

Compliance and enforcement regulatory options and tools



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Disclaimer This publication is a guide only and does not necessarily provide adequate information in relation to every situation. This publication seeks to explain your possible obligations in a helpful and accessible way. In doing so, however, some detail may not be captured. It is important, therefore, that you seek information from the EPA itself regarding your possible obligations and, where appropriate, that you seek your own legal advice.

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EPA FOR RECONCILIATION

The EPA acknowledges and respects the Aboriginal peoples of South Australia as the first peoples and nations of this State. We recognise them as the traditional custodians of land and waters in South Australia and that their spiritual, social, cultural and economic beliefs are of ongoing importance today. We recognise that they have made, and continue to make, a unique and irreplaceable contribution to the State.

Artwork: 'Caring for Country', courtesy of Arrernte man Scott Rathman, for the EPA.

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Summary

The *Environment Protection Act 1993* (the EP Act) is the primary environment protection legislation in South Australia. The EP Act is administered primarily by the South Australian Environment Protection Authority (EPA). Other administering agencies operating under the EP Act include but are not limited to, the South Australian Police and local government authorities.

The EP Act seeks to further its objects by ensuring that measures are taken to protect, restore and enhance the quality of the environment according to the principles of ecologically sustainable development.

The EPA is also an administering agency of the *Radiation Protection and Control Act 2021* (the RPC Act). This Act provides for the control of activities related to radioactive substances and radiation apparatus, and for protecting the environment and the health and safety of people against the harmful effects of radiation.

This document provides a description of the regulatory tools and options available to the EPA and administering agencies according to the legislation, and how the tools and options may be linked.

This document is intended to guide staff and individuals or corporations who operate authorised and unauthorised premises and are subject to the EPA's legislation.

1 Introduction

1.1 Regulatory context

The environmental impacts of activities are regulated primarily under the *Environment Protection Act 1993* (EP Act) and the *Planning, Infrastructure and Development Act 2016*.

The *Radiation Protection and Control Act 2021* (RPC Act) is specifically used for the control of activities related to radioactive substances and apparatus, and for protecting the environment and the health and safety of people against the harmful effects of radiation.

The EP Act provides the following statutory avenues for the South Australian Environment Protection Authority (EPA) to regulate activities that have, or may have, an adverse environmental impact: the general environmental duty, section 25 of the EP Act, which states that 'a person must not undertake an activity that pollutes, or might pollute, the environment unless the person takes all reasonable and practicable measures to prevent or minimise any resulting environmental harm'

- regulations and environment protection policies (EPPs), which may be accompanied by codes of practice, guidelines or standards
- environmental authorisations including licences for the activities described in Schedule 1 of the EP Act, works approvals and exemptions
- regulatory and administrative tools to achieve compliance
- environmental offences (eg causing serious or material environmental harm, or causing an environmental nuisance).

Schedule 1 of the EP Act specifies the prescribed activities of environmental significance that may only be undertaken if the relevant person¹ is issued an environmental authorisation in the form of a licence². It also specifies exceptions to those categories of activity.

However, both authorised and unauthorised premises are subject to the legislation.

There are also a number of non-statutory options and tools employed by the EPA, including the provision of information through education and communication.

Guidelines are used as tools to provide detailed information on the EPA's expectations regarding the design and operational standards of the activity, and/or the environmental performance of the individual or corporation.

¹ Any reference to the term 'person(s)' throughout this document encompasses individual(s) and body corporate according to the EP Act and the RPC Act. A body corporate is a legally recognised group of people and commonly referred to as a corporation.

² Any reference to the term 'licence' throughout this document encompasses all types of environmental authorisations according to the EP Act and the RPC Act.

1.2 Document scope

This document provides a description of the principles the EPA will use when undertaking regulatory decision making and when taking action³. It also provides a description of the regulatory tools and options available for environment protection and regulation under the following legislation:

- EP Act including container deposit and site contamination provisions⁴
- RPC Act.

In addition, this document provides an overview of the relationships that may exist between the tools and options described.

It has been produced for a wide audience, including but not limited to:

- authorisation holders
- businesses
- local government
- state government
- general public.

It is not intended to provide a comprehensive description of the regulatory tools and options the EPA will employ in every possible circumstance. Rather, the information presented will assist the audience to gain a broad understanding of the EPA's approach to regulation and compliance.

The EP Act in particular, provides the EPA with considerable discretion when undertaking regulatory action in compliance and enforcement of legislative provisions. Further detail on the factors the EPA will consider when employing this discretion is provided in the document entitled [Compliance and Enforcement Statement](#) (2009) and section 3 of this document.

³ Principles as described in the EPA document, *Compliance and Enforcement Statement* (2009).

⁴ In 2007, the SA Government amended the EP Act to incorporate provisions for site contamination. This Act came into operation on 1 July 2009.

2 Contraventions⁵

2.1 Contraventions of the EP Act

The EP Act and associated policies impose certain requirements on corporations and individuals, which, if contravened, may result in EPA taking enforcement action.

In particular, the EP Act provides opportunities for compliance and enforcement action to be taken in the event that the general environmental duty has been contravened, environmental harm has occurred or might occur, or other offences that have or may have occurred against the EP Act or mandatory provisions of EPPs and regulations.

2.1.1 General environmental duty

Everyone has a responsibility to care for the environment under section 25 of the EP Act which states:

A person must not undertake an activity that pollutes, or might pollute, the environment unless the person takes all reasonable and practicable measures to prevent or minimise any resulting environmental harm⁶.

This means that industry, community, government (including local and state) and individuals must care for the environment and do what is reasonable and practicable to prevent any harm to it.

Failure to comply with the general environmental duty does not in itself constitute an offence, but compliance with the duty may be enforced through issuing an appropriate order or environmental authorisation⁷.

The sections below discuss the three offences that form part of the EP Act. These offences are defined by the level of harm caused and/or the potential for harm to occur.

2.1.2 Environmental harm

The EP Act defines environmental harm as:

... any harm, or potential harm, to the environment (of whatever degree or duration) and includes (a) an environmental nuisance and (b) any thing declared by regulation or by an environment protection policy to be environmental harm⁸.

2.1.3 Environmental nuisance

Environmental nuisance is defined as:

any adverse effect on an amenity value of an area that –

⁵ A contravention is a legally recognised term according to the EP Act and the RPC Act and is commonly referred to as a non-compliance. Any reference to the term 'non-compliances' throughout this document encompasses contraventions. An alleged contravention or non-compliance may be also be confirmed and declared an offence or breach according to the EP Act.

⁶ EP Act, section 25(1)

⁷ See environment protection order, clean up order, clean up authorisation and site remediation order in this document

⁸ EP Act, section 5

- i is caused by pollution; and
- ii unreasonably interferes with or is likely to interfere unreasonably with the enjoyment of the area by persons occupying a place within, or lawfully resorting to, the area; or
- iii any unsightly or offensive condition caused by pollution⁹.

A pollutant is defined by the EP Act as any solid, liquid or gas (or combination thereof) including waste, smoke, dust, fumes and odour, noise, heat or anything declared by regulation (after consultation under section 5A) or by an environment protection policy to be a pollutant.

An individual or corporation that causes environmental nuisance by polluting the environment intentionally or recklessly and with the knowledge that an environmental nuisance will or may result is guilty of an offence and considerable financial penalties apply¹⁰.

Lesser financial penalties apply where environmental nuisance has been caused to the environment, without intent, recklessness or knowledge¹¹.

2.1.4 Material environmental harm

Environmental harm is considered to be material environmental harm if:

- i it consists of environmental nuisance of a high impact or on a wide scale; or
- ii it involves actual or potential harm to the health or safety of human beings that is not trivial, or other actual or potential environmental harm (not being merely environmental nuisance) that is not trivial; or
- iii it results in actual or potential loss or property damage of an amount or amounts in aggregate, exceeding \$5,000¹².

Causing material environmental harm by polluting the environment (either intentionally, recklessly and with knowledge, or not) is an offence, and carries significant financial penalties for a corporation and individuals.

Individuals can also face criminal prosecution and potential imprisonment¹³.

2.1.5 Serious environmental harm

Environmental harm is considered serious environmental harm if:

- i it involves actual or potential harm to the health and safety of human beings that is of a high impact or on a wide scale, or other actual or potential environmental harm (not being merely an environmental nuisance) that is of a high impact or on a wide scale; or
- ii it results in actual or potential loss or property damage of an amount or amounts in aggregate, exceeding \$50,000¹⁴.

⁹ EP Act, section 3 – Interpretation

¹⁰ EP Act, section 82(1)

¹¹ EP Act, section 82(2)

¹² EP Act, section 5(3)(a)

¹³ EP Act, section 80

¹⁴ EP Act, section 5(3)(b)

An individual or a corporation who pollutes the environment either intentionally or recklessly and with the knowledge or not, that environmental harm will or might occur is guilty of the offence of causing serious environmental harm¹⁵.

Heavy monetary penalties apply for both a corporation and individuals. Individuals can also face criminal prosecution and possible imprisonment.

2.2 Conventions of the RPC Act

The RPC Act provides a framework for licensing mining and handling radioactive material, and the operation of radiation apparatus, along with the registration of premises at which radioactive substances are handled or kept, and radiation apparatus.

The RPC Act sets out the available provisions to achieve compliance and also details the penalties which may be applicable for various licensing and registration offences.

2.3 The most common contraventions to occur

The most common contraventions to occur include:

- causing or potential to cause environmental harm in the form of environmental nuisance (eg noise, dust)
- non-compliance with conditions of an environmental authorisation
- breach of a mandatory provision of an EPP
- undertaking an activity of environmental significance as prescribed in Schedule 1 of the EP Act without an appropriate environmental authorisation (licence)
- non-compliance with an order
- non-compliance with a registration or licence by owners of ionising radiation apparatus
- operating an ionising radiation apparatus or handling a radioactive source or substance without a current licence.

¹⁵ EP Act, section 79.

3 Regulatory decision making

3.1 Principles

The EPA has a compliance and enforcement statement which describes the way regulation, compliance and enforcement fit into an overarching system to identify and manage non-compliance with relevant legislation¹⁶. The statement has, as its foundation, the concept of firm but fair regulation. In determining regulatory options, the EPA will be:

- proportional
- consistent
- transparent
- targeted
- timely.

