

ENFORCEMENT POLICY

All government fees, fines and penalties are indexed annually in line with changes in the Consumer Price Index (CPI).

For the latest information on the Monetary Units Act 2004 and its consequences for EPA fees and penalties, visit EPA's website at www.epa.vic.gov.au/industry/current_fees.

Fees and penalties are listed on pages 19–20 of this publication. When fees change, an addendum sheet will be made available to replace this listing of fees and penalties.

ENFORCEMENT POLICY

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FOREWORD

Victoria has a comprehensive legislative base for protecting the environment through encouraging responsible environmental behaviour by industry, government agencies, municipalities, local authorities and individuals.

In Victoria, community expectations about environment protection are high. The community expects EPA Victoria to exercise its responsibilities in an efficient and effective manner without fear or favour.

The thrust of EPA's overall approach is to facilitate good environmental practice and to seek co-operation and collaboration from those whose activities could potentially harm the environment. There will always be, however, the need for enforcement action for those who seek to gain through misuse of the environment or who through negligence, ignorance or inadvertence, damage the environment.

This enforcement policy was first published in 1993 to provide clarity and certainty to individuals, companies (including directors and managers) and government agencies about the approach adopted by EPA in the enforcement of the *Environment Protection Act 1970* and regulations, and other environment protection legislation.

This policy outlines the principles for fair and consistent enforcement and is intended to inform everyone including those who administer the legislation how enforcement will be carried out.

A handwritten signature in black ink, appearing to read 'M. Bourke', with a long, sweeping horizontal stroke extending to the right.

MICK BOURKE
CHAIRMAN

TABLE OF CONTENTS

FOREWORD.....	i
1. GUIDING PRINCIPLES.....	1
2. ENVIRONMENT PROTECTION.....	2
3. RESPONSIBILITY FOR ENFORCEMENT	6
4. MEASURES TO PROMOTE ENVIRONMENTAL PERFORMANCE	8
5. ENFORCEMENT MEASURES.....	10
6. POWERS OF AUTHORISED OFFICERS	16
7. OFFENCES, PENALTIES AND COSTS.....	18
APPENDIX 1	21
APPENDIX 2.....	22

ENFORCEMENT POLICY

1. GUIDING PRINCIPLES

EPA has an enforcement role in relation to the *Environment Protection Act 1970* ('the Act') and the *Pollution of Waters by Oil and Noxious Substances Act 1986* ('POWBONS'). These Acts apply to all persons in Victoria. The following principles will guide EPA in its enforcement role:

- enforcement of mandatory and discretionary provisions will be undertaken in a fair, predictable and consistent manner
- enforcement will be applied consistently to individuals, companies (including directors and managers) and government agencies
- enforcement will be undertaken using lawful procedures
- the emphasis in administration and enforcement will be on prevention of environmental problems
- the assistance of all sections of the community will be sought in reporting environmental problems and suspected offences against environmental legislation
- within the limitation of resources available, EPA will endeavour to investigate all suspected offences
- the primary purpose of enforcement measures is to stop or prevent polluting activities, by making offenders accountable as a deterrent to those involved and to others.

In addition to the above-mentioned principles Section 1K of the Act states that enforcement of environmental requirements should be undertaken for the purpose of:

- (a) better protecting the environment and its economic and social uses

- (b) ensuring that no commercial advantage is obtained by any person who fails to comply with environmental requirements
- (c) influencing the attitude and behaviour of persons whose actions may have adverse environmental impacts or who develop, invest in, purchase or use goods and services which may have adverse environmental impacts.

EPA and personal information

EPA is committed to valuing and protecting personal and sensitive information collected in the course of performing its functions under the Act.

EPA's commitment to the protection of personal information is balanced with meeting our obligations under the Act, delivering transparent decision-making, influencing the behaviours of people whose actions may have an adverse environmental impact and providing reliable and relevant information to Victorians.

The Act allows for personal information to be collected, used, disclosed and handled to enable the Authority to undertake its enforcement functions. EPA may also be lawfully required to collect, use, disclose or handle information in order to meet its obligations under other legislation.

Where required by law, personal information may also be shared with other departments or agencies.

EPA is subject to provisions of the *Freedom of Information Act 1982*. EPA also has obligations under the *Information Privacy Act 2000* in respect of how we collect, use, disclose and manage personal information. For further information EPA's Privacy Policy can be viewed at www.epa.vic.gov.au/Statements/privacy.asp.

ENFORCEMENT POLICY

2. ENVIRONMENT PROTECTION

The Act establishes EPA and provides for a system of administration to ensure the maintenance and where necessary, the restoration of a high standard of environmental quality.

EPA is an independent statutory body, and while reporting through its Minister, is separate from Government. It makes enforcement decisions alone.

EPA administers the Act, and regulations and any orders made under the Act. It may delegate certain powers from time to time.

The Act provides for a policy framework that is implemented through a range of regulatory and non-regulatory activities. Figure 1 provides an overview of the Act.

