

Session 1

The Regulatory Environment

Corporate and Individual Responsibility

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Environmental Protection Act

Environmental Protection Act 1994

- Lists obligations and duties to prevent environmental harm, nuisances and contamination
- Also sets out enforcement tools that can be used when offences or acts of non-compliance are identified

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Primary Duties of EP Act

- **General Environmental Duty** – 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
- **Duty to Notify** – inform the administering authority and landowner or occupier when an incident has occurred that may have caused or threatens serious or material environmental harm

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To whom do Primary Duties apply

- Everyone in Queensland
- A 'person' includes a body of persons, whether incorporated or unincorporated
- i.e. Corporate and Individual responsibility

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What is the General Environmental Duty

- We are all responsible for the actions we take that affect the environment
- We must not carry out any activity that causes or is likely to cause environmental harm, unless we take all reasonable and practicable measures to prevent or minimise the harm

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Environmental Harm

- **Environmental Nuisance**
 - is unreasonable interference or likely interference with an environmental value caused by an unhealthy, offensive or unsightly condition because of contamination
- **Material Environmental Harm**
 - not trivial or negligible in nature, extent or context; or that causes actual or potential loss or damage to property; or that results in costs in taking appropriate action to prevent or minimise the harm; and to rehabilitate or restore the environment to its condition before the harm
- **Serious Environmental Harm**
 - is environmental harm that is irreversible, of a high impact or widespread; or caused to an area of high conservation value; or an area of special significance, such as the Great Barrier Reef World Heritage Area

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To meet the GED need to consider

- Nature of the harm or potential harm - how severe is it?
- Sensitivity of the environment - are you operating near a protected area, waterway or sensitive habitat?
- Current state of technical knowledge for the activity - what is the current best practice for the activity? Is the activity a notifiable activity?
- Likelihood of possible measures being successful - how successful are different measures likely to be in preventing or minimising environmental harm?
- Financial implications of taking different measures - will taking certain prevention measures instead of others mean your activity is not commercially viable?

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Notifiable Activities

What are Notifiable Activities:

- Activities that have the potential to cause land contamination

Includes:

- [20] Landfill
- [24] Mine wastes

But, does not include construction

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EP Act Section 440ZG

- Depositing prescribed water contaminants (including sand, soil, silt or mud) in waters and related matters
- A person must not - unlawfully deposit a prescribed water contaminant in waters; or in a roadside gutter or stormwater drainage; or at another place, and in a way, so that the contaminant could reasonably be expected to wash, blow, fall or otherwise move into waters, a roadside gutter or stormwater drainage

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Water contaminants in water



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EP Act Section 440ZG

- Depositing prescribed water contaminants in waters and related matters
- A person must not - unlawfully release stormwater run-off into waters, a roadside gutter or stormwater drainage that results in the build-up of earth in waters, a roadside gutter or stormwater drainage

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Release stormwater into water



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EP Act Section 320

- Duty to notify of environmental harm
- A person who -
while carrying out an activity, becomes aware that an event has happened that causes or threatens serious or material environmental harm because of the person's or someone else's act or omission in carrying out the primary activity or another activity being carried out in association with the primary activity; must, no later than 24 hours after becoming aware of the event and unless the person has a reasonable excuse, give the administering authority written notice of the event, its nature and the circumstances in which it happened

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Duty to Notify - Guideline

Guideline provides details of:

- Who the duty to notify applies to:
 - Employee, employer, owner, occupier, tradesperson, operator or anyone carrying out an activity
- When the duty to notify applies:
 - When you become aware of a **pollution incident** or an activity (not authorised under the Act) that causes or threatens **serious or material environmental harm**
- The timeframe for notifying
 - **Within 24 hours** after becoming aware of the event

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Duty to Notify - Guideline

- Who is to be notified
 - Department of Environment and Science
 - The owner and/or occupier of the affected land
- How to notify of environmental incidents
 - By email, phone or registered post
 - pollutionhotline@des.qld.gov.au
 - Pollution Hotline on **1300 130 372**
 - Copy of the form - Duty to Notify of Environmental Harm
 - <https://www.qld.gov.au/environment/management/environmental/contaminated-land/assessing/notifications>
- Failure to notify fines up to \$7,500

