publication number can be used as a search term to find the latest version of a publication at www.des.qld.gov.au

[6] This is the publication number. The publication number can be used as a search term to find the latest version of a publication at www.des.qld.gov.au

department will consider:

- the objectives of the relevant legislation, including the type of harm the offence provision is designed to deter or prevent;
- the actual or potential harm or impact of the offence;
- the level of culpability of the alleged offender; and
- the department's *Enforcement Guidelines*.

The issue of a warning should generally be confined to an alleged offence where:

- a PIN or other enforcement tool is not considered appropriate;
- the offence/non-compliance is a one-off situation;
- the offence/non-compliance is considered minor or based on a technicality;
- the operator is otherwise compliant;
- the operator has not previously been issued with a PIN or a warning for a similar offence;
- the harm or potential harm to the environment is considered minimal; and the issue of a warning is likely to be a deterrent.

Statutory Tools

Requirement to provide information, answer questions or produce documents

Notice requiring relevant information

Under section 451 of the Act, the department can issue a notice to a person and require them to give information that is relevant to the administration or enforcement of the Act. The department can issue this notice if it suspects on reasonable grounds that the person:

- has knowledge of a relevant matter; or
- is in possession or control of a document that is relevant to the matter.

A notice under section 451 will state:

- the person to whom it is issued;
- the information required;
- the time within which the information is to be given to the department;
- why the information is required; and
- the review or appeal details.

Requirement to answer questions

Under section 465 of the Act, an AO can require a person to answer questions if the AO suspects on reasonable grounds that:

- an offence against the Act has happened; and
- a person may be able to give information about the offence.

When exercising this power, an AO can:

- require a person to answer a question about the suspected offence (this can include requiring a verbal response on the spot, for example during a field interview); or
- issue a written notice that requires the person to attend a particular place, at a particular time, to answer questions about the suspected offence (a formal interview); or
- issue a written notice to a corporation and require them to nominate a representative (the corporation's representative) who is authorised to provide answers about the suspected offence; and
- subsequently issue a written notice requiring the corporation's representative to attend a formal interview to answer questions about the suspected offence*.

*Note – the Act states that an answer given by a corporation's representative binds the corporation.

A notice under section 465(2) or (4) of the Act will state:

- the person to whom it is issued;
- identify the suspected offence;
- state that the authorised person believes the person may be able to give information about the suspected offence; and
- include a warning that it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse.

Requirement to produce documents

Under section 466 of the Act, an AO may require a person to produce a document for inspection that is required to be held or kept under:

- the Act; or
- a development condition of a development approval;
- an agricultural ERA standard that applies to an agricultural ERA or
- a recognised accreditation program for an agricultural ERA.

An AO can keep a document produced by a person for the purpose of taking an extract from it or making a copy of the document. An AO must return the document to the person as soon as practicable after taking the extract or making the copy.

Penalties for non-compliance

Failing to comply with a notice under section 451 of the Act requiring relevant information is an offence unless the person has a reasonable excuse. It is a reasonable excuse for an individual if complying with the notice might tend to incriminate the individual.

Failing to answer questions, nominate a corporation's representative or attend at a stated place at a stated time to answer questions under section 465 of the Act is an offence unless the person has a reasonable excuse. It is a reasonable excuse for an individual if answering the question might tend to incriminate the individual.

Failing to produce a document under section 466 of the Act is an offence unless the person has a reasonable excuse.

It is important to note that the privilege of self-incrimination does not apply:

1. to s466 as this is a document that the operator was required to keep and make available; or
2. where the requirement is given to a corporation.

Emergency Direction

Definitions for this section:

- A **contaminant** is defined in section 11 of the Act
- A **contamination incident** is an incident involving contamination of the environment, that the department is satisfied has caused, or is likely to cause, serious or material environmental harm.
- The *Acts Interpretation Act 1954* states that the singular includes the plural, so a contamination incident may in fact be a series of incidents that together or separately caused or are likely to cause serious or material environmental harm.
- A **prescribed person** for a contamination incident is defined in section 363G of the Act.
- A **prescribed responsible person** for a contamination incident mentioned in section 363F is defined in the Schedule 4 Dictionary and applies if a clean-up notice is issued to a corporation (the ***first corporation***) in relation to the incident and it fails to comply with the notice—
  (i) a parent corporation of the first corporation; and
  (ii) an executive officer of the first corporation.

General information

Where an emergency arises, authorised persons have a number of powers which may deal with the emergency but should also be aware there are further powers which are designed to specifically address emergency situations. *For example, if a toxic waste storage tank ruptures, then action will likely be required immediately to mitigate the damage. Section 467 of the Act provides authorised persons with the powers to act immediately in emergency situations.*

What is an emergency?

The Act states that an 'emergency' exists if:

- either human health or safety is threatened; or serious or material environmental harm has been or is likely to be caused; and
- urgent action is necessary to:
  - protect the health or safety of persons; or
  - prevent or minimise the harm; or
  - rehabilitate or restore the environment because of the harm.

What is an emergency direction?

Where an authorised person is satisfied on reasonable grounds that an emergency exists, they may take or direct someone to take stated action. An emergency direction is a direction to a person to take stated reasonable action within a stated reasonable time, including releasing a contaminant into the environment. Alternatively, an authorised person may take the action or authorise another person to take the action. It is important to note that an emergency direction can only be issued for an emergency that is actually occurring. It is not appropriate to issue an emergency direction to deal with an anticipated emergency event.

The legislative provisions relating to emergency powers can be found in chapter 9, part 4 of the Act.

Who can give an emergency direction?

An emergency direction may be given by an authorised person.

How an emergency direction is initiated

The decision to give an emergency direction may be initiated proactively by the department in the event that it considers that an emergency exists, and that the emergency requires a reasonable action to be taken, including the release of a contaminant.

A client (individual or company) can also contact the department and request that an emergency direction be given to them. For example, a direction may require the person to release a contaminant into the environment in order to protect the health or safety of persons.

If time permits, clients are encouraged to contact the department prior to requesting an emergency direction so that they can fully understand the information that they must provide.

As a direction is given in an emergency there are no particular requirements to consider (such as the standard criteria when issuing an EPO) other than being satisfied an emergency exists.

Material and serious environmental harm

The department considers whether the harm is material or serious and the context of the harm is considered together with the long-term effects of the harm. Where the consequences of the harm are uncertain, the precautionary principle is used to help determine the level of harm. This means that when the health of humans and the environment is at risk, it may not be necessary to wait for scientific certainty to take protective action.

What are a reasonable action and a reasonable time?

An emergency direction may allow environmental harm to occur which would otherwise be unlawful. An authorised person will sufficiently investigate the facts and circumstances surrounding the situation to justify the decision to issue an emergency direction.

A request by persons seeking an emergency direction may be considered by the department. Decisions to give an emergency direction will be made once the department has all necessary information to make a sound judgement based on all known facts and legislation. The time taken to process requests will be dependent on the complexity and urgency of the matter. Applicants will be kept informed on the progress and outcomes of their applications on a regular basis.

Urgency is a key element of whether an emergency exists. The Macquarie Dictionary provides a definition of urgent as being '*pressing; compelling or requiring immediate action or attention; imperative'*. Where an emergency direction has been given, the time within which the action must be taken will be appropriate in light of what the action requires.

What happens if a contaminant is released without an emergency direction?

In the event that a contaminant is released without an emergency direction, and such a release causes unlawful environmental harm, offences have been committed. Penalties may apply. See the Offences section of this guideline.

Can a transitional environmental program (TEP) be submitted requesting an emergency release?

A TEP is not considered to be an appropriate tool for an emergency direction to release a contaminant. A TEP is a regulatory tool under the Act and is used by the department to either reduce environmental harm or move

an activity through transition from non-compliance to compliance with an environmental authority or other instrument.

Direction notice

A direction notice is a statutory tool which may be used by the department if it is reasonably satisfied that there has been a contravention of certain prescribed provisions of the Act. A direction notice requires a person contravening one of the **prescribed provisions** to remedy the contravention.

The purpose of a direction notice is to require the person to remedy the situation. Where a contravention of the prescribed provisions has resulted in serious or material environmental harm, a direction notice may be issued with other enforcement tools provided for by the Act including a prescribed infringement notice.

