

## Responsibilities and the Law in Detail

### Who is responsible for ensuring there is no pollution from the site?

#### *Everyone!*

Under legislation anyone who places material into the stormwater system or even in a position where it may enter the stormwater system is guilty of an offence. Depending on the extent of the pollution, penalties range from on-the-spot fines of \$750 to a maximum of \$1 million or 7 years in gaol.

**It is the Builder/Site Supervisor's responsibility to ensure that all workers on site, including sub-contractors, do not breach environmental laws.** Workers have a responsibility under the law to notify their supervisors if they see a pollution incident which harms the environment. If the supervisor cannot be contacted, workers should notify the Council.

### The Law in detail

Pollution from building and construction sites is regulated under the Protection of the Environment Operations Act 1997 (POEO Act). Under this Act it is an offence for anyone to let any substance other than rainwater enter a waterway including the stormwater system. The Council and the Department of Environment and Climate Change (DECC) can issue notices and penalties on building and construction sites to protect the environment.

There are three kinds of notices:

- Clean up notices can be issued to require clean up of sites.
- Prevention notices can be issued if an activity is being carried out or is suspected to be carried out in an environmentally unsatisfactory manner. The prevention notice requires certain action to be taken and can be appealed in the Land and Environment Court.
- Prohibition notice can be issued to require work to cease for a given time.

When a company receives a Clean Up or Prevention Notice they may be liable for a \$320 administration fee. They can also be charged all costs incurred by the DECC or Council to ensure compliance with the notice. As well as notices there are three levels of offences that apply to building and construction sites if they pollute the environment:

- **Tier 1 Offences** are the most serious and involve wilful or negligent behaviour resulting in harm to the environment. The penalty is up to \$5 million for corporations and \$1 million and 7 years imprisonment for individuals. In defending against a Tier 1 offence the company or individual will need to show that they had no control over the pollution event and that they took reasonable precautions and exercised due diligence to prevent the offence.
- **Tier 2 Offences** have a maximum penalty of \$1 000,000 for a corporation and \$500,000 for an individual. Further daily penalties apply to continuing offences.
- **Tier 3 offences** are dealt with by penalty infringement notices, similar to speeding fines. These notices impose a fine that can be paid or defended in court. The maximum penalty is \$1500 for a corporation or \$750 for an individual.

**Public Register of Notices:** Councils and the DECC are required to keep a public register of all companies and individuals who are issued notices. So in addition to the fines and lost time in cleaning up, companies who pollute also risk damaging their reputation. This is a foolish thing to

do when the public are becoming more and more concerned about the environment and are starting to look at a company's environmental record when deciding which company to use.

If you do have a pollution incident which harms the environment, under the POEO Act, you have a **duty to notify** the Council or DECC. They can then work with you to minimise the harm to the environment. Penalties apply for failing to notify either the Council or the DECC. Further daily penalties apply to continuing offences.