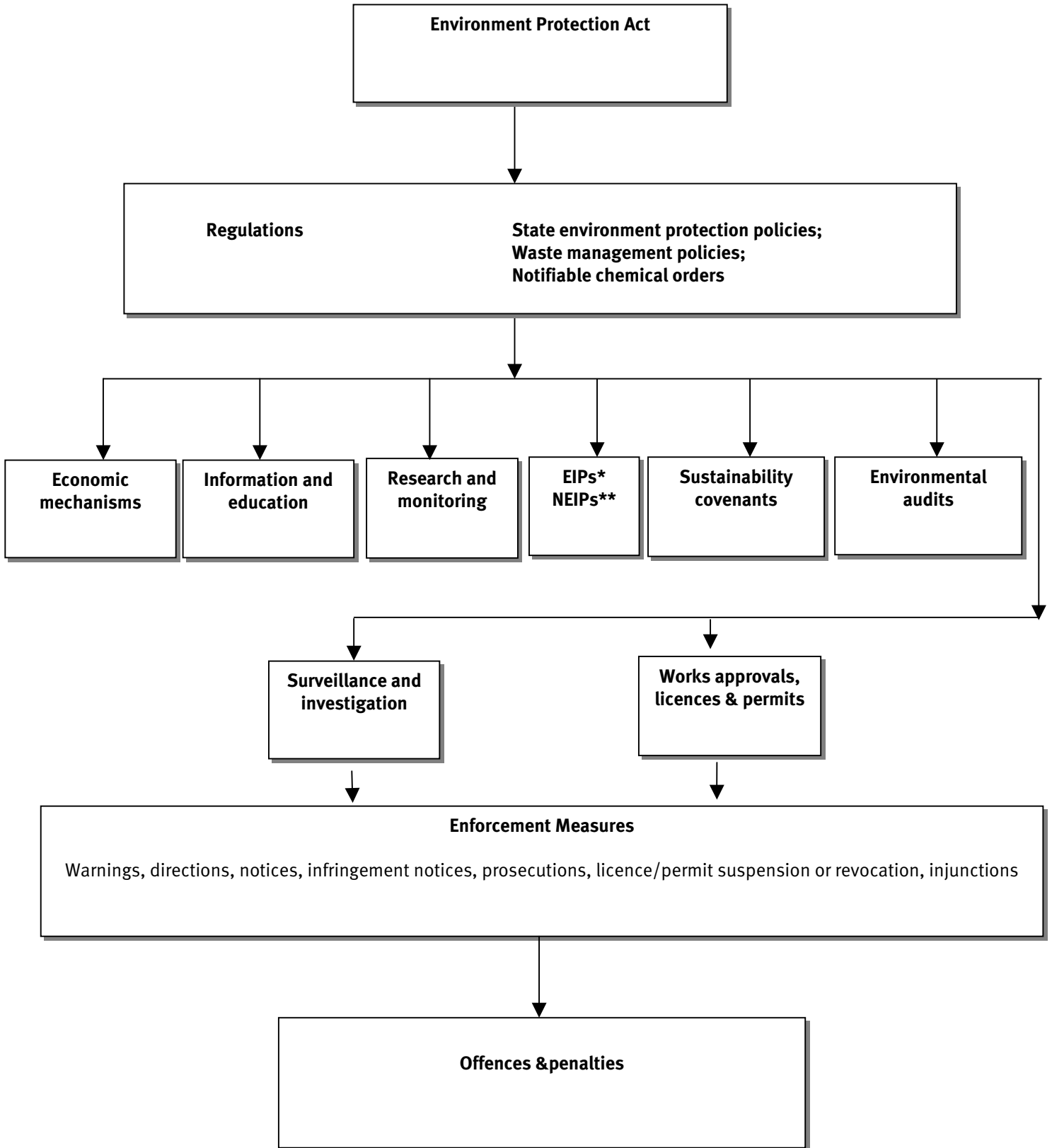
EPA is required to administer and enforce the Act and is responsible for:

- the development of programs to protect the air, water and land environments from adverse impacts of wastes and to secure the abatement of noise
- the recommendation to the Governor in Council of State environment protection policies and waste management policies
- the implementation of pollution prevention, emission control and clean-up strategies through the use of statutory tools such as works approvals, licences, regulations and notices
- the development of programs for the management of industrial, hazardous, prescribed and municipal waste, incorporating principles of waste minimisation and cleaner production

- undertaking air shed monitoring, water catchment and marine monitoring, and applied research and studies
- providing information to the community to encourage cooperation between all sectors (including residents and industry) in developing solutions to environmental problems and strategies for environment protection.

ENFORCEMENT POLICY

Figure 1. Environment Protection Act – How it Works



*EIPs = Environment Improvement Plans **NEIPs = Neighbourhood Environment Improvement Plans

ENFORCEMENT POLICY

Policies

State environment protection policies (SEPPs) and waste management policies (WMPs) are declared by the Governor in Council on the recommendation of EPA. SEPPs establish environmental objectives to protect relevant beneficial uses of various segments of the environment. SEPPs may also specify an attainment program including standards for waste discharges and for the installation and operation of equipment. WMPs cover the management of wastes including their generation, handling, transport, storage, treatment and disposal, emphasising management in accordance with the principles of the waste management hierarchy*. Policies provide the framework for the application of the Act. As such they guide the decisions of EPA and provide the basis on which statutory notices, works approvals and licences are issued.

Works approvals/licences

Certain premises with a high potential for environmental impact are scheduled under the Act. Before works can commence on such premises (known as 'scheduled premises'), a works approval is required from EPA. All works once complete must be operated in accordance with a licence issued by EPA, unless there is an exemption from the requirements to obtain a licence. The occupier of scheduled premises may apply to the Victorian Civil and Administrative Tribunal (VCAT) for a review of decisions regarding the conditions of a works approval or licence or against a refusal to grant these.