Direction notices can be issued if someone is committing an offence, or if they have committed an offence and it is likely that they will continue or repeat the offence. Direction notices cannot be issued if the offence is not currently occurring and it is not likely that the offence will be repeated. In other words, they are designed to make sure that an ongoing offence stops, or that an offence does not happen again.

A direction notice may only be issued if the matter relating to the contravention can be remedied, it is known what action should be taken and if it is appropriate to give the person an opportunity to remedy the matter.

When an authorised person can use a direction notice

A direction notice may be issued for a contravention of any of the following provisions of the Act (each of which is a ***prescribed provision***):

- section 426 – offence of carrying out an ERA without an environmental authority (EA);
- section 440 – offence of causing environmental nuisance;
- section 440Q – offence of contravening a noise standard;
- section 440ZG – depositing prescribed water contaminants in water and related matters;
- A provision of an agricultural ERA standard for an agricultural ERA.

Section 363B states that an AO can issue a written notice (a direction notice) to a person, requiring the person to remedy the contravention, if the AO is satisfied on reasonable grounds that:

- a person:
    - is contravening a prescribed provision; or
    - has contravened a prescribed provision in circumstances that make it likely the contravention will continue or be repeated; and
- a matter relating to the contravention can be remedied; and
- it is appropriate to give the person an opportunity to remedy the matter.

In the context of the direction notice, remedy includes cleaning up, fixing or rectifying any environmental harm (including nuisance) done by the person contravening the prescribed provision.

A direction notice may be given in writing or, if it is not practicable to issue a written notice, the direction may be made orally and confirmed by a written direction notice as soon as practicable.

A direction notice must include the date by which the person must remedy the contravention. The direction notice can also list reasonable actions that are considered necessary to remedy the contravention or avoid further contravention of the prescribed provision.

The amount of time given to remedy the contravention must be reasonable, taking into consideration:

- the actions required to remedy the contravention; and
- the risk to human health, natural environment or risk of loss or damage to property; and
- how long has the person been aware of the issue (i.e. where a person has been given an oral direction, and is already aware of the contravention before receiving written notice).

Penalties for non-compliance with a direction notice

Failure to comply with a direction notice is an offence unless the person has a reasonable excuse.

Other penalties

The department may also consider alternative compliance or enforcement action in relation to the offences that are the subject of the direction notice.

Environmental protection orders

An environmental protection order (EPO) can be used where it is necessary to require an entity to undertake or stop an activity.

The relevant sections of the Act that cover EPOs are found in Chapter 7, Part 5 of the Act.

An EPO is an order that can be issued by the department to impose a requirement on a person to do any of the following:

- Stop a particular activity for a specific period of time, indefinitely or until further notice is given by the department; and/or
- Not start a particular activity for a specific period of time, indefinitely or until further notice is given by the department; and/or
- Carry out a particular activity only during specific times or under specific conditions; and/or
- Carry out a stated activity only during stated times or subject to stated conditions; and/or
- Take particular action within a specific period of time.

EPOs are used when it is known what action needs to be taken and the timeframe during which the action needs to be undertaken. An EPO is not intended to be used where extensive work is required over a long period of time. A transitional environmental program (TEP) or an environmental evaluation (EE) can be used to determine what is causing harm, what needs to be done to rectify it and the appropriate regulatory tool to respond to, or manage, the issue.

When the department issues an EPO

Section 358 of the Act specifies that an EPO can be issued to a person/s:

- if the person was required to conduct or commission and environmental evaluation, and they have not complied; and/or
- if the person was required to submit an application for the issue of a TEP, and they have not complied; and/or
- if following an environmental evaluation, the department is satisfied unlawful environmental harm is being, or is likely to be, caused; and/or

- if the person is contravening or has contravened any of the following:
    - direction notices (section 363E); and/or
    - noise standards (section 440Q); and/or
    - depositing prescribed water contaminants in waters (section 440ZG); and/or
    - air contamination (Chapter 8, part 3E); and/or
    - fuel standards (Chapter 8, part 3F).
- in the circumstances where it is appropriate to issue an EPO to related persons of companies (a CoRA EPO).

Chain of Responsibility Environmental Protection Order (CoRA EPO)

The term CoRA stands for the *Environmental Protection (Chain of Responsibility) Amendment Act 2016* which amended the Act to include new powers for EPOs to be issued to a ***related person*** of a company. The full definition of a related person of a company can be found in section 363AB of the Act.

There are two scenarios when a CoRA EPO can be issued:

- if an EPO is issued to a company, or has been already issued to a company and remains in force, a CoRA EPO can be issued to a related person of the company; or
- if a company meets the definition of a ***high-risk company***, a CoRA EPO can be issued to a related person of a high-risk company, regardless of whether an EPO had been issued to the same company.

For more detailed information about CoRA EPOs, related persons, and when the department will consider issuing a CoRA EPO please refer to the Issuing 'chain of responsibility' environmental protection orders under chapter 7, part 5, division 2 of the *Environmental Protection Act 1994* Guideline (ESR/207/3479).

It is important to note that both an EPO and a CoRA EPO can be issued in the circumstances where the company does not operate under a licence issued by the department, such as an EA.

Penalties for non-compliance with an EPO

Failing to comply with an EPO is an offence unless the person has a reasonable excuse.

Failure to provide written notice of disposal of the place or business to which the EPO relates to someone else (the buyer) is an offence.

Failure to provide written notice within 10 business days of ceasing the activity to the department is an offence.

Environmental Evaluation

Ecological processes and environmental interactions are highly complex. Such complexity can make environmental decision making difficult. Environmental evaluations provide an important way of gaining environmental information so that rational and informed decisions can be made.

An environmental evaluation is a compliance tool designed to evaluate an activity or event, or contamination of land, in order to facilitate a solution to the problem.

Environmental evaluations are best used when the cause, nature or extent of a problem or the solution to a problem is not known. They answer the questions 'what is happening', and 'what is the solution?' Environmental evaluations require the person responsible for the problem to investigate (or commission someone to investigate) the problem and submit a report to the department. They do not in themselves fix the problem, but they give the department the information needed to then decide what needs to be done about the problem.

The legislative provisions relating to environmental evaluations can be found in sections 321–329 of the Act. The Act provides that an environmental evaluation is used to decide:

- the source, cause or extent of environmental harm being caused, or likely to be caused, by an activity or event; **or**
- the source, cause, or extent of contamination of the land being caused, or likely to be caused; and
- the need for a site management plan or site remediation; and
- the source, cause or extent of any contamination to the surrounding land or environment, caused or likely to be caused by the contamination; and
- any environmental harm being caused, or likely to be caused, by the contamination.

Environmental evaluation is defined in the dictionary of the Act as either an:

1. environmental audit; or
2. environmental investigation.

A person given a notice to conduct or commission an environmental evaluation must conduct or commission an environmental audit or environmental investigation into the matters stated in the notice and submit a report on that evaluation to the department. The report is referred to as an ***environmental report*** in the Act, however in this guideline the type of reports are further categorised into an ***audit report*** or an ***investigation report***.

The information in an audit report or investigation report is often used by the department to decide the best method for the person responsible for environmental harm or the potential harm to remedy the situation. This can include deciding whether to take further action such as;

- amending an environmental authority (EA);
- issuing another statutory notice such as an environmental protection order (EPO) or Clean-up Notice to address the problem; or
- other compliance action as required to address the problem.

Environmental investigations

Environmental investigations are separated into two categories:

- Environmental investigation – environmental harm; and
- Environmental investigation – contamination of land.

Environmental investigation – environmental harm

Under section 326B of the Act, the department may issue a written notice (an ***investigation notice***) to a person responsible for an activity (i.e. a person who has carried out, is carrying out or is proposing to carry out, the activity), if the department is satisfied on reasonable grounds that either:

- an event causing environmental harm has occurred while an activity was being carried out, or
- an activity or proposed activity is causing, or is likely to cause, environmental harm.

The investigation notice can require the person to:

- conduct or commission an environmental investigation about the event or activity; and
- give the department an investigation report.

Note - ***activity*** includes rehabilitation or remediation work.