The EPA will apply the following policy in relation to compliance and enforcement:

- it will not ignore any criminal or negligent act by any individual or corporation which threatens or damages the environment or which undermines the regulatory regime
- it will have regard to, and seek to further, the objects of the EP Act including taking into account social, environmental and economic factors, when making regulatory decisions.

The legislation provides the EPA with a variety of regulatory tools, and the ability to exercise discretion to determine which tool is appropriate for particular circumstances.

The suite of regulatory tools includes administrative, civil proceedings and criminal prosecution, and the various tools may be used in conjunction with one another where necessary. Section 4 of this document discusses these regulatory tools in detail.

3.2 Determining compliance and enforcement action to be taken

When the EPA is made aware of a possible issue, the first step taken is a validation process to determine if an issue is in fact a non-compliance under the Act and within the EPA's legislative powers to address.

If the issue is determined as non-compliance, the issue is assessed using a risk assessment approach to determine the appropriate regulatory action to be taken.

The following factors are considered (but not limited to) when determining what compliance and enforcement action will be taken:

- the seriousness of the contravention, for example the nature and extent of the impact, harm or potential harm to the environment or the potential to undermine the regulatory regime and
- the extent and speed of remedial action required

¹⁶ Compliance and Enforcement Statement (2009)

- the compliance history
- the alleged offender's willingness to cooperate as evidenced by factors including remediation action taken or offered, and whether the offender brought the incident to the attention of the EPA.

3.3 The risk-based approach to regulation

The risk-based approach adopted by the EPA is embodied by the Compliance and Enforcement Management System (CEMS).

In general terms, once the magnitude of the issue and risk associated with it have been assessed, a determination of the most appropriate and effective regulatory action(s) to take in response to the issue and associated risk will be made. The EPA will make decisions based upon the need to firstly secure compliance with the EP Act and RPC Act.

Following compliance, the EPA will determine if prosecution is appropriate. If prosecuting for an offence, the EPA will seek a penalty that is deemed appropriate.

Follow up is undertaken to ensure compliance has been secured and appropriate penalties have been applied. This follow-up may also include recording information on the public register and other administrative processes, such as cost recovery in some circumstances.

The objectives of the EPA's integrated and comprehensive CEMS are to ensure:

- effective and efficient use of EPA resources
- a consistent and systematic process
- a comprehensive governance system to support decision making
- a continuous improvement cycle
- management of business, environment and reputation risk.

3.4 Process for managing non-compliance

Figure 1 presents the key elements of the management system which is built around the main principles of quality assurance with:

- the **Compliance and enforcement statement** setting the corporate policy and principles for managing compliance and enforcement
- the **Compliance and enforcement regulatory options and tools document** defining the options, according to the legislation, that the EPA has for decision making.

As an overview, the process the EPA uses to systematically manage and consistently address each non-compliance and make decisions is:

- **Finding – the issues are categorised as potential non-compliances.**

The EPA is made aware of a possible issue through many avenues including complaints from the public, requests for assistance from local government agencies and the use of regulatory tools such as inspections and compliance audits.

- **Validation – the potential non-compliance may become an actual non-compliance.**

The EPA determines whether the identified issue is, in fact, a non-compliance. This is determined through a number of mechanisms including the collection of further information, preliminary investigation or surveillance.

- **Assessment – the non-compliance is prioritised.**

The EPA determines the magnitude of the actual non-compliance by generally using a risk assessment approach, considering a number of categories of risk including environmental and human health and risk to the regulatory regime

- **Decision – an action plan is made to address the non-compliance.**

The EPA involves a number of EPA officers to address the non-compliance and determine the most appropriate and effective regulatory action(s). The decision may take a number of successive and complementary actions including enforcement where appropriate. The EPA will make decisions based upon the need to both secure compliance with the EP and RPC Acts, and may seek a penalty where it deems appropriate.

- **Implementation – the EPA will implement the decided actions.**

The EPA has a suite of compliance and enforcement tools and each tool may be used in conjunction with others. The tools available include verbal advice, education strategies, warning letters, licence conditions, environment protection and clean up orders, civil penalties and prosecution.

- **Follow up – the non-compliance is resolved.**

The EPA 'closes the loop' to ensure that the non-compliance has been properly addressed by both the EPA and the proponent, that compliance has been secured and penalties have been applied where appropriate, including other processes such as recording information on the public register or other notifications, and the use of cost recovery mechanisms.

3.5 Regulatory options and tools available

A suite of tools is available for use by the EPA and each tool may be used in conjunction with others.

The regulatory options and tools available for use include:

- regulatory tools – applicable to scheduled and licensed activities (see section 4 of this document)
- administrative tools – applicable to all activities (see section 5)
- civil action – may be applied in conjunction with one or more regulatory or administrative tools (see section 8).

In appropriate circumstances, the EPA will endeavour to resolve a situation of non-compliance by negotiating directly with the alleged offender. Examples of this may be a minor breach of a condition of an environmental authorisation, or where a contravention may be easily rectified and there is no potential for environmental harm.

Figure 1 outlines the processes within the management system. The tool being applied within the specific process and a description of each tool's potential linkage to other tools and processes are provided in Figures 2 to 12, of sections 4 to 8 of this document.

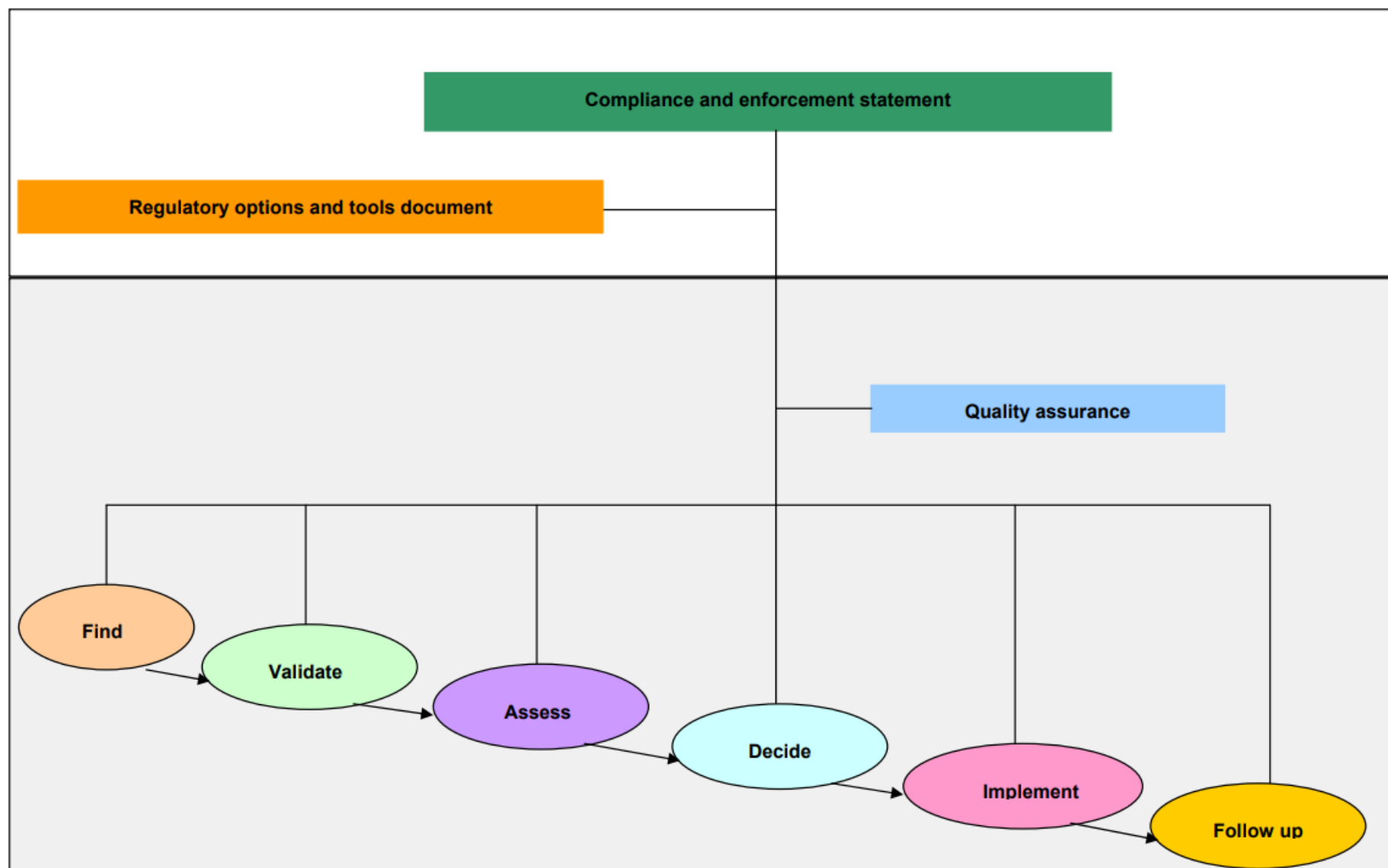


Figure 1 Management system for managing non-compliance issues

4 Regulatory tools

4.1 Development assessment

4.1.1 Development applications

The environmental aspects of development proposals involving activities of environmental significance are assessed by the EPA in accordance with the *Planning, Development and Infrastructure Act 2016* and the subordinate regulations.

Development applications (DAs) involving activities of environmental significance¹⁷ must be referred to the EPA by relevant authorities (usually councils)¹⁸ to provide direction on the proposed development¹⁹.

The EPA is required to provide a response to DAs involving activities of environmental significance within 30 business days.

The linkage with the *Planning, Development and Infrastructure Act 2016* provides the EPA with an opportunity to assess the appropriateness of granting a development approval, taking into account the proposed locality, structural and engineering design, hours of operation and environmental management measures.

4.1.2 Development approval conditions

The direction which EPA provides to relevant authorities (in relation to activities of environmental significance) usually includes directed conditions of development approval, aimed at minimising the potential for environmental impact or nuisance.

Conditions directed by the EPA must be imposed on the final approval given by the relevant authority and any EPA direction to refuse a DA must also be complied with. The EPA will advise the applicant through annotation in the DA response to the relevant authority if an application for an environmental authorisation is required for the proposed activity related to the development approval.