* The principles, in priority order, are: (1) avoidance, (2) re-use, (3) recycle, (4) recovery of energy, (5) treatment, (6) containment and (7) disposal.

Persons whose interests are affected by an Authority decision on a works approval can also apply to VCAT to have that decision reviewed.

Licensees who achieve a high level of environmental performance, and can satisfy certain requirements, can apply for an accredited licence.

Notices

The Act provides for a range of notices – **abatement notices, pollution abatement notices** and **litter abatement notices** are issued to rectify or prevent a range of breaches of the Act. The recipients of such notices may apply to VCAT for review of decisions regarding the issue or contents of the notice. The following are some exceptions:

- Where works are minor (less than \$50,000) and urgent preventative or corrective action is required, a **minor works pollution abatement notice** may be issued. There is no provision to seek review by VCAT of such notices.
- Where clean-up of pollution, industrial waste or a potentially hazardous substance is required, a **clean-up notice** may be served on the occupier of the premises or on the person responsible. There is no provision to seek review by VCAT of such notices.
- If a vehicle does not comply with EPA regulations, a **prohibition notice** may be served preventing further use or sale until compliance is achieved.

In addition, to assist in the administration of the Act, certain things can be required by giving notice in writing. Significant matters able to be required by notices in writing are:

ENFORCEMENT POLICY

- furnishing of information relating to operations on premises and wastes discharged or handled; and information relating to vehicles and their emissions
- presentation of a vehicle for noise testing or measurement, or a “ship” (boat) for testing or measurement.

Some of these notices will incur a service fee. Non-payment of the fee is an offence.

Waste transport

The Act establishes powers and obligations with respect to waste transport, leaving the detailed requirements to be prescribed in regulations. The Act requires that, unless exempted, a permit be in force for vehicles used to transport prescribed waste on a highway. The Act also requires all those involved in the movement of prescribed industrial waste from premises to premises to comply with any regulations relating to records of the movement of the waste.

Economic measures

An economic measure is a tool that seeks to achieve an environment protection aim by harnessing market forces. EPA is able to develop and use economic measures for the purpose of providing an economic incentive for environment protection. They usually work best where they are combined with other tools such as regulation and extension services.

Economic measures are developed through statutory policy and regulations, ensuring the objectives of the instruments are made clear and that environmental and social factors are assessed. Existing economic mechanisms in use are load-

based licence fees, financial assurances, fee reductions for accredited licensees, offsets measures and landfill levies.

Regulations

The Act contains wide regulation-making powers to assist in the attainment and maintenance of environmental quality. Regulations may cover such aspects as fees, prescribed waste, waste transport, noise and emission standards for motor vehicles, the construction and operation of plant and equipment, measurement of discharges, and prohibiting or regulating waste.

Notifiable chemical orders

To prevent or abate a serious environmental hazard the Act provides for chemicals, such as polychlorinated biphenyls, to be declared as notifiable chemicals. Notifiable chemical orders are published in the Victorian Government Gazette and prohibit absolutely or subject to conditions the storage, handling, use or supply of that chemical.

Other aspects

There is a range of other procedures that are authorised or encompassed by the Act for implementing policies. These relate to the promotion of environment protection measures through information and education, research and monitoring, and surveillance activities.

3. RESPONSIBILITY FOR ENFORCEMENT

The responsibility for enforcement of the Act rests with EPA and its authorised officers, but in some situations may also extend to local government, police and protection agencies. In most cases the enforcement powers of those other bodies are limited to certain sections of the Act.

Authorised officers

Authorised officers are appointed by EPA to assist in administration of the Act. Officers may also be appointed to assist in the enforcement of POWBONS. Certain officers are also authorised under NSW EPA legislation. The primary powers of authorised officers are outlined in Part 6 of this Enforcement Policy. Authorised officers will have the most frequent and regular contact with companies, individuals, government and local government agencies and bodies.

Authorised officers:

- carry out inspections and assessments to verify and ensure compliance with the Act and regulations, and with notices, licences, works approvals etc
- where non-compliance is found, review options for prevention and corrective action including warnings or notices of contravention
- advise and assist in emergency situations concerning the environment
- conduct investigations to obtain evidence as to whether a contravention has occurred
- take samples and measurements
- give directions in pollution situations.

Local government

Local councils have the ability under the Act to investigate and take enforcement action on certain noise issues:

- for unreasonable noise at residential premises, council officers have the power to order offenders to abate noise and to issue infringement notices
- for other noise sources, councils may implement EPA guidelines through local laws, the *Health Act 1958* and the *Planning and Environment Act 1987*. EPA may assist on more complex issues.

Local councils are responsible for issuing permits for the construction, installation or alteration of septic tanks having a design discharge capacity of not more than 5,000 litres per day. The type and design of the septic tank systems are approved by EPA but councils ensure compliance with the Act.

For other problems that are of a local nuisance nature EPA expects councils to take primary responsibility. Examples of this include backyard burning, odour and noise from shops or small business, or noise from small entertainment venues.

Police

Police have the power to take action over complaints about unreasonable noise from residential premises and entertainment premises. A member of the police force may direct any person apparently in charge to take action to abate the noise.

Police may also report smoky and noisy vehicles.

Police assist authorised officers in the conduct of special campaigns, for example litter operations

ENFORCEMENT POLICY

where police and authorised officers will go on street patrol together.

