

Information Sheet

Environmental Protection Act 1994

Information Sheet - Recipient of an Environmental Enforcement Order

This guidance provides information to recipients of an Environmental Enforcement Order issued by the administering authority under section 362 of the Environmental Protection Act 1994 (the Act).

What is an environmental enforcement order?

An environmental enforcement order (EEO) can be issued to a person, a company, and a person related to an activity even if they hold an environmental authority that authorises, or purportedly authorises, the activity. An EEO is an enforcement tool. It is applied when the administering authority identifies one or more of the following circumstances:

- Where the administering authority's delegate believes an enforcement ground exists (s362(1)).
- Where the administering authority believes a person to be a prescribed person for a contamination incident (s362(2)(a)).
- Where the person is a related person of a company that has received an EEO (other than as a prescribed person for a contamination incident) or of a high-risk company (s362(2)(b)).
- Where the administering authority accepts an Environmental Report as part of an Environmental Audit or Environmental Investigation (s326H(1)(c)).

The EEO may be issued once the administering authority has obtained an appropriate amount of information about the nature and extent of the requirements needed to cease the commission of an offence and/or respond to any contamination or environmental harm that may have been caused. The EEO imposes on the person responsible for the activity or event one or more requirements that must be followed.

Prior to issuing an EEO under s362(1), the administering authority's delegate must be satisfied that one or more of the enforcement grounds exist (s359 defines the enforcement grounds). An EEO may still be issued if an enforcement ground is not satisfied; however, the other circumstances outlined in s362(2) or s326H(1)(c) apply.

Actions stated under environmental enforcement order

An EEO will state the requirements you must take under the order. They will state the reasonable steps the administering authority considers necessary to—

- Remedy or otherwise address the matter, e.g. clean up, fix or rectify environmental harm.
- Avoid contravention or further contravention of a provision of this Act.

What are my responsibilities upon receiving an EEO?

Upon receipt of the order, you must complete all requirements that are listed in the order within the timeframes specified in the EEO. The specified actions and their timelines are primarily determined by the nature of the required actions, the potential risks to human health or the environment, and the risk of property loss or damage associated with the matter in question. The requirements also consider the duration of your awareness of the issue, any previous oral directives from authorised personnel, and any communication with you prior to the issue of the EEO for the matter at hand.

What if one of the requirements is to take action on someone else's land?

Some requirements may include you to undertake remedial works on property that is not your land. There are provisions in the Act that enable you and/or contractors to undertake required works on someone else's land after taking the necessary statutory requirements. See sections 369E, 369F and 369G of the Act for the requirements that will need to be followed. Each situation is different. It is advised that you obtain legal advice in these circumstances.

What if I was not the person who caused the contamination?

Section 369H of the Act allows the recipient of an EEO, who is a prescribed person for a contamination incident, to



Information Sheet - Recipient of an Environmental Enforcement Order

recover costs in particular circumstances. If the recipient complies with the EEO but was not the person who caused the contamination incident to occur, they are entitled to recover any costs they have incurred in complying with the EEO from the person responsible for the contamination incident. Each situation is different. It is advised that you obtain legal advice in these circumstances.

How do I notify the department that the EEO has been complied with?

When issuing the EEO, the department will have specified timeframes in which you need to meet the requirements. Good communication is key to a successful outcome for all parties. There are contact details on the EEO in which you can communicate with the administering authority through all stages of the requirements. An inspection may be necessary or desirable to ensure that the outcomes of the order have been met.

Can an EEO be amended?

Yes, there are several mechanisms in which an environmental enforcement order can be amended:

- The department may correct clerical mistakes and errors. You will receive a copy of the amended notice.
- Major or serious errors, that include errors which may give rise to unintended changes of meaning, may also be corrected by the department. You will be advised by way of written correspondence.
- Significant amendments which affect your rights or liabilities will be detailed in a new notice. These may include extensions of time for requirement due dates or modification of requirements (including potential additional requirements).

The department may adjust the order based on the outcome of an internal review or court appeal. The outcome will be detailed to you by way of an amended or new order.

What happens if I sell my business during the period stated on my EEO?

If you propose to dispose of the place or business (generally by selling the business) to which the order relates to someone else (the *buyer*), then in accordance with section 369D of the Act, you must give written notice to the buyer of the existence of the order. There are offences in relation to failing to give written notice to a buyer of the place or business that the EEO relates to.

What if I stop carrying out my business instead? Do I still need to comply with the order?

You need to comply with the order whether you cease carrying out the activity or not. If you do cease carrying out the activity, then in accordance with section 369D of the Act, you must notify the administering authority. There are offences in relation to failure to notify the administering authority.

What if I don't comply with the requirements of the EEO?

Failing to comply with an EEO is an offence unless you have a reasonable excuse. The maximum penalty for an offence if the grounds were one or more of the grounds are stated below.

<ul style="list-style-type: none"> • Prescribed person for a contamination incident (s362(2)(a)) • Necessary to secure compliance with the general environmental duty involving serious or material environmental harm • Necessary to secure compliance with the duty to restore involving serious or material environmental harm. • Necessary to secure compliance with an Environmental Approval (EA) condition; Development Approval condition; Prescribed condition for a small-scale mining activity; Site management plan condition; Progressive Rehabilitation and Closure Plan schedule; Transitional Environmental Program; Temporary Emissions Licence condition; conducting an Environmentally Relevant Activity without an EA (s426) 	<p>4,500 penalty units; OR If wilful, 6,250 penalty units or 5 years imprisonment</p>
<ul style="list-style-type: none"> • If the EEO was issued on other grounds not listed above 	<p>600 penalty units; OR If wilful, 1,665 penalty units</p>

Alternatively, a penalty infringement notice (PIN) for the offence of contravening an EEO may be issued. The [State Penalties Enforcement Regulation 2014](#) prescribes the PIN amount for both an individual and a corporation for the offence. Additionally, s369F provides that an authorised person or contractor may take any of the actions stated in an EEO if the recipient fails to comply with it within the period stated, or the decision to issue an EEO has been stayed. If this occurs, there is an ability for the department to initiate cost recovery of monies spent, taking action in place of the recipient of the order if they are the administering authority. Cost recovery information can be found in s369J.