Conditions directed by the EPA may include (but are not limited to) those requiring appropriate:

- environmental management plans including stormwater and sediment control management plans depending on the nature of the proposed development
- pollution control and treatment systems for predicted emissions to air and water
- noise attenuation structures or systems
- application of technology and engineering solution for liquid storage and containment.

¹⁷ As detailed in Schedule 9 of the *Planning, Development and Infrastructure (General) Regulations 2017*.

¹⁸ The State Commission Assessment Panel (state government) also refers DAs to the EPA.

¹⁹ The planning authority must comply with any direction, usually in the form of conditions set out by the EPA. There are also other types of DA referrals to the EPA not discussed here.

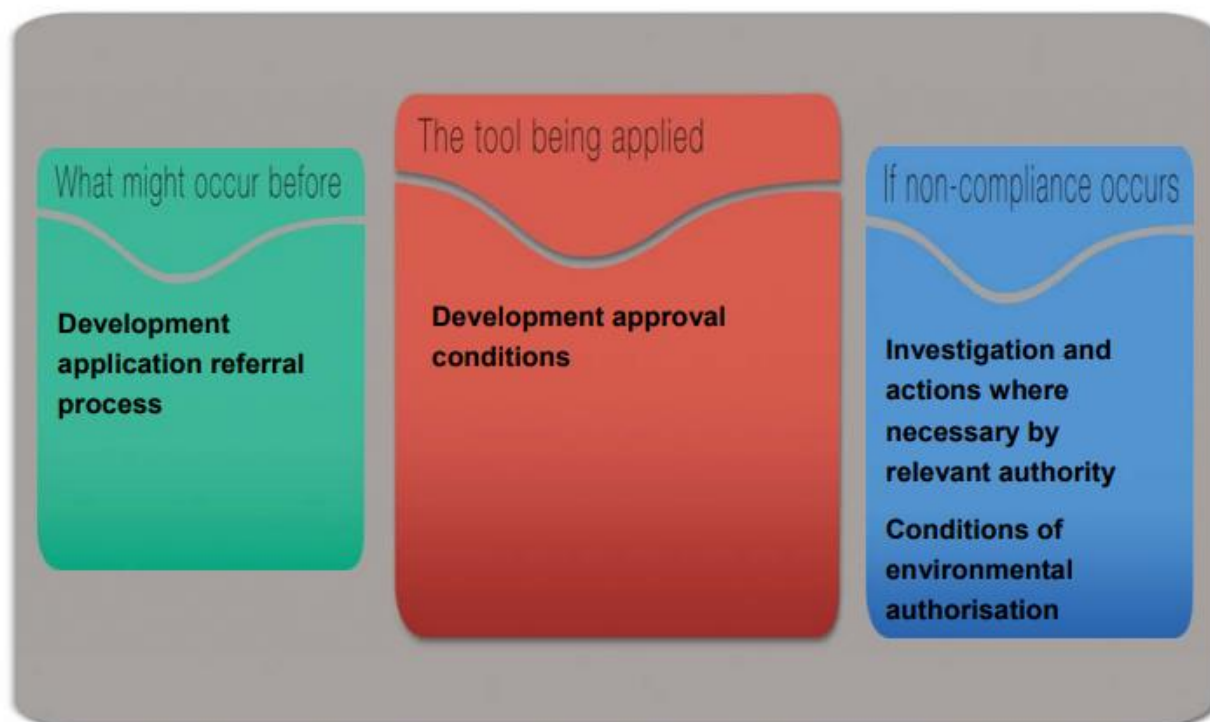


Figure 2 Post development approval

Should the development or related activity require an environmental authorisation or approval, these directed conditions related to design and operation may form the basis for conditions placed on that environmental authorisation or approval.

The relevant authority is required to investigate any non-compliance with DA conditions, even those imposed by the EPA. In this regard, guidance by the EPA is provided.

4.2 Environment authorisations and approvals – EP Act

4.2.1 Issuing

Under the EP Act, the EPA provides environmental authorisations, in the form of a licence or works approval for an individual or a corporation, to regulate the undertaking of prescribed activities of environmental significance. The EPA may also provide environmental authorisations in the form of an exemption for compliance with a mandatory provision of an EPP or the requirement to hold a licence in certain situations.

4.2.2 EPA options and actions

These environmental authorisations may include conditions with respect to matters covered by the EP Act and associated policies such as (but not limited to):

- specific management of particular operational issues
- monitoring and reporting on specific environmental issues or impacts
- development and implementation of management plans for specified environmental issues or impacts.

Some conditions may require certain actions or monitoring to be taken by a certain date, whilst others may stipulate an ongoing operational requirement.

Non-compliance with a condition of an environmental authorisation will be assessed and validated in accordance with the CEMS and a range of compliance or enforcement tools may be employed in order to secure compliance.

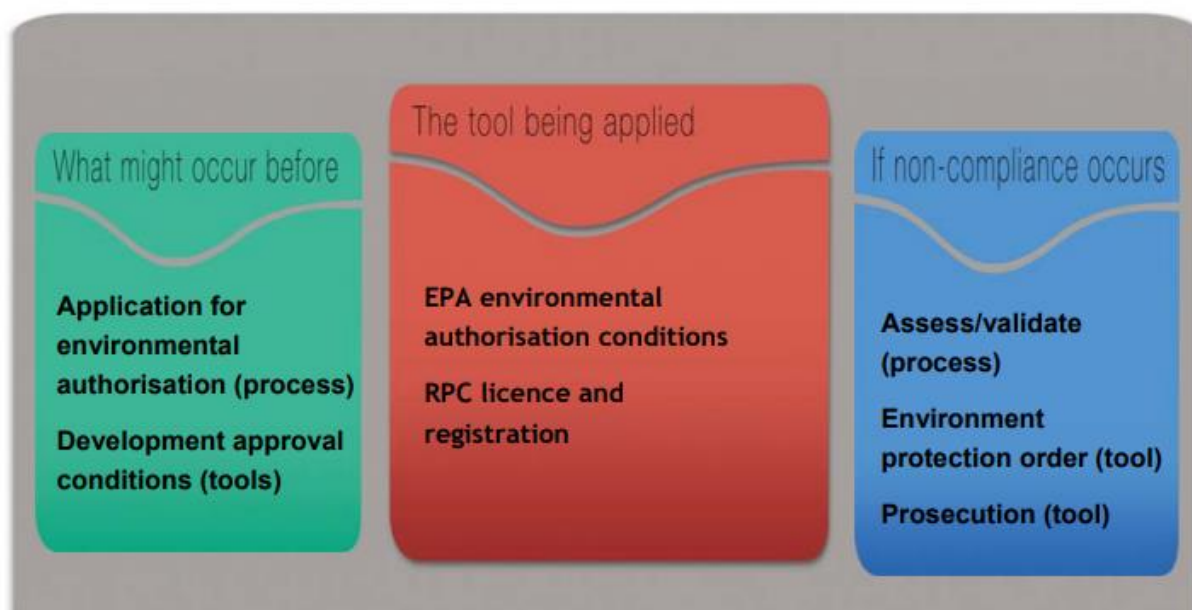


Figure 3 EPA authorisation and approval, RPC licence and registration

4.3 Licenses and registration – RPC Act

4.3.1 Issuing

Under the RPC Act, the EPA provides licences and registrations for a range of activities or situations. The EPA regulates a number of business sectors in this manner, including, but not limited to, the mining, medical, scientific, education and industry sectors. The provision of licences and registrations can be broadly divided into the following groups:

- Licences issued to individuals or corporations:
 - where radioactive ores are mined or milled
 - who operate ionising radiation apparatus
 - who handle sealed radioactive sources
 - who handle unsealed radioactive substances.
- Registrations are issued to:
 - owners of ionising radiation apparatus
 - owners of sealed radioactive sources
 - occupiers of premises for unsealed radioactive substances.

4.3.2 EPA options and actions

Licences and registrations are issued subject to (but not limited to) conditions such as:

- the location and layout of mining developments
- the manner in which use or handling of radioactive sources may occur
- the types of substances which may be used or handled
- limiting the use and/or modification of apparatus
- those who may operate certain apparatus
- demonstration of compliance with standards and regulations
- the requirement to submit results of certain tests and monitoring results
- the requirement to notify the EPA of any defects, damage, or results of tests which indicate that a radioactive source or container may have a defect.

Some conditions may require certain actions or monitoring to be taken by a certain date, while others may stipulate an ongoing operational requirement.

Non-compliance with a condition of a licence or registration will be assessed and validated in accordance with the CEMS. A range of compliance and enforcement tools may be employed to secure compliance.

4.4 Environment improvement programs

4.4.1 Issuing

Environment improvement programs (EIPs) are regulatory tools provided under section 54 of the EP Act. A number of actions are identified for a licensee to become compliant with the EP Act, provisions of a policy or environmental authorisation. Where those actions may require significant resources (time and cost) to be allocated by a licensee, the use of an EIP may be negotiated.

Licensees may voluntarily submit an EIP or in some instances the EPA will require certain issues be addressed by an EIP through a licence condition.

An EIP must provide clear and demonstrable scheduling of the improvements to be undertaken by a licensee to comply with the requirements identified.

4.5 EPA options and actions

Once an EIP document has been lodged with the EPA, it is assessed on technical grounds and against administrative criteria such as the clear inclusion of appropriate compliance actions and timeframes.

If approved, the licence will be amended to require the implementation of the EIPs or the licence will be amended to include specific compliance actions within the EIP.

Failure to implement an EIP will constitute non-compliance with a condition of a licence, and will be assessed and validated in accordance with the CEMS.

A range of compliance or enforcement tools may be employed in order to secure compliance or take punitive action.

4.6 Cancel or suspend an EPA authorisation or approval, RPC licence or registration

4.6.1 EPA authorisation or approval

The EPA may suspend or cancel an environmental authorisation or approval if the holder has:

- obtained the environmental authorisation improperly
- contravened a requirement of the EP Act or a condition of the environmental authorisation
- been guilty of misconduct
- ceased to undertake the activity for which the environmental authorisation applies.