If an authorised officer encounters resistance, or is threatened or obstructed from carrying out duties, police are usually called in to provide assistance.

In some investigations, police, along with other agencies, may be part of the operational attendance plan designed by officers of EPA where assistance is sought in the first stage of the inquiry.

Protection agencies

A protection agency is a body having powers under other legislation with respect to the environment. Examples of such agencies are the Melbourne Fire and Emergency Services Board, the Country Fire Authority, water authorities throughout Victoria and catchment management authorities. A protection agency may conduct a clean-up where any segment or element of the environment is polluted or an environmental hazard occurs. Additionally, EPA may require the agency to conduct a clean-up or to exercise specified responsibilities in polluted areas, especially in an emergency response situation.

As part of its enforcement responsibilities under POWBONS, EPA works closely with maritime organisations, particularly the Australian Maritime Safety Authority and Marine Safety Victoria, in investigating marine pollution incidents, notably oil spills.

Community

While the community does not directly enforce the provisions of the Act (other than domestic noise) it plays an integral role in providing key information to the EPA, including details of potential offences, smoky vehicles and litter offences.

Members of the community who witness an offence may occasionally be called upon to give evidence in court.

EPA encourages the general public to assist it in protecting the environment by reporting incidents of pollution through its Pollution Watch Line.

EPA's role includes communicating its activities to the community. Given that a number of enforcement activities originate from community reports of pollution, EPA, as a part of its enforcement procedures, will make this information publicly available. EPA may, for example, issue a media release, publish information on EPA's website and/or in its Annual Report.

This disclosure will include various types of enforcement, be it an abatement notice, infringement notice or prosecution, and will help ensure that the community affected by pollution is aware of subsequent EPA follow-up, as well as sending various messages to the community about EPA's roles and responsibilities in managing pollution.

This public disclosure forms an integral part of both specific and general deterrence and will include the name of the company, director or individual against whom the abatement notice or infringement notice has been issued or in relation to whom a prosecution has been launched, the nature of the infringement or offences committed and the geographical area affected.

4. MEASURES TO PROMOTE ENVIRONMENTAL PERFORMANCE

EPA is of the view that non-regulatory measures, to promote compliance with the Act and regulations and/or to encourage environmental performance beyond minimum requirements, are often effective and reduce the need for enforcement.

These measures include education and the provision of information, technical advice on licence compliance and waste minimisation, best practice guidelines, promotion of environmental audits, encouragement of environment improvement plans and voluntary agreements.

EPA is also of the view that industry, including industry bodies, should promote best practice environmental management within its ranks.

An open relationship with local communities is also encouraged as a means of achieving good environmental performance.

Education and information

As part of its communication program, EPA will provide or assist in obtaining information to aid in compliance, including the publications listed below:

- the Act and POWBONS together with regulations made under those Acts
- State environment protection policies and industrial waste management policies
- this *Enforcement Policy*
- information bulletins and guidelines to assist in complying with the Act, policies and regulations, and in minimising wastes

- guidelines for environmental management.

Information can also be obtained from the EPA Information Centre, website or the EPA Library.

Technical advice

For all statutory processes, including licences, works approvals and notices, EPA will, where a need becomes apparent, or where requested, provide advice on how compliance might be achieved. This advice may be by way of direct information or by referral to where expert assistance can be obtained.

Where EPA possesses unique in-house skills, these will be made available, wherever practicable, to assist in achieving compliance.

Guidelines for Environmental Management

To assist in the implementation of statutory policy and assist industry in meeting its environmental obligations, EPA produces various protocols and guidelines. These are developed in conjunction with relevant stakeholders.

Environmental audits

EPA Victoria promotes environmental audits by companies and government agencies as a means of identifying problems or potential problems, thus enabling corrective action to be taken. Guidelines published by EPA assist in undertaking these audits.

Statutory environmental audits are provided for under the Act. Such an audit is defined as a total assessment of the nature and extent of any harm or detriment caused to, or the risk of any possible harm or detriment which may be caused to any beneficial use made of any segment of the environment by any industrial process or activity,

ENFORCEMENT POLICY

waste, substance (including any chemical substance) or noise.

The primary objective of environmental audits undertaken or required by EPA is not to initiate enforcement action. To be effective audits require co-operation from all parties. Audits may identify issues that EPA will investigate with a view to taking enforcement action in accordance with this policy. However, audit findings are not used as primary evidence in taking such action.

EPA may require an occupier of a site to undertake an environmental audit using an environmental auditor appointed pursuant to the Act.

Environment improvement plans

Environment improvement plans (EIPs) are a mechanism used under the Act to improve environmental performance.

They allow operators of premises to develop a co-operative approach to environment protection with EPA and often involve the local community. EIPs go beyond bare minimum statutory requirements towards continuous improvement in environmental performance, and become enforceable via inclusion in a licence or notice. They can provide a mechanism for translating corporate environmental policy into practice.

Neighbourhood environment improvement plans

A neighbourhood environment improvement plan (NEIP) is an action plan to improve a local environment. NEIPs are developed in partnership by all parts of the community, and are intended to address environmental issues of importance to the community at the local scale.

The legislative backing of the NEIP program is designed to ensure that a NEIP is a binding commitment to address these issues. They are not intended to address environmental impacts from single factories or premises where other measures are more appropriate.

Sustainability covenants

Sustainability covenants are voluntary agreements between industry and EPA. These agreements encourage improvement in business sustainability amongst participants and give formal legal recognition to work already done by industry leaders in relation to waste management and reduction.