Environmental investigation – contamination of land

Under section 326BA of the Act, the department may issue an investigation notice for land that is recorded in the environmental management register (EMR) or contaminated land register (CLR), if the department is:

- satisfied or suspects on reasonable grounds that the hazardous contaminant contaminating the land has the potential to cause serious or material environmental harm, and
- satisfied that a person, animal or another part of the environment may be exposed to the hazardous contaminant, whether or not it is on the land, then the department may issue an investigation notice.

This notice is issued to a ***prescribed responsible person***[7] for the land, requiring them to:

- conduct or commission an investigation about the contamination or potential contamination of the land; and
- give the department a ***site investigation report*** prepared in accordance with the contaminated land investigation document (CLID) requirements in Chapter 7, Part 8, Division 3 of the Act.

Site investigation report

The site investigation report must be submitted to the department using the *Contaminated land investigation document – approved form* (ESR/2023/6339[8]) (the CLID form). The CLID form is also available at Resources | Environment, land and water | Queensland Government (www.qld.gov.au).

Conducting a site investigation for contaminated land and preparing a site investigation report under are regulatory functions that must be carried out by a **Suitably Qualified Person** (SQP), as defined in sections 564 and 565 of the Act. A SQP must have qualifications and experience relevant to the work being undertaken and must be a current member of a professional organisation prescribed under Schedule 14 of the Environmental Protection Regulation 2019. The site investigation report must be accompanied by a declaration by the SQP. This declaration is now contained within the CLID. For further information about how to engage a suitably qualified person or an auditor, go to Contaminated land | Environment, land and water | Queensland Government (www.qld.gov.au).

Under section 389(4) of the Act, the site investigation report must be certified by an **auditor** for contaminated land, verifying that the site investigation report prepared by the SQP meets the requirements of section 389(2) of the Act. The certification must include a declaration by the auditor, in accordance with section 574C of the Act. The Queensland Auditor Handbook for Contaminated Land is the primary guideline for Auditors and those seeking to become an Auditor. Contaminated Land Auditors are approved by the department and must act in accordance with the *Code of professional conduct* (Module 4 of the handbook). The auditor's certification and declaration are now contained within the CLID form.

[7] See definition in Schedule 4 of the *Environmental Protection Act 1994*

[8] This is the publication number. The publication number can be used as a search term to find the latest version of a publication at **www.des.qld.gov.au**.

Please note that the department will not require an environmental investigation for contaminated land in cases where land is subject to a site management plan for the contamination and the conditions of the plan are being complied with.

Decisions about investigation reports and further actions

After receiving an investigation report, the department will consider the report and decide whether to accept or refuse the report, or seek further information to inform its decision.

The department may:

- Require further information be provided within 10 business days of receiving the report. This request is made via an information request notice to the recipient.
- Extend the period for seeking information via a notice to the recipient within the 10 business days or at any time by agreement.
- Extend the timeframe for making its decision by issuing a notice to the recipient within 20 business days.
- Decide to accept or refuse the report within 20 business days after the investigation report or response to the information request was received or within the extended period.

If the department fails to decide whether to accept an investigation report within the relevant decision period, it is taken to be a decision by the department that it has refused to accept the report (section 329 of the Act).

Accept the report

If the department accepts the investigation report under section 326G(4)(a), it may do one or more of the following:

- for a report (other than a report relating to a PRCP schedule), require the recipient to apply for the issue of a TEP for the activity;
- if the recipient is the holder of an EA/suspended EA or PRCP schedule, amend the conditions of the EA or PRCP schedule;
- issue an EPO to the recipient; or
- take any other action it considers appropriate.

The recipient is the person or holder of an EA/suspended EA who received the notice to conduct or commission an environmental evaluation.

How does the department determine the environmental report is satisfactory?

The original notice to conduct or commission an environmental investigation lists the department's requirements. The department will assess each requirement in the notice against the investigation report and consider whether the environmental investigation carried out has adequately addressed each requirement.

If the department is not satisfied with the environmental report

If the department is not satisfied that the investigation report adequately addresses the relevant matters set out in the original notice, the department may, by giving written notice, require another environmental investigation and a further report under section 326I(2). The department will consider and make a decision on the further report using the same process for making a decision on an investigation report under section 326(G).

Penalties for non-compliance with an investigation notice

It is an offence to fail to comply with an investigation notice unless the person has a reasonable excuse.

It is an offence to fail to comply with a requirement to conduct or commission another environmental

investigation and submit a report. For more information, please refer to the Offences section of this guideline.

Recipient information

If you have received an investigation notice or a notice to conduct or commission another environmental investigation, and would like more information on your rights, responsibilities and obligations, please refer to the *Environmental Investigations information sheet* (ESR/2023/6388[9]).

Clean-up notice

The legislative provisions for clean-up notices can be found in sections 363F–363L of the Act.

Definitions for this section:

A ***contaminant*** is defined in section 11 of the Act and can include:

- a gas, liquid or solid;
- an odour;
- an organism (whether alive or dead), including a virus;
- energy, including noise, heat, radioactivity and electromagnetic radiation; or
- a combination of contaminants.

A ***contamination incident*** is defined in section 363F of the Act as;

- an incident involving contamination of the environment, that the department is satisfied has caused, or is likely to cause, serious or material environmental harm;
- the carrying out of an activity on contaminated land, the happening of an event on contaminated land, or a change in the condition of contaminated land that the administering authority is satisfied has caused or is likely to cause other land to become contaminated land; or
- a combination of the above.

Note: The *Acts Interpretation Act 1954* states that the singular includes the plural, so a contamination incident may in fact be a series of incidents that together or separately caused or are likely to cause serious or material environmental harm.

A ***prescribed person*** for a contamination incident is defined in section 363G of the Act and includes a ***prescribed responsible person***, as defined in the Dictionary of the Act.

What is a clean-up notice?

A clean-up notice is a statutory tool which may be issued by the department to a person reasonably believed to be a prescribed person for a contamination incident.

Clean-up notices are issued to ensure that a contamination incident that has caused or is likely to cause serious or material environmental harm or contaminated land, is cleaned up. This may include action to contain, remove, disperse or destroy the contaminants and/or rehabilitate or restore the environment because of an incident, including taking steps to mitigate or remedy the effects of the incident.

The clean-up notice is intended to operate separately from other powers under the Act, including emergency

[9] This is the publication number. The publication number can be used as a search term to find the latest version of a publication at **www.des.qld.gov.au**.

powers and issuing environmental protection orders (EPOs). This means that the department may use emergency powers under section 476 of the Act to deal with the contamination incident immediately, but then issue a clean-up notice to the same person for the same event, to make sure that non-urgent actions are taken.

Example

Company A operates a transport company. Company B consigns a load of chemicals to Company A, which loads it on to a truck operated by Mr. C at the depot operated by Company A. During the loading, Mr. C's negligence causes the chemicals to spill into a drain leading to a waterway. Serious environmental harm occurs as a result. A clean-up notice could be issued to Mr. C (who caused the incident to happen), to Company A (which was the occupier of the premises where the incident happened) or to Company B (which was the owner of the chemicals involved in the incident).

Clean-up notices can be issued to a wide range of people (prescribed persons) in response to a contamination incident. The department identifies the most appropriate person to clean up the incident, based on degree of responsibility, resources and their capacity. If someone who is not responsible for an incident is issued with a clean-up notice, they can recover any costs incurred by them in complying with the notice from the person who was responsible.

What the does the department consider when issuing a Clean-up notice

When considering whether the environmental harm is serious or negligible, the context of the harm must be considered along with the long-term effects of the harm. Where the consequences of the harm are uncertain, the precautionary principle is used to determine the level of harm. If the health of humans and the environment is at stake, it is not always necessary to wait for scientific certainty to take protective action.

The burden of proof rests with the department to demonstrate the threat of environmental harm is a reality and that a proportionate precautionary measure is necessary.

For more information on environmental harm, please refer to the Obligations under the Act section of this guideline.

What options exist for responding to non-compliance with a Clean-up notice?

There are options available to the department to ensure the contamination incident is cleaned up, if the recipient of a clean-up notice fails to comply with the notice or a court grants a stay of the original decision to issue a clean-up notice (i.e. the court 'suspends' the clean-up notice from having any effect while it makes a decision on an appeal). Section 363K of the Act allows an AO, or person acting under the direction of an AO (the contractor), to take any of the actions stated in the clean-up notice and to enter the land that the clean-up notice applies to, provided the consent of the owner or occupier has been obtained or if the AO or contactors gives 5 business days written notice.