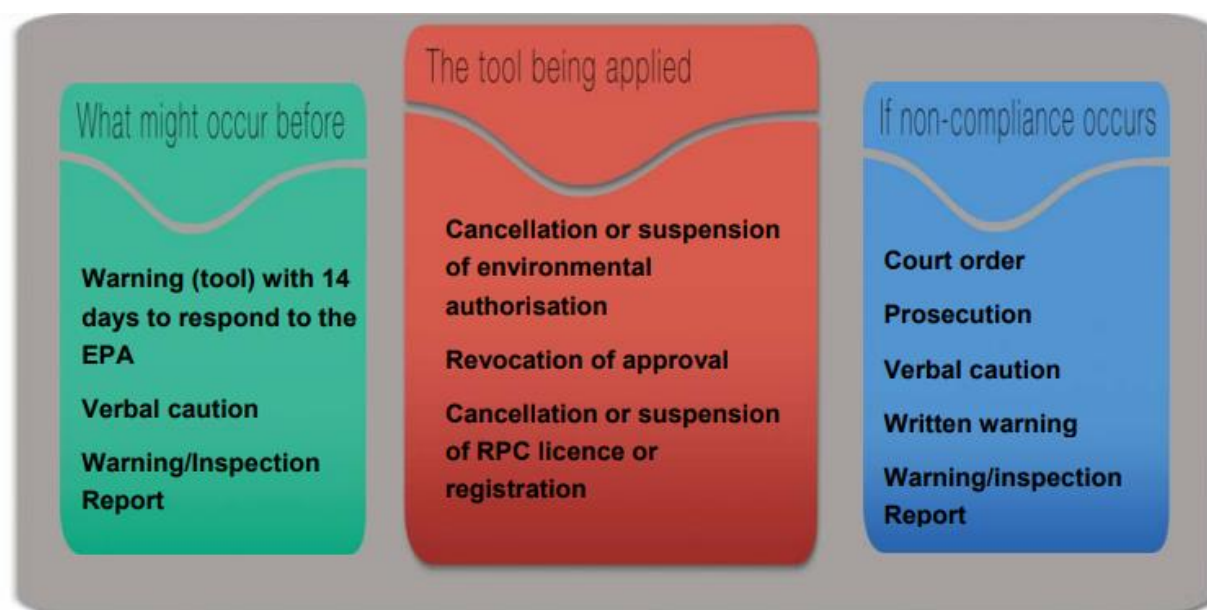


Figure 4 Cancellation of EPA authorisation/approval or RPC licence/registration

4.6.2 RPC licence or registration

A licence or registration issued under the RPC Act may be suspended or cancelled if the EPA is satisfied of one or more of the following:

- the licence or registration was obtained improperly
- the holder has contravened or failed to comply with a condition of the licence or registration
- the holder has been convicted of an offence against the RPC Act
- the holder of a licence has ceased to hold a qualification on the basis of which the licence was initially granted²⁰.

²⁰ RP Act, section 40.

4.6.3 EPA options and actions

A suspension or cancellation may be for a specified period, until the fulfilment of specified conditions or further order of the EPA. In addition, a cancellation may disqualify the holder from obtaining any environmental authorisation permanently or for a specified period.

Before taking this action, the EPA will notify the holder of the environmental authorisation in writing of its intention and the reasons for the proposed action. The holder of the environmental authorisation will be given 14 days to make to respond.

The EPA will consult and negotiate with the environmental authorisation or approval holder to pursue compliance before moving towards cancellation, suspension or revocation where appropriate.

The EPA may revoke an approval granted for the sale of a class of beverage container if a condition of the approval has been contravened. The revocation will be published by notice in the South Australian Government Gazette and will take effect from the date of publication.

Should persons continue to undertake an activity requiring an environmental authorisation or approval following the suspension, cancellation or revocation, the EPA will likely seek compliance and/or enforcement via the court (eg a court order to secure compliance or prosecution²¹).

²¹ Offences under the EP Act will likely be heard in the Environment Resources and Development (ERD) Court, with offences under the RP Act heard by the Magistrates' Court, with appeals heard in the Supreme Court.

5 Administrative tools – applicable to all activities

The EPA has a number of administrative tools available to seek compliance with the EP and RPC Acts, which may be used without taking court action. These tools may be applied to both licensed and non-licensed activities meaning that any individual within the community may be regulated in this manner.

5.1 Initiating the administrative process

Prior to using an administrative tool, the EPA will generally initiate the administrative process with an individual or corporation likely to be affected by the use of such a tool, with an advisory letter and/or a show cause letter. The exception to this is when an administrative tool is to be used to prevent ongoing environmental harm from any activity or when the nature of the non-compliance is considered serious.

These letters provide a recorded history of environmental performance and may be used to demonstrate a pattern of noncompliance if future non-compliances are identified.

5.1.1 Advisory letter

An advisory letter may be sent by the EPA for the recipients' information. Such a letter may provide the transgressing individual or corporation with:

- information in the form of guidance, recommendations and/or instructions
- cautionary advice forewarning of possible EPA options and actions which may be taken should the non-compliance continue.

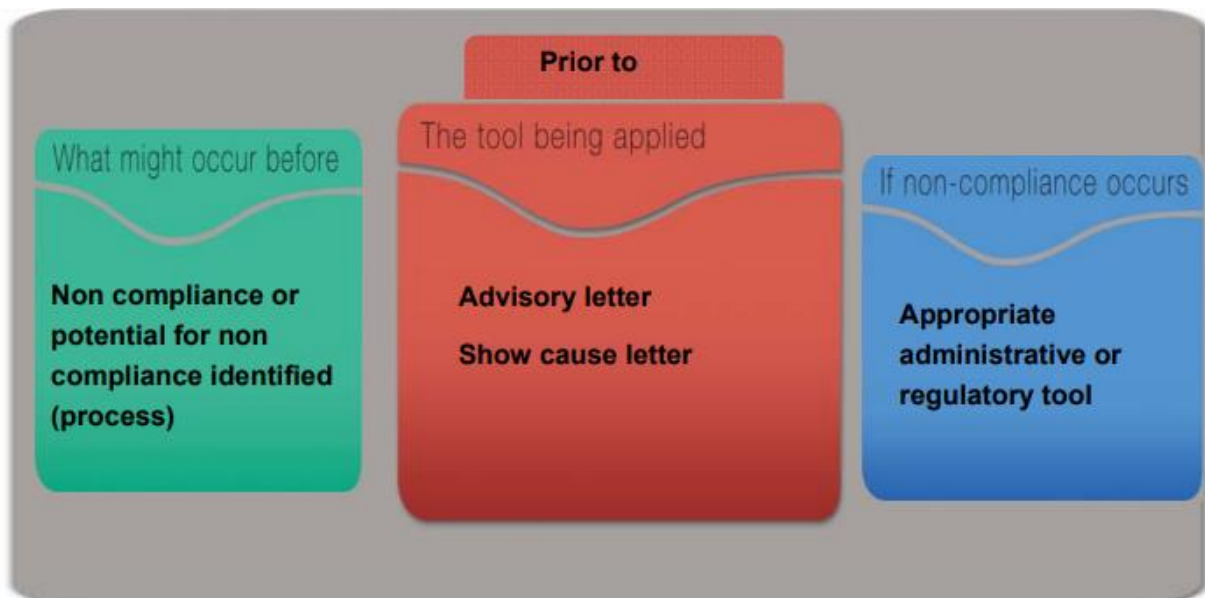


Figure 5 The advisory and show cause letters

An advisory letter may be sent to ensure the transgressing individual or corporation clearly understands the non-compliance and action required to address the non-compliance and to minimise its actual or potential environmental harm or nuisance.

5.1.2 Show cause letter

A show cause letter may be sent to request the recipient to show cause as to why an administrative or regulatory tool should not be used. This is an opportunity for the transgressing individual or corporation to offer an explanation for their actions and reasons for why the EPA should not pursue a course of action of issuing an administrative or regulatory tool.

5.1.3 EPA options and actions

In its regulatory decision making, the EPA will consider the response to a show cause letter.

Not addressing contraventions following receipt of an advisory and/or show cause letter may lead to further compliance and enforcement action being taken.

Concurrent or subsequent to an advisory and/or show cause letter the EPA may also pursue other administrative and regulatory tools.

Section 3 details the principles and risk-based approach to EPA options and actions.

5.2 Warning

5.2.1 Issuing

A warning may be issued by the EPA for both licensed and non-licensed activities when:

- the actual or potential environmental harm or nuisance is minimal
- the contravention identified is administrative and/or minor in nature
- a warning is considered fair and appropriate in the circumstances
- no previous warning has been given.

A warning may also be considered appropriate if the identified contravention is a once-off occurrence and/or is easily remedied and for which no further EPA compliance and enforcement action is warranted.

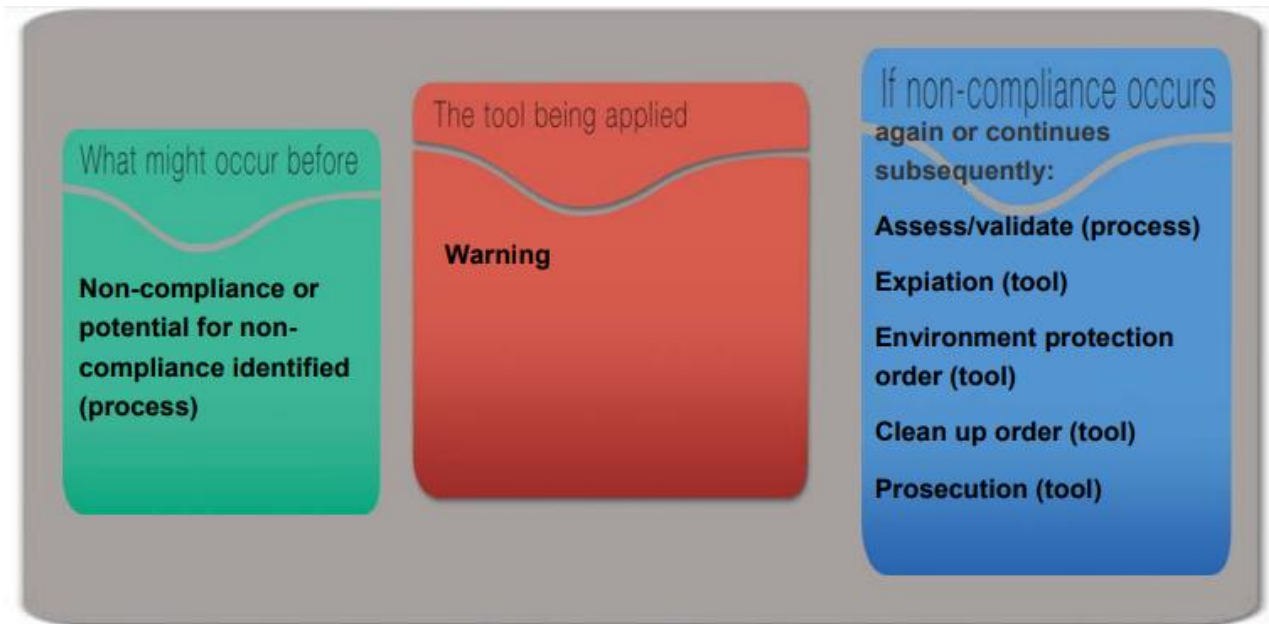


Figure 6 The warning

A warning provides clear notice of the non-compliance and any action required to deal with the non-compliance to the individual or corporation. In discussions with an individual or corporations, the EPA will generally alert the transgressing individual or corporation of the forthcoming issue of a warning.