The Act also supports the covenants through a regulatory underpinning that ensures progressive businesses suffer no short-term commercial disadvantage for their environmental leadership.

Alternative resolution

EPA Victoria may negotiate resolution of environmental disputes by way of binding undertakings, which set conditions that achieve an appropriate environmental outcome.

ENFORCEMENT POLICY

5. ENFORCEMENT MEASURES

If, after investigation, it is determined that an offence appears to have been committed against the Act or regulations or orders under the Act, enforcement action will be taken. This may or may not involve prosecution.

Offences under the Act are subject to prosecution. The decision to prosecute will be taken in light of all relevant circumstances. Other enforcement measures may be taken consistent with this policy.

The following measures are available to enforce the Act:

- warnings
- oral or written directions by an authorised officer
- statutory notices
- infringement notices
- prosecutions
- licence suspension or revocation
- injunctions
- calling in financial assurances.

The decision as to which enforcement measures are appropriate is a matter of judgement. This judgement will be based on a range of factors included in Appendix 1.

Warnings

Warnings may be given by an authorised officer where:

- the degree of harm or potential harm to the environment or human health and welfare is minimal

- breaches of works approvals, licences, notices, permits, regulations and policies are of a technical nature

and/or

- in the interests of fairness a warning is warranted.

In determining whether to give a warning, the authorised officer may consider:

- whether the individual, company or government agency has a good history of compliance
- whether the individual, company or government agency has taken reasonable steps to remedy the situation and prevent a recurrence of the breach.

Warnings will always be given in writing. In the first instance, the warning may be given verbally. This will be confirmed as soon as possible in writing. The written warning will detail the breach and if relevant a time limit for the individual, company or government agency to comply.

Failure to comply with a warning may lead to further enforcement measures.

Directions by authorised officers

Where there is imminent danger to life, limb or the environment, an authorised officer may give directions to any person to remove, dispose of, destroy, neutralise or treat any pollutant, waste, substance, environmental hazard or noise.

Because of the emergency nature of these situations, such direction will normally be given verbally in the first instance. Verbal directions will be confirmed in writing as soon as possible.

ENFORCEMENT POLICY

Failure to comply with directions in the above circumstances without reasonable cause is a very serious matter and may result in prosecution.

Notices

The various forms of notices are outlined in Part 2 of this enforcement policy. Notices will be issued where substantive works or actions are required to comply with the Act, policies or regulations. In particular, notices will often hold recipients to a given time frame to comply with the requirements.

Notices are legal directions to carry out works, cease activities or carry out investigations. They may also be accompanied by other enforcement measures such as an infringement notice or prosecution.

Authorised officers will usually advise recipients of a proposed notice prior to its issue and, where the situation allows, will consult on its contents.

Failure to comply with a notice may lead to further enforcement measures.

Unpaid service fees will lead to prosecution.

Notices of contravention

A notice of contravention formally advises the recipient of a contravention of the Act. Such a notice will be issued where there is a substantive ongoing contravention and it is envisaged that further enforcement action may be required. Upon being served with such a notice, the polluter becomes liable, upon being prosecuted, to a very substantial penalty for each day that the contravention continues. The issue of a notice of contravention therefore sends a clear message that EPA will take any continuation of the breach very seriously.

Infringement notices

The Act establishes specific offences for which an infringement notice may be issued. An infringement notice imposes a penalty, the level of which is also set in the Act.

Offences for which infringement notices may be applied are of a well-defined nature and usually present a low level of danger to the environment and human life.

Examples are:

- operation of scheduled premises without a licence
- failure to comply with works approval, licence, permit, or notice conditions
- failure to comply with waste transport regulations
- littering, including dropping a lighted cigarette butt from a vehicle
- motor vehicle (noise or emissions) offences.

An infringement notice will be applied to all offences for which it is available except:

- where in accordance with the criteria in this policy a warning is appropriate (a repeated offence or offence where no reasonable steps were taken to remedy the situation will, however, attract an infringement notice)
 - where in accordance with the criteria of this policy a prosecution is appropriate
- or
- where an offence leads to an additional offence for which an infringement notice is not available (eg, unlicensed discharge resulting in pollution).

ENFORCEMENT POLICY

The recipient of an infringement notice has the option of paying the penalty within a given time or appearing in court to answer the charges.

Prosecution proceedings will be initiated in situations where the penalty is not paid within the specified time. However, in the case of notices for littering from a vehicle, such proceedings will not be brought against the driver or registered owner if within 14 days of receiving the notice they provide evidence to EPA's satisfaction (in a statutory declaration containing information as specified in the Act) that someone else must have deposited the litter.

Once an infringement notice penalty has been paid, it is the end of the matter and the offence is expiated.

Prosecutions

Broadly speaking, prosecutions will be undertaken where to do so is in the public interest.

The decision to prosecute rests with EPA considering the factors outlined in Appendix 1 and recommendations from Authority staff.