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Failure to Notify

- Fines up to \$7,500



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General Environmental Duty

- No specific offence for failing to fulfil your general environmental duty
- Enforcement tools used by an administering authority to bring into compliance with the Act
- Include issuing an environmental protection order or issuing Direction and Clean-up notices
- Demonstrating compliance with General Environmental Duty can be used as a defence for offences relating to causing unlawful environmental harm
- If a person can show that the harm occurred while an activity considered lawful, apart from this Act, was being carried out and they fulfilled their General Environmental Duty, then they cannot be found guilty of causing unlawful environmental harm

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General Environmental Duty

- Can be demonstrated by following relevant best practice guidelines such as the IECA Australia "Best Practice Erosion & Sediment Control Guideline" (2008) for building and construction sites (White Book)
- Implementation of technical controls; sound soil and water management
- Management measures; training, design, planning, monitoring and maintenance

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Environmental Protection

- One of the main potential adverse impacts identified during construction is associated with soil and water due to erosion and sedimentation
- Such impacts are to be minimised by mitigating measures
- May be required to prepare a Construction Environmental Management Plan (CEMP) before construction commences

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Environmental Protection

- Erosion & Sediment Control Plan (ESCP) may be part of a CEMP
- ESCP sets out specific conditions to be met to achieve environmental outcomes
- Key objectives of a ESCP are to:
 - Minimise risk of erosion and sediment deposition
 - Prevent surface water degradation
 - Ensure compliance with all legislative water quality requirements

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How are E&SC rules applied?

- Two approaches to implementation:
 - “performance based”, e.g. 50 mg/L discharge limit for suspended solids
 - “good practice”, e.g. “White Book” approach
- Responsibility
 - Organisations and individuals responsible for any actions reasonably or legally within their control
 - Must display “Due Diligence”

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Enforcement Tools

Environmental Protection Order (EPO) may enforce:

- Not start or stop a stated activity indefinitely, for a stated period or until further notice from the Department
- Carry out a stated activity only during stated times or subject to stated conditions
- Take stated action by a stated date

Fines for non-compliance (1PU = \$143.75):

- Individual 4,500PU ~ \$650,000, 5 years gaol
- Corporation 22,500PU ~\$3.2M

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Enforcement Tools

Clean-up Notice:

- A clean-up notice is a written notice issued by the Department of Environment and Science (the Department) to a person who is reasonably believed to be a prescribed person, to ensure that a contamination incident (that has caused or is likely to cause serious or material environmental harm) is cleaned up

Fines for non-compliance:

- Individual 4,500PU ~ \$650,000, 5 years gaol
- Corporation 22,500PU ~\$3.2M

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Enforcement Tools

Direction Notice requires:

- A person contravening one of the prescribed provisions to remedy the contravention
- The purpose of a Direction Notice is to provide the person with an opportunity to remedy the situation before any further action is taken

Fines for non-compliance

- Individual ~\$85,000 or ~\$430,000 if wilful
- Corporation ~\$240,000 or ~\$1.2M if wilful

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Enforcement Tools

Cost Recovery Notice:

- A Cost Recovery Notice is a written notice that requires the recipient to pay all reasonable expenses the Department incurred in relation to the clean-up of a contamination incident
- 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

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Enforcement Tools

Penalty Infringement Notice (PIN):

- A means of dealing with minor contraventions of legislation administered by the Department which warrant some form of sanction, but which are generally not serious enough to warrant a prosecution
- The offences for which infringement notices can be issued, and the associated penalties, are set out in the State Penalties Enforcement Regulation 2014
- Fines ~\$2,000 - \$10,000

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Appropriate penalty?



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Appropriate penalty?



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Appropriate penalty?



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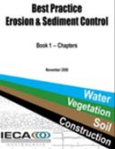
E&SC Guidelines in QLD Reference Materials

This course is based on:

- IECA Australia “Best Practice Erosion & Sediment Control Guideline” (2008) for building and construction sites

Available from:

- <https://www.austieca.com.au/publications/best-practice-erosion-and-sediment-control-bpesc-document>



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IECA Best Practice Erosion & Sediment Control

- Book 1 – Principles, planning, design standards, site management and preparing plans
- Book 2 (Appendices) – Hydrology and hydraulics, basin design, soils, soil loss calculation, erosion hazard assessment
- Book 3 (Appendices) – Building sites, in-stream works, road and rail construction, access tracks, service installation

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IECA Best Practice Erosion & Sediment Control

- Book 4 – Design Fact Sheets for a range of commonly used BMPs, drainage and construction techniques
- Book 5 – Erosion and Sediment Control – “A Field Guide for Construction Site Managers”
- Book 6 – Standard technical drawings for a range of commonly used BMPs, drainage and construction techniques

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