A warning is also formally recorded on the EPA Public Register²². Warnings provide a historical public record of environmental performance that can be used to demonstrate a pattern of non-compliance if future non-compliances are identified.

5.2.2 EPA options and actions

Once a warning is issued and recorded on the EPA Public Register for a particular non-compliance, no further compliance and enforcement action is undertaken by the EPA on that particular non-compliance.

The actions taken by the transgressing individual or corporation in response to that particular warning will be considered by the EPA should the offence continue or occur again. If the offence continues without cessation or further evidence shows the nature of the offence is more serious, the EPA may withdraw the initial warning and issue another administrative or regulatory tool.

Any subsequent non-compliance will be deemed a new offence. The historical record of non-compliances will be used to demonstrate a pattern of non-compliance for such subsequent contraventions.

Section 3 details the principles and risk-based approach to EPA options and actions.

²² In accordance with section 109(3) (i) of the EP Act, and regulation 13 of the *Environment Protection Regulations 2023*.

5.3 Expiation notice

Expiation is a monetary fee or penalty applied for minor contraventions or offences of any mandatory provision. An expiation notice may be issued directly by an EPA authorised officer or an administering agency to the individual or corporation responsible for a contravention or offence.

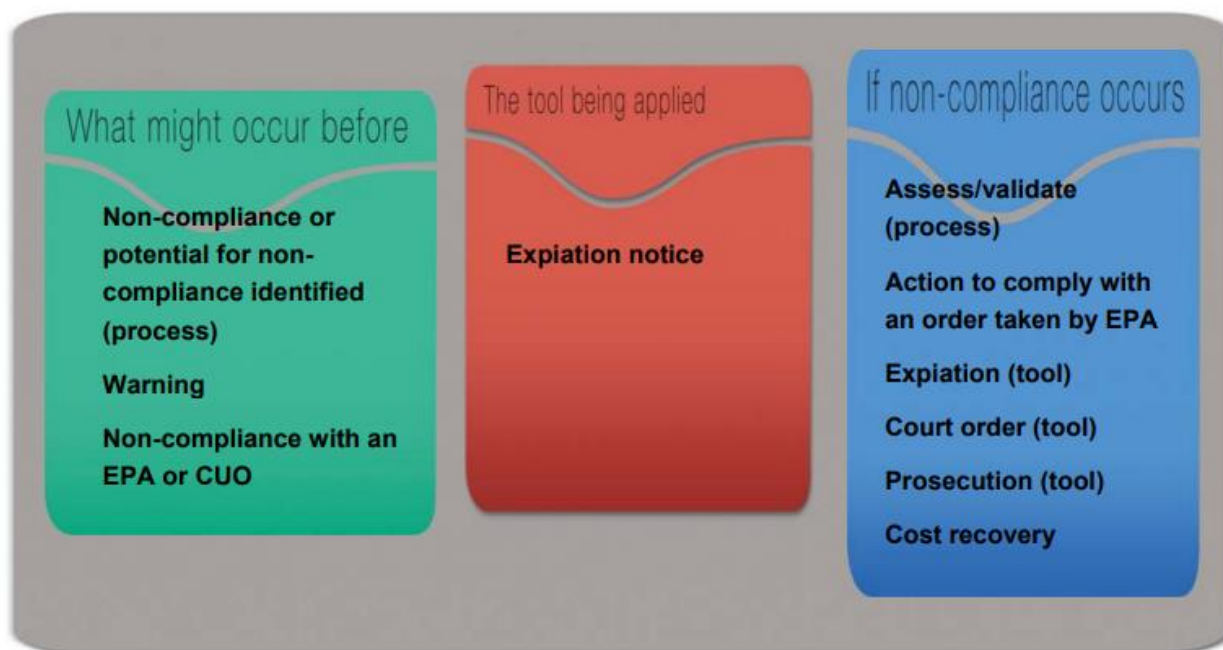


Figure 7 The expiation notice

Fines and penalties for contraventions and offences of the EP Act and associated policies are classified into divisions. Expiation fee amounts are detailed in Appendix—Divisional penalties and expiation fees of the EP Act.

5.3.1 Issuing

The issuing of an expiation notice is usually restricted to those instances where:

- the contravention or offence is minor and the facts appear indisputable
- the contravention or offence is a one-off occurrence and easily remedied
- issuing an expiation notice will act as a deterrent to future contraventions.

5.3.2 EPA options and actions

An expiation notice is usually considered inappropriate if the contravention is ongoing or there have been multiple contraventions.

All expiation notices issued by authorised officers are forwarded to SA Police Infringement Notice Unit for processing. The recipient of an expiation notice may elect to be prosecuted rather than pay the expiation fee.

If the contravention or offence for which an expiation notice was issued continues, or there has been a subsequent breach of the same provision or requirement, the expiation may be withdrawn and further enforcement action taken. The EPA may withdraw an expiation notice up to 90 days from its date of issue for this purpose and will notify the SA Police should this occur. If the EPA withdraws the expiation notice and the expiation has already been paid, a refund will be provided.

5.4 Direction – Radiation Protection and Control Act only

5.4.1 Issuing

If a dangerous or potentially dangerous situation exists in relation to an exposure of an individual to excessive radiation, the Minister²³ may issue a direction to the individual or corporation responsible for the actual or potential dangerous situation. A direction may include a single or combination of the following:

- a requirement to take or to refrain from taking specified action
- seizure of apparatus or equipment
- other direction given or action to be taken to avoid, remove or alleviate the danger or potential danger
- a direction provided in writing by the Minister, by notice in the South Australian Government Gazette or verbally in circumstances of imminent danger and
- the only exception to this is if an officer considers that danger is imminent, in which case a verbal order may be issued by that officer.

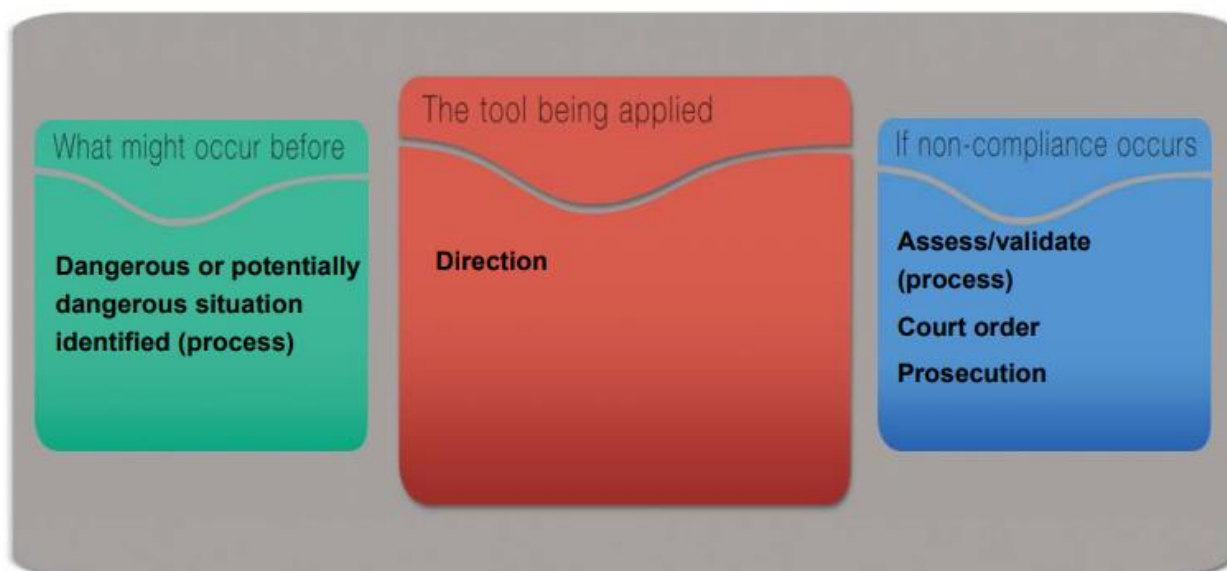


Figure 8 The direction

²³ In April 2009, the Minister is the SA Minister for Environment and Conservation.

5.4.2 EPA options and actions

Non-compliance with a direction may result in the EPA obtaining a court order to direct the action required or prosecution. All offences administered under the RPC Act are dealt with by the Magistrates' Court, with appeals heard in the Supreme Court.

5.5 Environment protection order

5.5.1 Issuing

An environment protection order (EPO) is an important regulatory tool used by the EPA to achieve compliance in a variety of circumstances. Sections 93 and 93A of the EP Act provides for when an order can be issued. An EPO may be issued for the purpose of securing compliance with any of the following:

- the general environmental duty
- mandatory provisions of an environment protection policy
- a condition of an environmental authorisation
- a condition of a beverage container approval
- any other requirement imposed by or under the EP Act
- for the purpose of giving effect to an environment protection policy
- to direct cessation of an activity, whether licensed or not.