The prerequisite for any prosecution is that the available evidence must establish a *prima facie* case. Prosecutions will be undertaken where:

- serious harm or risk to the environment, human health or welfare occurs
- false or misleading information, obstruction, or interference by the alleged offender is evident
- a matter of public importance is at issue
- repeated offences warranting infringement notices have occurred
- the nature of the offence and action or attitudes of the alleged offender indicate that an infringement notice is unlikely to act as a sufficient deterrent (eg. deliberate contravention with the threat or likelihood of additional contravention)
- an individual, company or government agency has failed to comply with a direction given by an authorised officer in a situation of imminent danger to life, limb, or the environment
- there has been a deliberate attempt to circumvent a requirement of the Act or subordinate instrument, especially for personal gain
- obstruction, assault or intimidation of an authorised officer has taken place
- there has been failure to comply with a lawful direction from an authorised officer
- a penalty infringement notice has not been paid
- a service fee has not been paid
- a waste discharge continues after a licence is suspended or revoked, or transport of prescribed waste continues after a permit has been suspended or revoked
- an auditor deliberately provides false information
- a person or company aids, abets, counsels or procures the commission of an offence
- a person or company has attempted to commit an indictable offence.

In cases where there are several possible defendants, EPA may prosecute one, some or all parties, depending on the circumstances. If a

ENFORCEMENT POLICY

corporation has contravened any provision of the Act, section 66B deems each person who is a director or is concerned in the management of the corporation to be also guilty of the offence relating to that contravention, subject to some defences. EPA will consider matters set out in Appendix 2 in deciding whether or not to prosecute company directors and managers.

There are few defences available to offences against the Act. In most cases it is not necessary for EPA to prove that the defendant intended to commit the offence. In the case of directors and managers there are statutory defences available, namely, that the director or manager had no knowledge of the offence, no influence over the conduct of the corporation in relation to the contravention or had such influence but used all due diligence to prevent the contravention, or that the corporation itself had a valid statutory defence.

Unpaid infringement notices for certain offences may be referred to the PERIN Court or, alternatively, the matter may be prosecuted by EPA in open court.

Most offences under the Act are indictable offences that can be heard by a judge and a jury in the County Court but they are usually heard in the Magistrates' Court. Cases that proceed on indictment to the County Court are conducted by the Office of Public Prosecutions.

EPA may seek to appeal sentences imposed on environmental offenders. These are brought by the Director of Public Prosecutions in the public interest on recommendation by EPA. EPA will be guided by the principles set out in the 'Director's Policy With Respect To Appeals Under s84 Magistrates' Court

Act 1989' of the Office of Public Prosecutions (Victoria), including;

- a) apparent manifest inadequacy of the sentence
or
- b) whether or not the sentencer made a material error of fact or law, misunderstood or misapplied proper sentencing principles, or wholly assessed or omitted to consider some salient feature of the evidence, apparent from the remarks on the sentence.

Appeals will only be sought where there is a reasonable prospect of the appeal succeeding.

Licence/permit suspension or revocation

A licence may be granted by EPA authorising the discharge of waste at certain permissible levels. The licence holder is required to comply with the conditions of the licence. Similarly, the holder of a waste transport permit is responsible for complying with the conditions of the permit.

EPA will consider revocation or suspension of a licence or permit where:

- the licensee or permit holder has a history of breaching conditions
- breaches continue to occur after prosecution
or
- breaches are of a serious nature.

EPA will accord the licensee or permit holder procedural fairness before deciding whether or not to revoke or suspend – for example by inviting a response to a 'show cause' letter. Revocation is a serious step that EPA does not contemplate lightly.

EPA may also suspend or revoke a licence or permit in the case of non-payment of fees.

Injunctions

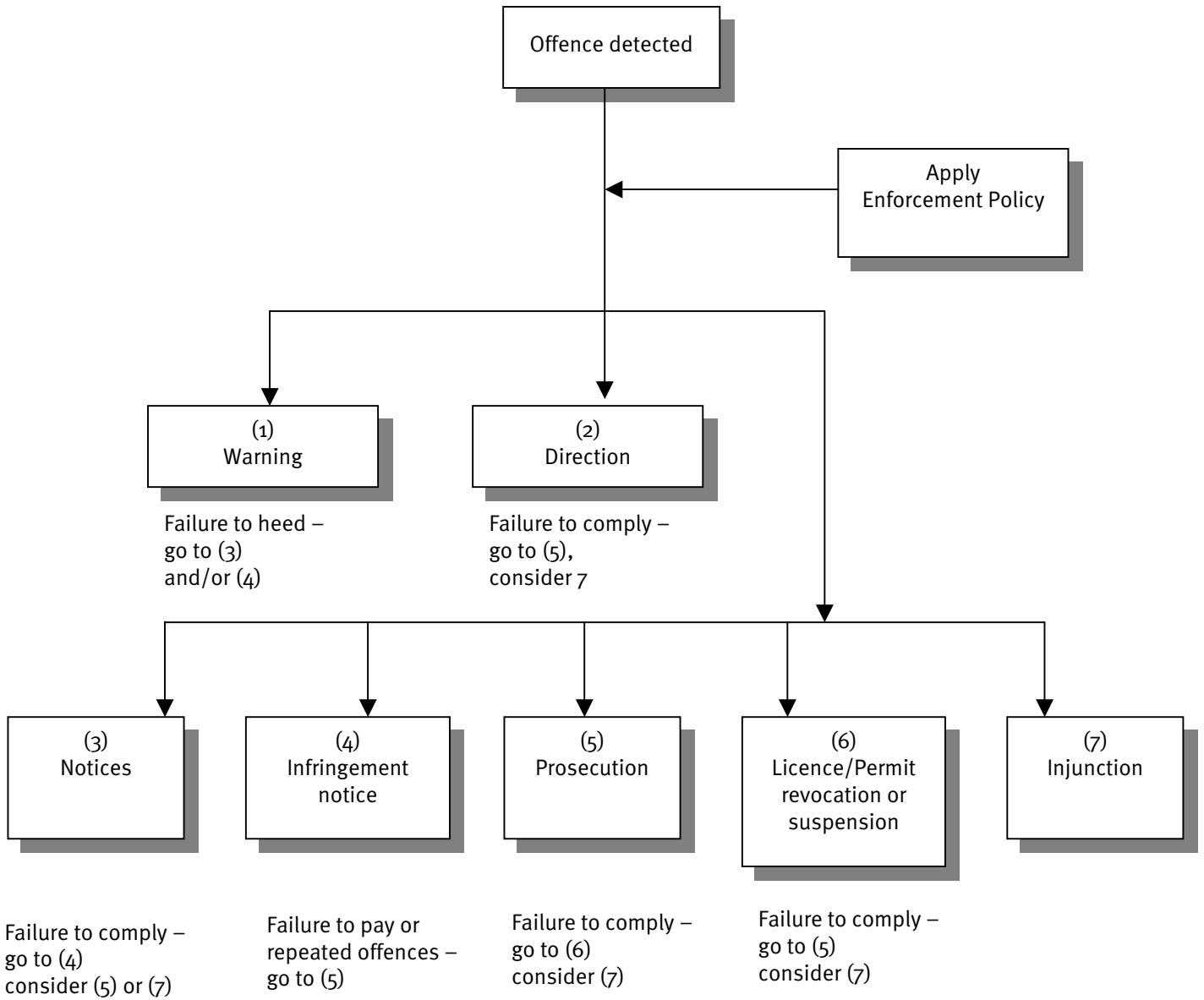
Whether or not prosecution proceedings have been taken, consideration may be given to making an application to the Supreme Court for an injunction to restrain any person from contravening the Act or any condition of a works approval, licence or notice where there is an urgent environmental problem and/or other measures taken under the Act have proved ineffective. The injunction may either require the cessation of an activity, or require something to be done.