Section 458 of the Act allows an AO to apply to a magistrate for a court order to enter the land to take the actions required under the clean-up notice. If this occurs, the department will give written notice of the application for the court order to:

- the owner of the land;
- if the owner is not the occupier – the occupier; and
- the recipient of the clean-up notice.

The department may issue a cost recovery notice to the recipient of a clean-up notice in the following circumstances:

- if the recipient of the notice fails to comply with it and an AO or contractor takes any of the actions

stated in the notice pursuant to section 363K; or
- if a decision to issue the notice is stayed by the court whilst the recipient appeals the decision, and during the period of the stay an AO or contractor takes any of the actions stated in the clean-up notice pursuant to section 363K, and either the appeal ends without an appeal decision or the court's decision confirms the decision to issue the clean-up notice.

If either of the above circumstances apply, a cost recovery notice may claim a stated amount for costs or expenses reasonably incurred:

- for taking an action stated in the clean-up notice; or
- for monitoring compliance by the recipient with the clean-up notice.

Failure to comply with a clean-up notice is an offence unless the recipient has a reasonable excuse.

It is a reasonable excuse not to comply with a notice if it requires information or the production of a document that might incriminate an individual to whom it was issued. A reasonable excuse must be reasonable in the circumstances of the actions required to be taken in the clean-up notice. For example, a reasonable excuse may be that the actions cannot physically be done or that to undertake the works in the way specified would cause more environmental harm than the positive benefits from the clean-up. It would not be a reasonable excuse to claim lack of funds to perform the clean-up, unless every avenue to obtain the funds has been exhausted. In such circumstances, the person should have taken all reasonable and practicable precautions to prevent or minimise environmental harm being caused.

For more information, please refer to the Offences section of this guideline.

Defences

In a proceeding regarding non-compliance with a clean-up notice, there are defences for the recipient of the clean-up notice:

- recipient of the clean-up notice is not a prescribed person;
- contamination incident was caused by a natural disaster and all reasonable measures to prevent the incident, having regard to all the circumstances including the inherent nature of the risk and the probability of the natural disaster had been taken;
- the contamination incident was caused by a terrorist act or other deliberate act of sabotage;
- if the recipient is a parent corporation of the first corporation, that it has taken all reasonable steps to ensure that the first corporation complied with the notice served on the first corporation;
- if the recipient is an executive officer of the first corporation that the person:
    - has taken all reasonable steps to ensure that the first corporation has complied with the notice served on the first corporation; or
    - was not in a position to influence the conduct of the first corporation in relation to its compliance with the notice.

The proof of defence based on general environmental duty rests with the person who is claiming the defence.

Cost recovery notice

Definitions for this section

For cost recovery notices, each of the following persons is a prescribed person for a contamination incident:

- a person causing or permitting, or who caused or permitted, the incident to happen;
- a person who, at the time of the incident, is or was—

  - the occupier of a place at or from which the incident is happening or happened; or
  - the owner, or person in control, of a contaminant involved in the incident;
- for a contamination incident mentioned in section 363F, definition contamination incident, paragraph (b)—a prescribed responsible person for the land to which the incident relates;
- if a cost recovery notice is issued to a corporation (the first corporation) in relation to the incident and it fails to pay the amount claimed under the notice—
  - a parent corporation of the first corporation; and
  - an executive officer of the first corporation.

What is a cost recovery notice?

A cost recovery notice is a written notice that requires the recipient of the notice to pay all reasonable expenses that the department incurred in relation to the clean-up of a contamination incident.

The notice can be issued to:

- a person who failed to comply with a clean-up notice;
- a prescribed person who failed to comply with an emergency direction; or
- a prescribed person on whose behalf the state took emergency action.

Where the recipient of a clean-up notice does not take the actions required, the department has the power to undertake the work where there is a significant risk of damage to persons, property or the environment. This operates whether a stay during an appeal of the decision to issue to clean-up notice is in place or not.

The issuing of cost recovery notices is governed by sections 363M to 363O of the Act.

In some cases, the amount claimed may also not be payable if the cost recovery notice is issued to a corporation that fails to pay the amount claimed in the notice and the prescribed person is an executive officer of the corporation.

In this instance, the amount will not be payable if:

- the executive officer took all reasonable steps to make sure the corporation paid the amount claimed in the notice; or
- the executive officer was not in a position to influence the corporation in regard to paying the costs claimed in the notice.

Penalties for non-compliance with a cost recovery notice

If the recipient does not pay the amount in the cost recovery notice within 30 days after the notice is issued, the department may claim the amount from the recipient as a debt. The recipient may be subject to other civil action.

The department may issue a written notice to recoup costs and expenses incurred:

- if the recipient of a clean-up notice fails to comply with the notice and the department takes the action specified in the clean-up notice;
- in monitoring the compliance of the recipient with the provisions of the clean-up notice; or
- in taking an action under the department's emergency powers provided for in chapter 9, part 4 of the Act.

Issuing a cost recovery notice is only appropriate where the department has acted on behalf of a recipient or prescribed person under a clean-up notice or emergency direction. It enables the department to recover both

external and internal costs if there was a non-compliance with a notice or direction. This would include the cost of an authorised person's time spent managing the post-incident environmental clean-up.

When the costs incurred will not be payable

There are certain circumstances when the amount claimed is not payable, as specified in section 363N(5) of the Act. These include:

- if the recipient of the cost recovery notice is not a prescribed person;
- if the contamination incident was caused by a natural disaster and the recipient had taken all reasonable measures to prevent the incident; or
- if the contamination incident was caused by a terrorist act or other deliberate act of sabotage by someone other than the recipient and, taking all of the circumstances onto account, the recipient had taken all reasonable measures to prevent the incident.

Transitional environmental programs

A transitional environmental program (TEP) is a specific program that sets out actions, requirements and conditions in relation to a particular activity, that would otherwise contravene the Act. When complied with, an approved TEP achieves compliance with the Act by doing one or more of the following:

- reducing environmental harm caused by the activity;
- detailing the transition of the activity to an environmental standard;
- detailing the transition of the activity to comply with:
    - a condition (including a standard environmental condition) of an environmental authority (EA);
    - a development condition;
    - a prescribed condition for carrying out a small scale mining activity; or
    - an agricultural ERA standard that applies to an agricultural ERA.

TEPs are a useful tool to use when it is known what needs to be done to achieve a solution to an environmental problem, and the solution is likely to take a long period of time. Therefore, a TEP is not considered appropriate where an emergency situation exists.

A TEP must not be used to achieve compliance with a progressive rehabilitation and closure plan (PRCP) schedule or an enforceable undertaking (EU). For more information in relation to EUs, refer to the *Enforceable Undertakings Statutory Guideline* (ESR/2016/2272)[10].

The legislation regarding TEPs can be found in Chapter 7, Parts 3 and 4 (sections 330–357) of the Act.

How is a TEP initiated?

A TEP can be initiated in the following ways:

- A person (you) or public authority can voluntarily submit a TEP application; or
- The department can issue a notice to a person (you) or a public authority requiring them to submit a TEP application; or
- A person (you) can give the department a program notice under section 350 of the Act notifying of an action or a failure to act on your part that has caused or threatened environmental harm while carrying

[10] This is the publication number. The publication number can be used as a search term to find the latest version of a publication on the department's website at www.des.qld.gov.au

out an activity and declaring the person's intention to submit a TEP application for the activity.

The term 'person' includes an individual or corporation[11]. A public authority includes the following;

- an entity established under an Act;
- a government owned corporation; and
- Queensland Rail Limited ACN 132 181 090.

When can the department require a TEP?

The department may require you or a public authority to submit a TEP application in the following circumstances:

- as a condition of an EA; or
- if the department is satisfied that:
  - an activity carried out, or proposed to be carried out, is causing, or may cause, unlawful environmental harm;
  - it is not practicable for you or a public authority to comply with an environmental protection policy (EPP) or regulation on its commencement;
  - a condition of an EA or DA has been contravened;
  - a prescribed condition for carrying out a small scale mining activity is, or has been, contravened; or
  - an environmental protection order has been amended or withdrawn[12].

What is the effect of a TEP?