The receipt of an EPO should not be seen as a penalty. However, non-compliance with an EPO can lead to a penalty.

The following information is required to be included in an EPO, as prescribed by the EP Act:
the purpose of the order

- the details of non-compliance
- the requirements of the order including timeframes for the requirements to be carried out.

An EPO will be placed on the EPA Public Register²⁴ and may also be registered to the specific Certificate of Title of Land the EPO applies to, or to other land owned by the recipient.

An EPO that requires immediate compliance, or ongoing compliance beyond a specified date, will remain in force. Such an EPO is appropriate when it is reasonably foreseeable that a contravention may recur.

The EPA or other administering agency may vary or revoke an issued order by notice in writing served on the persons to which it was issued²⁵.

The EPA will write to the offender once satisfied that compliance with the EPO has been met. A copy of this letter will also be placed on the EPA Public Register.

The issuing of an EPO does not preclude the EPA from taking other additional enforcement action.

²⁴ EP Act, section 109(3)(i)

²⁵ EP Act, section 93(7).

Such a letter will not be used where ongoing environmental harm is occurring or may occur if the issuing of an EPO is delayed.

Factors that will be considered prior to the issuing of an EPO include:

- the extent of the environmental harm if harm has occurred
- if environmental harm has not occurred, the degree of risk of environmental harm
- the extent to which an individual, corporation or licensee is not complying with the general environmental duty
- the risk that not issuing an order may have in relation to the industry sector involved as a whole
- if any previous action has been taken in relation to the matter (eg discussions, a warning letter, a show cause letter)
- if it is likely the contravener is likely to become compliant without issuing an EPO, ie if the desired result could be achieved through other means
- the length of time it will take to achieve compliance through other means.

5.5.2 Appeals

Persons issued with an order have a right of appeal against the EPO to the Environment Resources and Development Court (ERD Court) within 14 days of its issue.

5.6 Clean up order

5.6.1 Issuing

The EPA may issue a clean up order (CUO) according to section 99 of the EP Act, which requires an individual or corporation to take specific action within a given timeframe to remediate the resulting damage.

The CUO is a written notice that specifies the contravention which caused the environmental harm and will include the following information:

- the name of the individual or corporation issued with the CUO
- the details of the alleged contravention which resulted in environmental harm
- the requirements of the CUO, including timeframes for the requirements to be carried out.



Figure 10 The clean up order

A CUO will be placed on the EPA Public Register²⁶ and may also be linked to the applicable Certificate of Title of land.

A CUO may be issued in the following circumstances:

- the environmental harm caused is not trivial
- clean up is required promptly due to potential movement, or expansion of contaminants or potential health impacts
- costs associated with the required clean up are large or potentially larger if the clean up is not carried out directly or
- an emergency clean up order was initially issued for the crisis situation and further action is required after its 72 hour expiration. Section 5.6.2 provides further details
- the environmental harm is not confined to the property owned by the person(s) who caused the environmental harm.

5.6.2 Emergency CUO

A CUO may be issued as an emergency CUO in circumstances where an authorised officer considers urgent action is required for the protection of the environment. An emergency CUO may be issued verbally yet will cease to have effect after 72 hours from the time of issue unless it is confirmed in writing.

A CUO will not be issued if the person who caused the environmental harm is not in control of the affected land and/or does not have authority from the occupier of the land to undertake proposed clean up actions. In these circumstances a clean up authorisation (CUA) may be appropriate. Section 5.7 provides further details.

²⁶ EP Act, section 109(3)(i)

5.6.3 EPA options and actions

Prior to issuing a CUO, the EPA is likely to discuss clean-up requirements with the individual or corporation likely to be affected. The EPA will also consider:

- the significance of the environmental harm
- if the person(s) who caused the environmental harm is taking prompt action to remedy the harm.

Before the EPA issues a CUO, it will provide the individual or corporation with an opportunity to provide reasons why the CUO should not be issued. Termed a show cause letter, the EPA will issue this correspondence and provide the recipient with an appropriate period of time in which to provide a response. Such a letter will not be used where ongoing environmental harm is occurring or may occur if the issuing of a CUO is delayed.

5.6.4 Appeal

Persons issued with an order have a right of appeal against the CUO to the ERD Court within 14 days of the issue of the CUO.

The EPA or other administering agency may vary or revoke an issued order by notice in writing served on the individual or corporation to which it was issued²⁷.

5.7 Clean up authorisation

A clean up authorisation (CUA) is a written notice issued by the EPA to authorised officers or third parties it authorises so that they may take specified action on behalf of the EPA, to appropriately manage environmental damage caused by an individual or corporation who has contravened the EP Act. This action may include (but is not limited to):

- the provision of appropriate spill management and control infrastructure
- recovery of spilt/emitted pollutants
- the removal and remediation of contaminated soil resulting from a pollution event.

A copy of the CUA will be provided to the individual or corporation alleged to have caused the environmental harm. A CUA must include the following information:

- details of the person alleged to have caused environmental harm (name or sufficient description)
- details of the alleged contravention to have caused the environmental harm
- environment authorisation for action to be taken to prevent or mitigate further environmental harm if environmental authorisation is necessary.

5.8 Site contamination assessment order

5.8.1 Issuing

A site contamination assessment order (SCAO) may be issued by the EPA in the event that the EPA is

²⁷ EP Act, section 99(7).

satisfied that site contamination²⁸ exists at a site, or suspects that site contamination exists at a site due to a potentially contaminating activity²⁹ occurring or previously taking place there³⁰.

A SCAO is issued to an appropriate person who may be either an individual or a corporation. A SCAO will be in the form of a written notice and will specify both the person to whom it is issued and the site to which it applies, along with:

- requirements for assessments to be carried out regarding the nature and extent of any site contamination on or below the surface of the site and, if the EPA determines, on or below the surface of land in the vicinity of the site, and
- a requirement for a written report of the assessments to be submitted to the EPA in a form within a set period.

5.8.2 EPA options and actions

In addition, a SCAO may include the following requirements:

- that a person with the appropriate qualifications be appointed or engaged to carry out the assessments or prepare the written report of assessments
- a site contamination audit to be carried out, in accordance with EPA guidelines, and a site contamination audit report to be submitted to the EPA within a set period
- consultation to be carried out with owners or occupiers of land in the vicinity of the site.

5.8.3 Appeal

A person who is issued a SCAO may appeal against the issuing of the order to the ERD Court within 14 days of receipt of the order.

The EPA may vary or revoke the SCAO by written notice to the appropriate person, who may be either an individual or a corporation, to whom it was issued³¹.

5.9 Site remediation order

5.9.1 Issuing

A site remediation order (SRO) may be issued in the event that the EPA is satisfied that site contamination exists at a site, and considers that remediation of the site is required, taking into account current or proposed land uses³².

²⁸ For further information on site contamination please refer to EPA Publication, *Site Contamination – Responsibility for site contamination* (2008).

²⁹ Potentially contaminating activity (PCA) is an activity that has an increased likelihood of resulting in site contamination.

³⁰ EP Act, section 103H

³¹ EP Act, section 103H(5)

³² EP Act, section 103J(1)

A SRO will be in the form of a written notice, stating either the individual or corporation to whom it is issued and the site to which it applies with details of the site contamination. The following requirements may also be specified:

- remediation of the site within a set period preparation of a plan of remediation to the satisfaction of the EPA, in accordance with specified requirements
- compliance with such a plan to the satisfaction of the EPA
- environmental authorisation for the remediation site, or any other action to be taken in respect of its remediation, on the EPA's behalf by authorised officers or other individuals authorised by the EPA a written report of the remediation to be submitted to the EPA in a form within a set period
- a person with suitable qualifications be appointed or engaged to:
 - prepare a plan of remediation
 - prepare a written report of the remediation
 - carry out the remediation or other activities associated with the remediation.
- a site contamination audit to be carried out and a report to be submitted to the EPA within a specified period
- consultation with owners or occupiers of land in the vicinity of the site.

The EPA may vary or revoke the SRO by written notice to the individual or corporation to whom it was issued³³.

5.9.2 Emergency SRO

A SRO may be issued as an emergency SRO in circumstances where an authorised officer's assessment deems that urgent action is required for the remediation of the site.

An emergency SRO may be issued verbally; however, this will cease to have effect 72 hours from the time of issue unless it is confirmed in writing. The person who is issued the emergency SRO must be advised immediately of their right to appeal against the issuing of the order to the ERD Court.

5.9.3 Appeal

A person who is issued an SRO may appeal against the issuing of the order to the ERD Court within 14 days of receipt of the order.

5.10 Voluntary proposal – site contamination

5.10.1 Alternative to issuing an SCAO or SRO

The proposal is a legislative alternative to a site contamination assessment order or site remediation order. Under sections 103I and 103K of the EP Act, a person may enter into a voluntary proposal with the EPA, for site contamination assessment or remediation.

³³ EP Act, section 103J(9)

Section 103I allows the EPA to decide not to issue a site contamination assessment order to a person, in relation to known or suspected site contamination, if the individual or corporation undertakes to carry out an assessment in accordance with an EPA approved voluntary site contamination assessment proposal.

5.10.2 EPA options and actions

Similarly, section 103K allows the EPA to decide not to issue a site remediation order to a person, in relation to site contamination, if the person undertakes to carry out remediation in accordance with an EPA approved voluntary site remediation proposal.

An agreement must be in writing and copies of the agreement must be served on all parties to the agreement.

Section 109 of the EP Act requires that the details of each agreement entered into with the EPA, relating to an approved voluntary site contamination assessment proposal or an approved voluntary site remediation proposal, be recorded in the EPA Public Register.

6 Non-compliance with an order or authorisation

The EP Act allows the EPA to:

- take the action required by the order
- direct someone else to undertake the action on its behalf
- recover all reasonable costs for taking action to fulfil an order
- recover the amount, together with interest of 24% per annum which until paid is a charge in favour of the EPA on any land owned by the individual or corporation.

Non-compliance with an order may result in the EPA obtaining a court order to direct compliance or prosecution.