Overview

The decision-making process for enforcement of the Act is outlined in Figure 2.

ENFORCEMENT POLICY

Figure 2: Environment Protection Act – enforcement decision making



6. POWERS OF AUTHORISED OFFICERS

The Act provides for the appointment by EPA of authorised officers.

An authorised officer has certain powers to enable enforcement of the Act. These powers relate to entry to premises, requests for certain information, occupier disclosures and special powers during incident response and clean-up.

Entry to premises

Fundamental to the enforcement of the Act is the ability for authorised officers to enter premises. This power may only be used in certain situations:

- premises on which an industry or trade is conducted may be entered at any time
- other premises may be entered at any reasonable time, being:
 - premises on or from which any waste or pollutant is or is likely to be discharged or deposited or noise is or is likely to be emitted
 - a ship from which there has been a discharge into State waters in breach of POWBONS
 - premises used for or in connection with the motor vehicle trade
 - premises at which fuel is offered for sale for use in any vehicle or ship.

A residential premises cannot be entered unless an authorised officer believes that there are reasonable grounds to do so.

Purpose of entry

An authorised officer may enter a premises:

- to take or remove samples, drill bores for the purpose of taking samples, take photographs, and conduct inspections, measurements or tests
- to generally administer the Act and protect the environment, including seizure of documents.

Request for information

An authorised officer is able to require certain things. The following may be required by notice in writing to the owner or occupier as the case may be:

- information by way of books, maps, reports or documents relating to any process in which an industry's waste is handled or works or the discharge of waste or emission of noise (an authorised officer is able to take copies of such documents)
- vehicles or ships not complying with the Act or regulations may be prohibited by the authorised officer from being sold or used.

In addition, authorised officers may require through verbal direction:

- the name and address of any person found offending against the Act – and the authorised officer may request the assistance of the police.

Identity of occupier

An authorised officer may serve a notice on the apparent occupier(s) of a premises to compel the recipient(s) to disclose the name and address of any actual occupier. The information supplied as a response to the notice is binding and admissible in court.

ENFORCEMENT POLICY

The notice is served where it is proposed to serve a pollution abatement or clean-up notice. The notice is also used in conjunction with infringement notices and prosecutions.

inform EPA of the existence of any defences to potential offences.

Special powers for clean-up

An authorised officer may give a direction verbally or in writing to clean-up if there is or is likely to be imminent danger to life or limb or to the environment.

Motor vehicles

Where a vehicle is lawfully stopped by a police officer an authorised officer may make an inspection, measurement or test in relation to the vehicle.

Delegated powers

EPA may delegate any of its powers to authorised officers. These delegations are recorded by a formal decision of EPA, and may vary from time to time. For example, the power to sign certain notices on behalf of EPA is delegated.

Delay/obstruction

Any person who delays or obstructs an authorised officer or fails to comply with any requirement made commits an offence against the Act.

Interviews

In order to assist the investigative process authorised officers may request the co-operation of individuals, companies or government agencies to participate in a formal interview. The purpose of the interview is to provide the opportunity to clarify, explain or comment on issues before EPA determines what enforcement action, if any, it may take. It also allows an opportunity for people to

7. OFFENCES, PENALTIES AND COSTS

In order to meet the objectives of the Act and the requirements of the policies and regulations made under the Act, offences and penalties are specified in the legislation. In addition the potential exists under legislation for costs to be reimbursed.