Once approved, a TEP gives you the ability to do, or not do, the thing under the TEP despite, and without being in contravention of:

- a regulation;
- an environmental protection policy (EPP);
- their EA or DA;
- a prescribed condition (small scale mining activity); or
- an agricultural ERA standard.

How will I know if I am required to submit a TEP application?

You will receive a written notice from the department if you are required to submit a TEP application. The written notice will state:

- the grounds on which the requirement is made;
- the matters to be addressed by the TEP;
- the period over which the TEP is to be carried out;
- the day (at least a reasonable period after the notice is given) by which the person or public authority must submit a TEP application; and
- the review or appeal details.

What happens if I do not submit a TEP application after receiving a notice?

[11] Section 32D of the *Acts Interpretation Act 1954*.

[12] Section 332 of the Act.

Failure to comply with a notice to submit a TEP application is an offence under the Act, unless you have a reasonable excuse. For more information, please refer to the Penalties section of this guideline.

How do I apply for a TEP?

For more information on how to apply for a TEP, please refer to the *Transitional environmental programs guideline* (ESR/2023/6520[13]).

Penalties and offences under the Environmental Protection Act

Penalty infringement notices

In accordance with the department's *Enforcement Guidelines* (ESR/2021/5549[14]), the department may issue a penalty infringement notice (PIN), when applicable, for offences under the Act.

- The *Environmental Protection Act 1994* prescribes the penalty units of the offences against the sections of the Act the offence is associated with.
- The *Penalties and Sentences Act 1992* (the PS Act), administered by the Department of Justice and Attorney-General, provides the definition of a penalty unit and a legislative mechanism for annual indexation increases to the value of a penalty unit.
- Section 3 of the Penalties and Sentences Regulation 2015 prescribes the current monetary value of a penalty unit. The prescribed value increases on 1 July of each year.
- Schedule 1 of the State Penalties Enforcement Regulation 2014 prescribes the offences for which PINs can be issued and their corresponding penalty unit amounts used to calculate the fine.

For more information, visit the Queensland legislation website at www.legislation.qld.gov.au and search for the above-mentioned Acts and regulations.

Background

Infringement notices are a way of dealing with common contraventions of the law where the impacts are not serious enough for court action. For example, under the Act, PINs can be issued for offences such as failing to give a name and address to an AO or failure to comply with a statutory notice issued to take particular action.

The infringement notice system modifies the traditional legal system. A notice is served because it appears an offence has been committed; however, payment of the penalty does not lead to the recording of a criminal conviction. Non-payment of the fine is not dealt with by a jail sentence but is recoverable as a civil debt. On the other hand, if a person elects to have the matter heard, proceedings are commenced in the criminal jurisdiction of the Magistrates Court.

Infringement notices can be issued by AOs. These can include AOs from organisations such as local governments and the department. The department has no direct control over how AOs from other organisations

[13] This is the publication number. The publication number can be used as a search term to find the latest version of a publication on the department's website at www.des.qld.gov.au.

[14] This is the publication number. The publication number can be used as a search term to find the latest version of a publication at www.des.qld.gov.au

carry out their duties. However, for fairness and consistency, the department's AOs will in accordance with the infringement notice guidelines set out here.

Operation

Infringement notices are designed primarily to deal with one-off contraventions that can be remedied easily. They are usually a first response when a preventable contravention is discovered. The department will not issue successive infringement notices for multiple contraventions, unless the contraventions are related to different offences. In those circumstances, even though each contravention might be comparatively minor, it may indicate an underlying, potentially major and continuing compliance problem. Such a problem needs to be dealt with through other enforcement measures if a past infringement notice has not motivated the recipient to successfully address the underlying issue.

In accordance with the department's *Enforcement Guidelines*, the department may issue a PIN, when applicable, for the offences noted against the compliance tools explained in this document.

The *State Penalties Enforcement Act 1999* gives the department the discretion to withdraw an infringement notice after serving the notice. This allows for two possibilities:

- one possibility is that a more serious breach of the law might have taken place without the authority's knowledge when the notice was issued. The notice can be withdrawn to allow the more serious breach to be pursued; or
- alternatively, a second possibility is that a mistake of fact was made and the notice should not have been issued. In such a case, the State Penalties Enforcement Regulation 2014 allows the authority to withdraw the notice, even if the penalty has been paid.

Summary

Infringement notices are generally appropriate when the following conditions are met:

- where the breach is minor;
- where the facts are apparently indisputable;
- where the breach is a one-off situation easily remedied;
- when inspection discovers a breach that normal operating procedures should have prevented; and
- where the issuing of an infringement notice is likely to act as a deterrent.

Infringement notices should not be issued in the following circumstances:

- child under the age of 17;
- where large-scale habitat or environmental damage has occurred;
- where the contravention is continuing and not within the alleged offender's ability to remedy quickly;
- where the penalty seems inadequate for the severity of the offence;
- where the extent of the harm to the environment cannot be assessed immediately;
- where the evidence is so controversial or insufficient that court action is unlikely to succeed;
- where there has been substantial delay since the alleged contravention;
- where another authority has issued a notice for the same or similar offence in the same period;
- where a notice, direction or order has been issued by the department to do specified work within a time limit and the limit has not expired;

- where multiple contraventions have occurred, unless all are minor; or
- where the offence took place under a proposal approved by the department.

Court orders

Many of the Acts administered by the department provide a power to seek orders from a court to ensure compliance with legislative requirements. These orders may take a variety of forms, including declaratory orders, enforcement orders, restraint orders or orders resulting from a criminal prosecution.

Court orders are amongst the strongest enforcement tools available to the department and are only sought where other alternatives have failed or where the conduct is of such a serious nature that the department considers it necessary. Public interest considerations are considered by the department when deciding whether court orders are appropriate.

Declarations

Where there is uncertainty regarding if an activity is unlawful in relation to the provisions of an Act administered by the department, the Act may provide an avenue to seek a declaration from the court. A declaration is a formal statement of legal rights enabling or disallowing an activity. Seeking a court declaration enables an activity to proceed with a clear statement of the legal situation.

Restraint orders

Under section 505 of the Act, various parties (such as the Minister, the department, other affected parties or those granted leave of the court to apply) can apply to a court for a restraint order, where there is existing or potential unlawful activity that amounts to an actual, threatened or anticipated offence under the Act.

A court can grant a restraint order directing the defendant to do either of the following:

- stop an activity that is, or will be, a contravention of the Act; or
- do anything required to comply with the Act or stop the contravention under the Act.

The restraint order may also require any of the following:

- restrain the use of plant or equipment or a particular place;
- require the demolition or removal of plant or equipment, a structure or another relevant thing; or
- require the environment to be rehabilitated or restored.

When making a restraint order, the court will specify the time required for compliance with the order. The Court may also include an order for the defendant to pay the department's costs associated with monitoring the defendants actions regarding the offence.

In order to stop frivolous or vexatious applications for restraint orders, the Court has the discretion to make an order in relation to costs.

It is an offence to contravene a restraint order. For more information, refer to the Offences section below.

Under section 506 of the Act, the Court may grant a restraint order before the proceedings to decide the restraint order have been finalised, if the Court is satisfied it would be proper to make the order.

Persistent offender order

Under section 506A of the Act, the court may make any of the following orders if a person is convicted or a serious environmental offence, and the person has been convicted of the same or another serious environmental offence at least 2 other times in the past 5 years:

- an order prohibiting the person from carrying out a particular activity;
- an order prohibiting the person from carrying out a particular activity, except in particular circumstances; or
- any other order the court considers appropriate.

It is an offence to contravene a persistent offender order. For more information, refer to the penalties section below.