6.1 Registration on titles to land

When the EPA has issued the EPO, CUO, CUA, SCAO or SRO, it may apply to the Registrar General for registration of the order³⁴. This ensures that the order or environmental authorisation binds subsequent owners and occupiers, protects the EPA's claim over any costs and expenses incurred by the EPA in the event of non-compliance with the EPO, SCAO, SRO, CUO or following the CUA.

The EPA will register an order on the land if there:

- are ongoing requirements for a subsequent owner or occupier to comply with
- is a risk of non-compliance
- are significant anticipated costs associated with compliance.

The EPA will notify the owner or occupier in writing that an order has been registered.

³⁴ EP Act, sections 99 and 104

7 Recovery of costs associated with contraventions

The EPA or other administering agency may recover various fees or costs concerning actions taken in response to a contravention³⁵.

These actions may include investigating a contravention, issuing an order³⁶ in respect of the contravention, or ensuring that the individual or corporation has complied with the requirements of an order.

A notice may be issued to recover costs and expenses irrespective of any court action.

The costs or expenses incurred must be in relation to the action taken by the EPA or other administering agency, and may include the costs for taking samples, conducting tests, examinations or analyses and in the following circumstance of:

- an investigation of a contravention:
 - cost recovery will not be applied in relation to the investigation of a contravention if the contravention is minor and if the accused has not been given notice of the potential recovery costs. An individual or corporation will be warned that cost recovery may be sought if the minor contravention persists.
- issuing an order:
 - when issued with an order the recipient will be advised that, if the EPA is required to take action to ensure compliance with the order, the reasonable costs and expenses in taking that action may be recovered.
- ensuring compliance with an order:
 - a person who fails to comply with the requirements of an order may commit an offence and be liable to penalty.

³⁵ EP Act, section 135.

³⁶ An order issued under Part 10 of the EP Act.

8 Civil action

8.1 Civil remedy

Although similar outcomes may be achieved by the EPA using an EPO or a CUO or its powers to take action and recover costs, the EPA may choose to apply to the ERD Court for a civil remedy or enforcement order when:

- non-compliance with an EPO or CUO has occurred
- the EPA believes that it is likely that non-compliance with an EPO or CUO will occur
- the contravention is severe, or the extent of environmental harm is widespread.

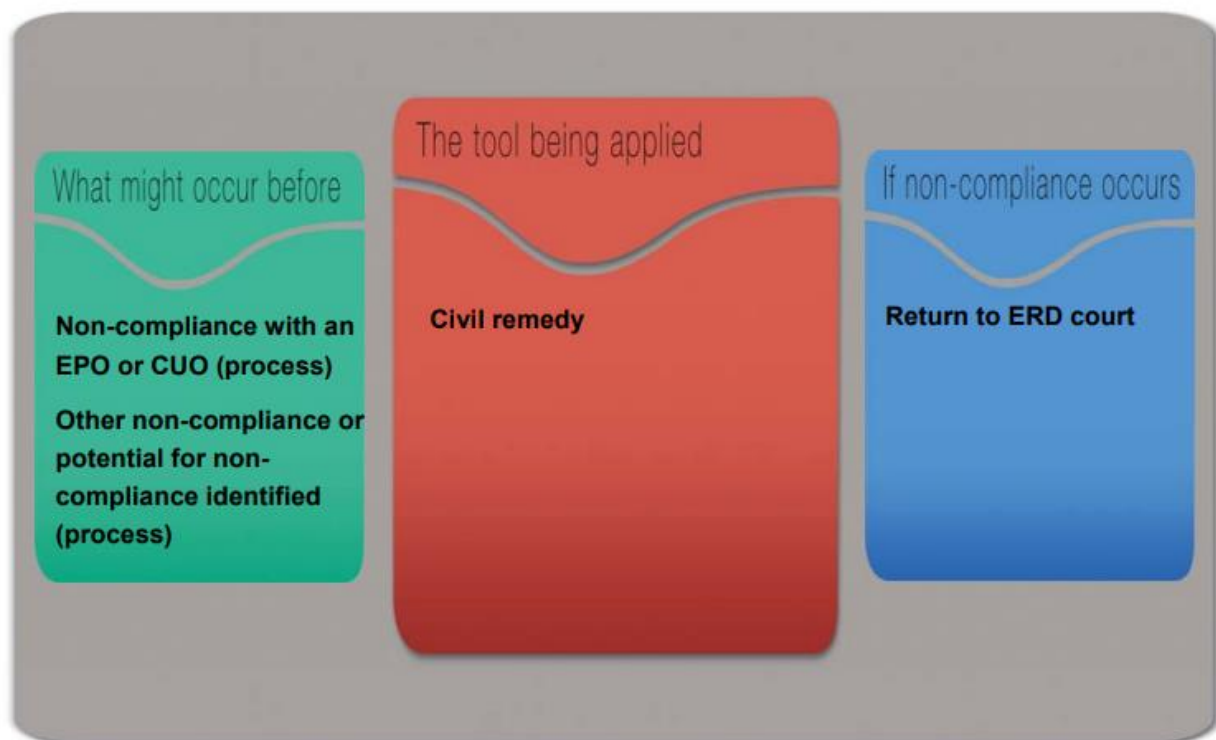


Figure 11 The civil remedy

The EPA may also apply to the ERD Court for various civil remedies³⁷, including:

- an order:
 - restraining an individual or corporation from engaging in certain conduct
 - requiring an individual or corporation to take specified action –
 - requiring an individual or corporation to rectify any environmental damage and take specified action to prevent or mitigate further environmental harm.

³⁷ EP Act, section 104.

- payment of:
 - the reasonable costs and expenses incurred by the EPA, or any other public authority, in taking action to prevent or mitigate environmental harm or to make good environmental damage 37 EP Act, section 104. Non-compliance with an Civil remedy EPO or CUO (process) Other non-compliance or potential for non-compliance identified (process) Return to ERD court Compliance and enforcement regulatory options and tools 32
 - compensation for injury, loss or damage to property, or for payment of the reasonable costs and expenses incurred in taking action to prevent or mitigate such injury, loss or damage
 - exemplary damages.

Any failure to comply with a court order would be referred back to the ERD Court.

8.2 Civil penalty

The EPA has the power to apply to the ERD Court for a civil penalty or to negotiate a civil penalty directly with an alleged offender to recover a penalty in respect of a contravention as an alternative to criminal prosecution³⁸.

A civil penalty provides a regulatory tool for the EPA to respond to less serious contraventions of the EP Act. It can be imposed as an alternative to criminal prosecution for a strict liability offence of the EP Act. This is an offence where there is not a requirement to prove state of mind, such as the contravention of a mandatory provision of an environment protection policy³⁹, undertaking a scheduled activity without an appropriate environmental authorisation⁴⁰, or causing pollution⁴¹. The 'burden of proof' for a civil penalty requires proof 'on the balance of probabilities' that the individual or corporation contravened the EP Act.

A person who contravenes the EP Act and receives a civil penalty will not incur a criminal conviction. It is important to note, that repeat offences will most likely be dealt with via criminal prosecution.

The civil penalty system is voluntary, and both the EPA and the individual or corporation in alleged contravention of the EP Act must agree to the process. The person may choose not to negotiate a civil penalty with the EPA and, in that event, the EPA may apply to the court for a civil penalty or undertake a criminal prosecution. The individual or corporation may elect to be prosecuted under the higher criminal burden of proof rather than be heard in the civil jurisdiction of the court.

The EPA may negotiate a civil penalty directly with an individual or corporation with whom the EPA is satisfied has committed the offence (negotiated) or may apply to the ERD Court for an order that the person(s) pay to the EPA an amount as a civil penalty (imposed).

The maximum amount recoverable as a civil penalty by negotiation is the criminal penalty specified by the EP Act for the offence or \$120,000, whichever is the lesser.

The maximum amount that the court may impose as a civil penalty is the criminal penalty specified by the EP Act for the offence.

³⁸ EP Act, section 104A.

³⁹ EP Act, section 34(2).

⁴⁰ EP Act, section 36.

⁴¹ EP Act, sections 80(2) and 82(2).

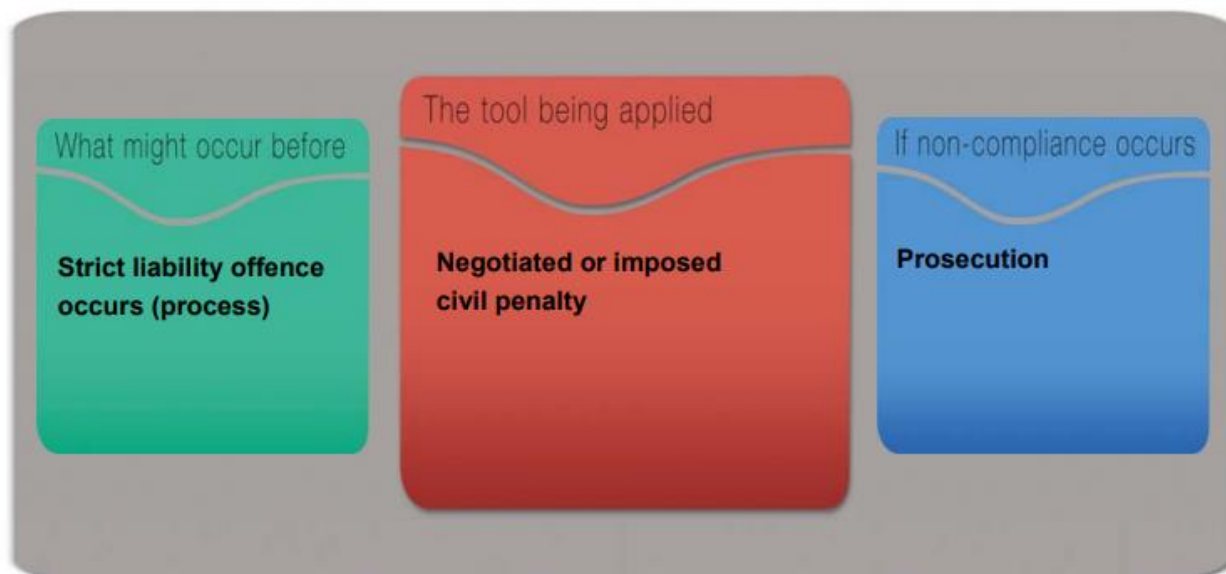


Figure 12 The civil penalty

8.3 Prosecution and criminal penalty

For a criminal penalty, the burden of proof is greater than a civil penalty and requires proof 'beyond reasonable doubt' that the person(s) committed the offence.