A summary of offences and penalties indicating the level of seriousness is shown in Figure 3.

Offences

The principal offences are:

- pollution of water, air and land or excessive noise
- causing or permitting an environmental hazard
- discharging of waste without a licence or the constructions of works at a scheduled premises without a works approval
- breach of licence or works approval conditions
- breach of vehicle emission standards
- transport of prescribed waste without a permit
- failure to comply with regulations and orders made under the Act
- failure to comply with notices under the Act
- obstruction or delay of authorised officers
- failure to comply with any requirement made by an authorised officer
- failure to comply with the provisions of a notifiable chemical order
- providing false information or concealing information from EPA or an authorised officer.

ENFORCEMENT POLICY

Figure 3. Environment Protection Act – Summary of Offences and Penalties

Offence type	Penalty range
<p>Level 1</p> <p>Aggravated pollution</p> <p>False environmental audit/monitoring results</p> <p>False information by environmental auditor</p>	<p>\$1,074,300 for a body corporate</p> <p>\$268,575 and/or 7 years imprisonment for an individual</p> <p>\$ 257,832 and/or 2 years imprisonment</p>
<p>Level 2a</p> <p>Intentional pollution</p> <p>Intentional environmental hazard</p> <p>Intentional false information</p> <p>Illegal dumping</p>	<p>Up to \$537,150</p>
<p>Level 2b</p> <p>Water, air, land, noise pollution</p> <p>Environmental hazard</p> <p>Unlicensed activity/breach of licence</p> <p>Breach of works approval</p> <p>Breach of notices</p> <p>Unpermitted activity/breach of permit</p> <p>False information</p> <p>Others</p>	<p>Up to \$257,832</p>
<p>Level 3</p> <p>Infringements</p>	<p>\$537 – \$6446</p>
<p>Level 4</p> <p>Litter</p>	<p>Infringements</p> <p>\$107 – \$214</p>

When fees change, an addendum sheet will be made available to replace this listing of fees and penalties.
 For the latest information on the *Monetary Units Act 2004* and its consequences for EPA fees and penalties, visit EPA's website at www.epa.vic.gov.au/industry/current_fees.

ENFORCEMENT POLICY

For most offences it is not necessary for EPA to prove a deliberate act. It is therefore possible to instigate proceedings for accidents and such decisions will be made on the merits of a particular situation.

Penalties

The Act establishes penalties for all offences including those for which an infringement notice is available. In the case of prosecution, the courts determine the actual fines. The following outlines the major penalty provision of the Act:

- penalties incurred by infringement notices vary from \$537 to \$6446
- a maximum penalty of \$257,832 applies for pollution, environmental hazard, breach of licence, breach of permit or breach of notice
- maximum daily penalties apply for each day such an offence continues after conviction or service of a notice of contravention (\$128,916 per day maximum)
- higher penalties apply to a person who intentionally pollutes the environment (\$537,150)
- a minimum penalty applies where an offence has been committed in the previous five-year period (\$5372/\$1074 min)
- in addition to imposing a penalty a court may order that action be taken to prevent the continuance or recurrence of the offence
- for the indictable offence of aggravated pollution the maximum penalty for a corporation is \$1,074,300 and for an individual it is \$268,575 and/or seven years imprisonment.

Alternative penalties

Section 67AC of the Act empowers the courts to make certain orders, in addition to or instead of any other penalty. Such orders may require an offender to publicise the offence and its consequences and/or to carry out a specific public environmental project. Courts can also order offenders to audit their operations to minimise future risks.

Costs

If a court finds an individual, company or government agency guilty of an offence, EPA may apply for:

- professional costs incurred in preparation and presentation of the case
- reimbursement of all reasonable expenses including analytical and witness costs
- all clean-up costs associated with the offence.

Civil proceedings may be brought seeking clean-up costs or restitution costs.

ENFORCEMENT POLICY

APPENDIX 1

ENFORCEMENT MEASURES – FACTORS TO CONSIDER

- The seriousness of the offence due to the harm or potential harm to the environment.
- The culpability of the offender whether it be a corporation or employee including mitigating or aggravating circumstances.
- The previous history of the offender and whether enforcement measures are necessary to ensure compliance with the Act.
- The prevalence of the offence, the public concern generated and the need for deterrence both specific and general.
- The cost of enforcement and whether enforcement proceedings may be counter- productive.
- The precedent which may be set by any failure to take enforcement action.
- The length of time since the offence and the likely outcome of enforcement proceedings.
- The co-operation given to EPA and whether enforcement measures have been taken against others out of the same incident.

ENFORCEMENT POLICY

APPENDIX 2

PROSECUTION – DIRECTORS AND MANAGERS

In addition to Appendix 1, the following matters will be considered in the case of directors and managers:

- the contribution of company policy to the incident such as a decision to defer or reduce maintenance expenditure
- the reasonable foreseeability of the incident or whether there was inaction or wilful blindness by the company
- the existence of fundamental flaws in the company's systems which led to or contributed to the incident
- the nature of the activities, and whether there was blatant criminal activity for commercial gain
- the use of good practice at the time of the incident, irrespective of prevailing industry standards
- the existence of a viable defence for the relevant company
- the knowledge the person had, or should have had about the incident and relevant mitigating factors
- the position of influence the person had over the conduct of the corporation at the time of the incident
- the due diligence shown to prevent the incident.