Offences

Section	Offence Description	Maximum Penalty
Agricultural ERAs		
82	**Offence to contravene agricultural ERA standard** It is an offence for a person operating under an agricultural ERA standard, to contravene that agricultural standard.	If offence committed wilfully, 1,665 penalty units Otherwise – 600 penalty units
85	**Offence to give false or misleading tailored advice** If is an offence for an adviser providing tailored advice about carrying out an agricultural ERA to give advice that they know, or ought to reasonably know, is false or misleading in a material particular.	600 penalty units
Environmental Evaluations		
325	**Failure to comply with audit notice** It is an offence for a person to fail to comply with a notice to conduct an audit, unless the person has a reasonable excuse.	300 penalty units
326D	**Failure to comply with investigation notice** It is an offence for a person to fail to comply with a notice to conduct or commission an environmental investigation, unless the person has a reasonable excuse.	300 penalty units
326I	**Failure to comply with notice to conduct or commission another environmental investigation** It is an offence for a person to fail to comply with a notice to conduct or commission another environmental investigation, within the period stated in the notice.	300 penalty units
574L	**Impersonation of auditor** It is an offence to pretend to be an auditor.	100 penalty units
574B	**Auditor must comply with approval** It is an offence for an auditor to fail to comply with the conditions of any approval given under section 571(1)(b), unless the auditor has a reasonable excuse.	100 penalty units

Section	Offence Description	Maximum Penalty
574M	**False or misleading reports, certifications or declarations** It is an offence for an auditor, in performing the auditor's functions, to make a report, provide a certification, or make a declaration about a report or certification, that the auditor knows, or ought reasonably to know, is false or misleading.	4,500 penalty units or 2 years imprisonment
Transitional Environmental Programs (TEPs)		
332	**Failure to comply with notice requiring an application for the issue of a TEP be submitted** It is an offence for a person to fail to comply with a notice to apply for the issue of a transitional environmental program, unless the person has a reasonable excuse.	100 penalty units
345	**Failure to submit annual return for TEP** It is an offence for the holder of a transitional environmental program to fail to give the department an annual return in the approved form, within 22 business days after each anniversary of the approval.	100 penalty units
347	**Failure to provide notice of disposal** 347(2) – It is an offence for the holder of a prescribed transitional environmental program* to fail to provide written notice of the existence of the program to a buyer before agreeing to dispose of the place or business. 347(6) – It is an offence for the holder of a prescribed transitional environmental program* to fail to provide written notice of disposal to the department within 10 business days after agreeing to dispose of the place or business. **Prescribed transitional environmental program means a transitional environmental program that doesn't relate to an environmental authority (EA)*	50 penalty units 50 penalty units
348	**Failure to provide notice of ceasing activities** It is an offence for the holder of a transitional environmental program to fail to provide written notice to the department within 10 business days of ceasing to carry out the activity to which a transitional environmental program relates.	50 penalty units
357	**Failure to comply with a Court order pending a TEP application decision** It is an offence for a person to contravene a Court order made pending a decision on a transitional environmental program application made in relation to a Program Notice.	If offence committed wilfully, 6,250 penalty units or 5 years imprisonment Otherwise – 4,500 penalty units
432	**Failure to comply with a TEP** 432(1) – It is an offence for the holder of a transitional environmental program, or a person acting under it, to wilfully contravene the program. 432(2) - It is an offence for the holder of a transitional environmental program, or a person acting under it, to contravene the program.	6,250 penalty units or 5 years imprisonment 4,500 penalty units
433	**Failure of TEP holder to ensure others comply**	The relevant penalty

Section	Offence Description	Maximum Penalty
	It is an offence for a TEP holder to fail to ensure another person acting under the program complies with the program.	under section 432 for contravention of program
Temporary Emissions Licences (TELs)		
357I	**Failure to comply with conditions of TEL** It is an offence for the holder of a temporary emissions licence, or a person acting under it, to fail to comply with conditions of the licence.	If offence committed wilfully, 6,250 penalty units or 5 years imprisonment Otherwise – 4,500 penalty units
Environmental Protection Orders (EPOs)		
361	**Offence not to comply with EPO** 361 (1) – It is an offence for the recipient of an environmental protection order to wilfully contravene the order. 361(2) – It is an offence for the recipient of an environmental protection order to contravene the order.	6,250 penalty units or 5 years imprisonment 4,500 penalty units
362	**Failure to provide notice of disposal** 362(2) – It is an offence for the recipient of an environmental protection order to fail to provide written notice of the existence of the order to a buyer before agreeing to dispose of the place or business. 347(6) – It is an offence for the recipient of an environmental protection order fail to provide written notice of disposal to the department within 10 business days after agreeing to dispose of the place or business.	50 penalty units 50 penalty units
363	**Failure to provide notice of ceasing activities** It is an offence for the recipient of an environmental protection order to fail to provide written notice to the department within 10 business days of ceasing to carry out the activity to which the order relates.	50 penalty units
363AH	**Obstruction of recipient complying with EPO** It is an offence for a person to obstruct the recipient of an environmental protection order in taking actions to comply with the order, unless the person has a reasonable excuse.	165 penalty units
Direction Notices		
363E	**Offence not to comply with direction notice** It is an offence for a person to fail to comply with the notice, unless the person has a reasonable excuse.	If offence committed wilfully, 1,665 penalty units Otherwise – 600 penalty units
Clean-Up Notices		
363I	**Offence not to comply with clean-up notice** It is an offence for the recipient of a clean-up notice to fail to comply with the notice, unless the person has a reasonable excuse.	If offence committed wilfully, 6,250 penalty units or 5 years imprisonment. Otherwise – 4,500

Section	Offence Description	Maximum Penalty
		penalty units
363L	**Obstruction of recipient complying with notice** It is an offence for a person to obstruct the recipient of a clean-up notice in taking the action necessary to comply with the notice, unless the person has a reasonable excuse.	165 penalty units
Contaminated Land		
407	**Owner to give notice to occupant or proposed occupant** 407(2) – It is an offence for the owner of land (when a lease is in effect) to fail to give a lessee notice that the particulars of the land have been recorded in the contaminated land register, within 20 business days after the particulars have been recorded. 407(3) – It is an offence for the owner of that land to fail to give a proposed new lessee notice about the particulars recorded in the contaminated land register.	50 penalty units 50 penalty units
408	**Owner to give notice to proposed purchaser** It is an offence for the owner of land (that is contaminated land) to fail to provide written notice to a prospective buyer of the land, outlining the particulars of the contaminated land and any statutory notices or orders relating to the land.	50 penalty units
General Environmental Offences		
256	**Failure to notify owners of transferred EA** It is an offence to fail to notify relevant land owners within 10 business days after an environmental authority (EA) has been transferred to new holders.	10 penalty units
260	**Failure to comply with surrender notice** It is an offence for an environmental authority (EA) holder to fail to comply with a surrender notice, unless the holder has a reasonable excuse.	100 penalty units
285	**Failure to submit rehabilitation auditors report** It is an offence for the holder of a PRCP schedule to fail to submit the rehabilitation auditors report and declaration to the department within 4 months after the end of each audit period.	100 penalty units
291	**Failure to have plan of operations for petroleum activities** It is an offence for an environmental authority (EA) holder to carry out, or allow the carrying out of, petroleum activities under a petroleum lease if the holder has not given the department a plan of operations that complies with the Act.	100 penalty units
703	**Failure to provide plan of operations for petroleum activities** It is an offence for an environmental authority (EA) holder not to give the department a plan of operations for all relevant activities within 6 months after commencement of the activity.	100 penalty units
294	**Failure to comply with plan of operations** It is an offence for an environmental authority (EA) holder to fail to comply with the plan of operations when carrying out the petroleum	100 penalty units

Section	Offence Description	Maximum Penalty
	activity under the petroleum lease.	
295	**Failure to amend plan of operations when inconsistent with EA** It is an offence to fail to amend a plan of operations within 15 business days after the holder became aware of the inconsistency between the plan of operations and the environmental authority (EA).	100 penalty units
302	**Failure to apply for new ERC decision before expiry** It is an offence for an environmental authority (EA) holder for a resource activity to fail to apply for a new ERC decision within the required time before the existing decision expires.	100 penalty units
303	**Failure to comply with direction to re-apply for ERC decision** It is an offence for an environmental authority (EA) holder for a resource activity to fail to comply with a direction to re-apply for an ERC decision.	100 penalty units
304	**Failure to re-apply for ERC decision after relevant changes** It is an offence for an environmental authority (EA) holder for a resource activity to fail to re-apply for an ERC decision after relevant changes to the activity.	100 penalty units
316H	**Failure to give amended rehabilitation planning part** It is an offence for the holder of a PRCP schedule to fail to review and amend the rehabilitation planning part of the holders PRC plan, and give a copy to the department after the PRCP schedule was amended.	100 penalty units
316IA	**Failure to give annual return for EA** It is an offence for an environmental authority (EA) holder to fail to give the department an annual return, when directed to by the department, unless the holder has a reasonable excuse.	100 penalty units
316P	**Failure to replace EA if non-compliant with eligibility criteria for the ERA standard** It is an offence for an environmental authority (EA) holder to fail to comply with a notice to make a site-specific EA application or an EA amendment application when non-compliant with the eligibility criteria for the relevant ERA standard.	4,500 penalty units
318X	**Offences related to mobile and temporary ERA work diaries** 318X(1) – It is an offence for a registered suitable operator to fail to keep a work diary in the approved form for a mobile and temporary ERA. 318X(3) – It is an offence for a registered suitable operator to fail to record the information required in the approved form within 1 day after vacating each location the mobile and temporary ERA is carried out, unless the operator has a reasonable excuse. 318X(4) – It is an offence for a registered suitable operator to fail to keep the work diary for 2 years after the day the operator vacates the last location the mobile and temporary ERA was carried out, unless the operator has a reasonable excuse.	100 penalty units 100 penalty units 100 penalty units