This section of this document is necessarily consistent with the Director of Public Prosecutions' Prosecution Policy.

The EP Act contains both summary⁴² and indictable⁴³ offences. The vast majority of offences under the EP Act are summary offences with the exception of these indictable offences:

- causing serious or material environmental harm
- failing to notify incidents causing or threatening serious or material environmental harm.

Prosecution will generally be pursued in the ERD Court after obtaining advice from the Crown Solicitor or the Director of Public Prosecutions. The final choice of jurisdiction will be influenced by the seriousness of the alleged offence.

The EPA considers all the circumstances and will recommend that the relevant prosecuting authority lays the appropriate charges. Prosecutions are usually conducted by a prosecutor from the Crown Solicitor's Office.

A prosecution will not proceed if there is no reasonable prospect of establishing guilt.

- In light of the particular circumstances, the EPA or other relevant prosecuting authority will consider whether:
- there is sufficient evidence to support a prima facie case

⁴² For a detailed definition, please see *Summary Procedure Act 1921*, section 5(2).

⁴³ For a detailed definition, please see *Summary Procedure Act 1921*, section 5(3).

- there is a reasonable prospect of securing a finding of guilt
- the public interest will be served by a prosecution.

In determining what is in the public interest the EPA will consider a range of factors, including but not limited to:

- the risk assessment factors used when determining the action to be taken
- any mitigating or aggravating circumstances
- the culpability of the individual or corporation who committed the contravention (the greater the culpability the more likely the public interest will require a prosecution)
- the cost of prosecution
- the availability and efficacy of other forms of enforcement
- the prevalence of the contravention and the public concern generated
- the need for deterrence, both specific and general
- any precedent which may be set by failure to take action
- prosecution measures taken against others arising out of the same incident, or under similar circumstances
- likely outcome in the event of a finding of guilt including the sentencing options available to the court and the powers that are available to the EPA in the event of a contravention of the EP Act.

Generally, if there is sufficient evidence, the EPA will prosecute. If there are mitigating factors these can be put to the sentencing court. For less serious offences, the EPA will decide whether the public interest will be served by prosecuting.

Further information

[Planning, Development and Infrastructure Act 2016](#)

[Environment Protection Act 1993](#)

[Radiation Protection and Control Act 2021](#)

[Radiation Protection and Control \(Ionising Radiation\) Regulations 2022](#)

[Policy for calculation of civil penalties under the Environment Protection Act 1993](#)

[Civil remedies under the Environment Protection Act 1993 \(2000\),](#)

[Container deposit legislation \(CDL\) – a South Australian environmental success story](#)

Director of Public Prosecutions, [Prosecution Policy and Guideline](#)

[Environment improvement programs \(EIPs\): A drafting guide for licensees](#)

[Environment, Resources and Development Court](#)

[Waste management – regulatory framework and objectives](#)

Appendix 1 Supporting information – Radiation and Control Act

Relevant defendant

Owners and occupiers

The RPC Act and Radiation Protection and Control (Ionising Radiation) Regulations 2000 (Regulations) apply to individuals or corporate bodies that carry out operations where radioactive ores are mined or milled, own a radiation apparatus, own a sealed radiation source or occupy premises where unsealed radioactive substances are used or stored.

When an owner or occupier commits a contravention against the RPC Act or its Regulations, proceedings can be instituted against the individual or the corporate body, whichever is the case⁴⁴.

Officers of the body corporate

Senior officers of a corporation control the information flow to employees, the budgets necessary to establish workplace systems, and procedures necessary to prevent a contravention of the RPC Act. The environmental responsibilities of company officers are correspondingly significant.

Under the RPC Act, each individual who is a director of the body corporate or an individual concerned in the management of the body can be guilty of an offence and be liable for contraventions. Officers of the body corporate can include:

- a director of a body corporate
- board members of a body corporate
- the chief executive officer of a body corporate
- a receiver or manager of any property of a body corporate or a liquidator
- an employee of a body corporate with management responsibilities related to the contravention or alleged contravention.

Individuals

When an individual owner or occupier contravenes the RPC Act or its Regulations, proceedings can be instituted against the individual⁴⁵.

Operators and handlers

The RPC Act also applies to individual operators of apparatus and handlers of radioactive substances and sources. When a licence holder or an individual that is required to hold a licence commits a contravention against the RPC Act or its Regulations, proceedings can be instituted against that individual.

⁴⁴ More than one individual or corporate body can own a single entity (ie mine or mill, radiation apparatus, sealed radiation source) or be occupiers of premises where unsealed radioactive substances are used or stored.

⁴⁵ While an individual can be the occupier of a premises (in which unsealed radioactive substances are kept or used), premises are generally occupied by corporate bodies.

Employers

Under the Regulations, an employer has specific legal responsibilities toward a radiation worker it employs and must ensure the workplace environment complies with the Regulations. An employer must comply with responsibilities specified in the RPC Act and its Regulations and also provide:

- radiation monitoring equipment and radiation warning devices
- protective clothing, fume cupboards, interlocks, signs, labels and any other radiation protection equipment or devices
- prior to employment as a radiation worker, certain information including a radiation safety manual.

Considerations prior to initiating a prosecution

In determining whether to recommend prosecution against any individual, the EPA will consider:

- whether the individual knowingly and deliberately contravened the RPC Act or its Regulations
- the individual's ongoing cooperation with compliance issues
- whether the contravention is significant enough to warrant court proceedings.

Education

Part of the role of the EPA is to educate its stakeholders in the form of advice and instruction on matters relating to radiation protection. This is used as a method for radiation dose management for the benefit of individuals and the community as a whole, and as a tool to prevent non-compliance with the RPC Act and its Regulations.

Appendix 2 Supporting information – Environment Protection Act

Relevant defendant

Corporations

The EP Act applies to individuals and corporations. When an officer, employee or agent of a corporation in the course of their employment commits a contravention, proceedings will usually be instituted against the corporation rather than an individual.

If employees in good faith and without negligence follow the directions of their employer and a contravention occurs, they should not be prosecuted nor have civil action be taken against them. However, if they act outside the scope of their authority, proceedings may be instituted against them. In determining whether to recommend prosecution or civil action against a corporation, the EPA will consider whether:

- the alleged contravention resulted from any failure on the corporation's part to take all reasonable and practicable measures to prevent it
- proper systems and procedures were in place to ensure that any contravention or risk of contravention would be reported promptly to the governing body of the body corporate and appropriate action taken
- the governing body of the body corporate actively and effectively promoted and enforced compliance with the Act.

More information on general criminal defence is contained in section 124 of the EP Act.

Officers of the body corporate

Senior officers of a corporation control the information which flows to employees, the budgets necessary to establish workplace systems, and procedures necessary to prevent a contravention of the EP Act. The environmental responsibilities of company officers are correspondingly significant.

Under the EP Act, an officer of a body corporate is defined as:

- a director of a body corporate
- the chief executive officer of a body corporate
- a receiver or manager of any property of a body corporate or a liquidator
- an employee of a body corporate with management responsibilities related to the contravention or alleged contravention.

Under the EP Act, officers of a body corporate may be vicariously liable for contraventions committed by the body corporate.

The crucial issue is whether an officer of a body corporate had actual control or influence over the particular conduct constituting the contravention. As a general rule, the EPA will institute proceedings against an officer in addition to, or in lieu of, taking action against the company if there is evidence that the officer:

- should have exercised greater supervision or control over the activities of the company
- intended to commit the contravention or cause environmental harm
- was negligent or reckless in the act or omission
- promoted or acquiesced in the contravention.

Employees

Employees cannot rely on the defence that they were acting under orders. The guiding principle in deciding whether to charge an employee is the degree of culpability or blame involved, based on:

- whether they knew or should have known that the activity was probably illegal
- their seniority and the scope of their duties
- whether, having regard to their seniority and duties, they took reasonable steps to draw to the attention of the employer or any other relevant individual the impropriety of the practice
- their actual involvement in the contravention.

Lender liability

There are very few circumstances in which lenders will attract liability under the EP Act. They will not be prosecuted if their only involvement was to lend money to an individual or corporation under normal commercial terms and did nothing that led to the environmental harm. However, if an individual or corporation is declared bankrupt, the lender may have day-to-day management responsibility for the business. Lenders will then fall within the definition of an officer of the body corporate and may be liable.

Additional penalties

Under the EP Act, a continuing act or omission attracts additional penalties for every day during which the relevant act or omission continues. See section 123 of the EP Act.

In addition, under section 133, the court has power to make orders imposing a variety of additional obligations on an individual or corporation found guilty of a contravention of the EP Act. These include payment of an amount equivalent to the court's estimation of the economic benefit acquired by the person(s), or accrued to the person(s), as a result of committing the contravention.

Disclosure and cooperation

The EPA encourages people to notify it of an incident as soon as possible. This is consistent with the objects of the EP Act and also with the public interest. The EPA can then work with the individual or corporation responsible to minimise harm to the environment.

In addition, there is a statutory requirement to notify the EPA of some incidents, which is discussed below.

Disclosure

When an incident that is likely to result in serious or material environmental harm from pollution occurs (or is threatened) the individual or corporation involved must, under section 83 of the EP Act, as soon as reasonably practicable, notify the EPA of:

- the incident
- its nature
- the circumstances in which it occurred
- the action taken to deal with it.

Failure to properly notify as soon as reasonably practicable after becoming aware of the incident is an offence punishable by a fine of up to \$250,000. If an individual or corporation makes the appropriate notification they will avoid prosecution for the requirement to notify. This will not, however, influence the EPA decision on whether or not to prosecute them over the incident.

Cooperation

In deciding what enforcement measures to take against alleged offenders, the EPA may consider how cooperative they have been, above and beyond the disclosure requirements of the EP Act. Cooperation may range from the provision of information to assisting the remediation of any environmental harm.

An individual or corporation who hinders, obstructs, abuses, threatens or assaults an authorised officer will be prosecuted. This behaviour will also be taken into account by the EPA in determining what action should be taken on other contraventions of the EP Act.

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