Section	Offence Description	Maximum Penalty
318Y	**Failure to notify chief executive if work diary is lost or stolen** It is an offence for a registered suitable operator to fail to give written notice to the chief executive of the department within 7 business days of becoming aware of this fact, unless the operator has a reasonable excuse.	50 penalty units
318YW	**Failure to notify accredited persons about changes to accreditation program** 318YW(2) – It is an offence for the owner of an accreditation program (for an agricultural ERA) to fail to give written notice to each person accredited under the program within 5 business days of any amendment, suspension, cancellation or ending of the program taking effect. 318YW(4) – It is an offence for the owner of the accreditation program to fail to give the department a copy of the notice given under 318YW(2) and the names of each accredited person given the notice, within 5 business days of notice given accredited persons	100 penalty units 100 penalty units
320B	**Duty of employee to notify employer of environmental harm** It is an offence for an employee to fail to notify the employer within 24 hours of becoming aware of an event or fail to notify the department in writing if the employer cannot be contacted.	100 penalty units
320C	**Duty to notify particular owners and occupiers of environmental harm** 320C(2) – It is an offence for a person to fail to give the department written notice of an event within 24 hours of becoming aware of the event, unless the person has a reasonable excuse. 320C(3) – It is an offence for a person to fail to provide written notice of the event to any occupier or registered owner of the affected land or provide public notice (where relevant) as soon as practical after becoming aware of the event, unless the person has a reasonable excuse.	For an event under: s.320A(1)(a) – 500 penalty units s.320A(1)(b) – 100 penalty units
320D	**Duty of employer to notify particular owners and occupiers of environmental harm** 320D(2) – It is an offence for an employer to fail to give the department written notice of an event within 24 hours of becoming aware of the event, unless the person has a reasonable excuse. 320D(3) – It is an offence for an employer to fail to provide written notice of the event to any occupier or registered owner of the affected land or provide public notice (where relevant) as soon as practical after becoming aware of the event, unless the person has a reasonable excuse.	For an event under: s.320A(1)(a) – 500 penalty units s.320A(1)(b) – 100 penalty units
320DA	**Duty of owner, occupier or auditor to notify of environmental harm** 320DA(1) – It is an offence for an owner, occupier or rehabilitation auditor to fail to provide written notice to the department within 24 hours of becoming aware of the presence or happening of an event involving hazardous contaminants, or a change in the condition of	500 penalty units

Section	Offence Description	Maximum Penalty
	contaminated land, unless the person has a reasonable excuse. 320DA(3) – It is an offence for an owner, occupier or rehabilitation auditor to fail to provide written notice to the department within 20 business days of becoming aware of a notifiable event, unless the person has a reasonable excuse.	500 penalty units
426	**Environmental authority required for particular ERAs** It is an offence to carry out an environmentally relevant activity (ERA) unless the person holds, or is acting under, an environmental authority (EA).	4,500 penalty units
430	**Contravention of condition of environmental authority** 430(2) – It is an offence for a person to wilfully contravene a condition of an environmental authority (EA). 430(3) – It is an offence for a person to contravene a condition of an environmental authority (EA).	6,250 penalty units or 5 years imprisonment 4,500 penalty units
431	**EA holder responsible for ensuring conditions complied with** It is an offence for the holder of an environmental authority to fail to ensure persons acting under an authority comply with the conditions.	The relevant penalty under section 430 for contravention of conditions
431A	**PRCP schedule required for particular ERAs** It is an offence for the holder of a site-specific environmental authority for mining activities relating to a mining lease, to carry out, or allow another person to carry out, the environmentally relevant activity (ERA) without a progressive rehabilitation and closure plan (PRCP) schedule for the activity.	4,500 penalty units
431B	**Contravention of condition of PRCP schedule** 431B(2) – It is an offence for the holder of a PRCP schedule, or a person acting under it, to wilfully contravene a condition of the PRCP schedule. 431B(3) – It is an offence for the holder of a PRCP schedule, or a person acting under it, to contravene a condition of the PRCP schedule.	6,250 penalty units or 5 years imprisonment 4,500 penalty units
431C	**Holder of PRCP schedule responsible for ensuring conditions of PRCP schedule complied with** It is an offence for the holder of a PRCP schedule to fail to ensure persons acting under a schedule comply with the conditions.	The relevant penalty under section 431B for contravention of conditions
434	**Contravention of site management plan** 434(1) – It is an offence for a person to wilfully contravene a site management plan. 434(2) – It is an offence for a person to contravene a site management plan.	6,250 penalty units or 5 years imprisonment 4,500 penalty units
435A	**Offence to contravene prescribed conditions for small scale mining activity** 435A(2) – It is an offence for a person to wilfully contravene prescribed conditions for a small scale mining activity.	6,250 penalty units or 5 years imprisonment

Section	Offence Description	Maximum Penalty
	435A(3) – It is an offence for a person to contravene prescribed conditions for a small scale mining activity.	4,500 penalty units
437	**Offence of causing serious environmental harm** 437(1) – It is an offence for a person to wilfully and unlawfully cause serious environmental harm. 437(2) – It is an offence for a person to unlawfully cause serious environmental harm.	6,250 penalty units or 5 years imprisonment 4,500 penalty units
438	**Offence of causing material environmental harm** 438(1) – It is an offence for a person to wilfully and unlawfully cause material environmental harm. 438(2) – It is an offence for a person to unlawfully cause material environmental harm.	4,500 penalty units or 2 years imprisonment 1,665 penalty units
440	**Offence of causing environmental nuisance** 440(1) – It is an offence for a person to wilfully and unlawfully cause an environmental nuisance. 440(2) – It is an offence for a person to unlawfully cause an environmental nuisance.	1,665 penalty units 600 penalty units
440Q	**Offence of contravening a noise standard** It is an offence for a person to unlawfully contravene a noise standard.	If offence committed wilfully, 1,665 penalty units Otherwise – 600 penalty units
Authorised Officer Powers		
482	**Obstruction of an authorised person** It is an offence to obstruct an authorised person in the exercise of their powers under the Act unless the person has a reasonable excuse.	165 penalty units
471	**Failure to comply with signal** It is an offence for a person to fail to obey a signal under section 459(2) to stop or not to move a vehicle, unless the person has a reasonable excuse.	50 penalty units
472	**Failure to comply with requirements about vehicles** 472(2) – It is an offence to fail to give reasonable help to an authorised person to enter or board a vehicle (when required under section 459(3)) unless the person has a reasonable excuse. 472(3) – It is an offence for a person to fail to take required action in relation to a vehicle, (when required under section 460(1)(i)) unless the person has a reasonable excuse.	50 penalty units 50 penalty units
473	**Failure to help an authorised person in an emergency** It is an offence to fail to provide reasonable help to an authorised person (when required under section 460(1)(h)) to exercise emergency powers unless the person has a reasonable excuse.	100 penalty units

Section	Offence Description	Maximum Penalty
474	**Failure to help authorised person** It is an offence to fail to provide reasonable help to an authorised person (when required under section 460(1)(h)) to exercise their powers unless the person has a reasonable excuse.	50 penalty units
475	**Failure to give name and address** 475(1) – It is an offence for a person to fail to provide an authorised person with that person's name and address (when required under section 464(1)) unless the person has a reasonable excuse. 475(2) – It is an offence for a person to fail to provide an authorised person with evidence of the correctness of that person's name and address (when required under section 464(3)) unless the person has a reasonable excuse.	50 penalty units 50 penalty units
476	**Failure to attend, answer questions or nominate representative** It is an offence to fail to comply with a requirement to answer questions, nominate a corporation's representative or attend a stated reasonable place at a stated reasonable time to answer questions (when required under section 465), unless the person has a reasonable excuse. *Note: It is not a reasonable excuse for an individual to fail to answer a question that complying with the requirement might tend to incriminate the individual.*	50 penalty units
477	**Failure to produce documents** It is an offence to fail to produce a document required under section 466, unless the person has a reasonable excuse.	50 penalty units
480	**False or misleading documents** It is an offence to give the administering authority or an authorised person a document that the person knows, or ought to reasonably know, contains false or misleading information.	4,500 penalty units or 2 years imprisonment
480(A)	**Incomplete documents** It is an offence to give the administering authority or an authorised person a document that the person knows, or ought to reasonably know, contains incomplete information.	4,500 penalty units or 2 years imprisonment
481	**False or misleading information** It is an offence for a person to state anything to an authorised person that is false or misleading, or omit from a statement to an authorised person anything that would make the statement false or misleading.	4,500 penalty units or 2 years imprisonment
Emergency Directions		
478	**Failure to comply with an emergency direction** It is an offence for a person to whom an emergency direction is given to fail to comply with the direction, unless the person has a reasonable excuse.	If offence committed wilfully, 6,250 penalty units or 5 years imprisonment Otherwise – 4,500 penalty units
Restraint Orders		

Section	Offence Description	Maximum Penalty
506	**Failure to comply with an order** It is an offence for a person to fail to comply with an order.	3,000 penalty units or 2 years imprisonment
506A	**Failure to comply with an order against persistent offenders** It is an offence for a person to fail to comply with an order made by the Court prohibiting the person from carrying out a particular activity.	3,000 penalty units or 2 years imprisonment
Enforceable Undertakings		
513	**Failure to comply with an enforceable undertaking** It is an offence for a person to fail to comply with an enforceable undertaking made by that person that is in effect.	If offence committed wilfully, 6,250 penalty units or 5 years imprisonment Otherwise – 4,500 penalty units
Offences related to water contamination		
440ZG(a)	It is an offence to unlawfully deposit a prescribed water contaminant in waters, or in a roadside gutter or stormwater drainage, or at another place that may go into an adjacent roadside gutter or stormwater drainage.	If offence committed wilfully, 1,665 penalty units Otherwise – 600 penalty units
440ZG(b)	It is an offence to unlawfully release stormwater run-off into waters, a roadside gutter or stormwater drainage that results in earth build-up.	If offence committed wilfully, 1,665 penalty units Otherwise – 600 penalty units
Offences related to air contamination		
440ZL(1)	It is an offence to sell solid fuel-burning equipment for use in a residential premises unless a certificate of compliance has been issued for the equipment and a plate/s has been attached to the equipment under the prescribed standard.	If offence committed wilfully, 1,665 penalty units Otherwise – 600 penalty units
440ZL(2)	If is an offence to fail to attach a plate/s to the equipment before selling or transferring the equipment to another person if the person is the manufacturer and an accredited entity issues a certificate of compliance for solid fuel-burning equipment.	If offence committed wilfully, 1,665 penalty units Otherwise – 600 penalty units
440ZL(3)	It is an offence to use, or transfer to another person, certified equipment if the person knows a plate attached to the equipment has been defaced, altered or removed or there has been a material modification or alteration of other related equipment.	If offence committed wilfully, 1,665 penalty units Otherwise – 600 penalty units
440ZM(1)	It is an offence for a person to knowingly use, in stationary fuel-burning equipment, liquid fuel containing more than the permitted concentration of sulfur.	600 penalty units
440ZM(2)	If is an offence for a distributor to distribute or sell liquid fuel containing more than the permitted concentration of sulfur to another person unless authorised.	If offence committed wilfully, 1,665 penalty units Otherwise – 600

Section	Offence Description	Maximum Penalty
		penalty units
Offences related to fuel standards		
440ZQ(1)	It is an offence for a person who manufactures or imports fuel to supply the fuel in the State if the fuel does not comply with a Commonwealth fuel determination standard (other than the supply of fuel supplied for use in a motor vehicle used only for motor racing on a racing circuit or track under a registration certificate for that activity).	165 penalty units
440ZR(2)	It is an offence for a person who manufactures or imports fuel to supply the fuel in the low volatility zone in the summer period if the Reid vapour pressure of the fuel is more than 76kPa, where the ethanol content of the fuel is more than 9% but not more than 10% by volume.	165 penalty units
440ZR(3)	It is an offence for a person who manufactures or imports fuel to fail to ensure that, for each summer month, the volumetric monthly average Reid vapour pressure of the fuel supplied by the person in the low volatility zone is not more than 74kPa, where the ethanol content of the fuel is more than 9% but not more than 10% by volume.	165 penalty units
440ZS(2)	It is an offence for a person who manufactures or imports fuel to supply the fuel in the low volatility zone in the summer period if the Reid vapour pressure of the fuel is more than 69kPa.	165 penalty units
440ZS(3)	It is an offence for a person who manufactures or imports fuel to fail to ensure that, for each summer month, the volumetric monthly average Reid vapour pressure of the fuel supplied by the person in the low volatility zone is not more than 67kPa.	165 penalty units
440ZY(2)	It is an offence to fail to keep records (for 2 years after the supply of the fuel) relating to fuel that is prescribed under a regulation by a person who manufactures or imports the fuel in relation to fuel supplied in the State, if a Commonwealth fuel standard determination applies to the fuel and the person is not required to keep records for the supply of the fuel under s66 of the *Fuel Quality Standards Act 2000* (Cth).	50 penalty units
Other offences		
442(1)	It is an offence to release, or cause to be released, a prescribed contaminant into the environment, other than under an authorised person's emergency direction.	If offence committed wilfully, 1,665 penalty units Otherwise – 600 penalty units
443	It is an offence to cause or allow a contaminant to be placed in a position where it could reasonably be expected to cause serious or material environmental harm.	If offence committed wilfully, 4,500 penalty units or 2 years imprisonment Otherwise – 1,655 penalty units
443A	It is an offence to cause or allow a contaminant to be placed in a position where it could reasonably be expected to cause	If offence committed wilfully, 1,665 penalty

Section	Offence Description	Maximum Penalty
	environmental nuisance.	units Otherwise – 600 penalty units
444	It is an offence to interfere with any monitoring equipment used under the Act or a development condition of a development approval.	165 penalty units
470	It is an offence for a person to fail to comply with a notice given under section 451, unless the person has a reasonable excuse.	50 penalty units
574K	It is an offence not to keep a certificate of approval under section 573(2)(a) for the term of the approval, unless the person has a reasonable excuse.	100 penalty units
484	It is an offence to attempt to commit an offence under the Act.	Half the maximum penalty for committing the offence
493	If a corporation commits an offence against a provision of this Act, each of the executive officers of the corporation also commits an offence, namely, the offence of failing to ensure the corporation complies with this Act.	The penalty for the contravention of the provision by an individual

Disclaimer

While this document has been prepared with care, it contains general information and does not profess to offer legal, professional or commercial advice. The Queensland Government accepts no liability for any external decisions or actions taken on the basis of this document. Persons external to the department should satisfy themselves independently and by consulting their own professional advisors before embarking on any proposed course of action.

Approved by:

Director: Bryce Hertslet

26 March 2024

Enquiries:

Permit and Licence Management

Phone: Ph: 13 QGOV (13 74 68)

Email: palm@des.qld.gov.au

Version history

Version	Date	Description of changes
1.00	23 January 2015	Initial Upload.
1.01	19 June 2016	Footer updated.
2.00	1 July 2016	The document template, header and footer have been updated to reflect current Queensland Government corporate identity requirements and comply with the Policy Register.
2.01	30 August 2017	Minor amendments to reflect the repealed Sustainable Planning Act 2009 and the commencement of the Planning Act 2016.
2.02	20 September 2018	The document template, header and footer have been updated to reflect current Queensland Government corporate identity requirements and comply with the Policy Register.
3.00	24 March 2024	New template, Machinery of Government updates, EPOLA amendments made. All sections reviewed and updated