

Guideline

Environmental Protection Act 1994

Environmental Protection Order

The purpose of this document is to provide guidance and information to customers of the Department of Environment and Science who have been issued an environmental protection order, pursuant to Chapter 7 Part 5 of the Environmental Protection Act 1994.

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What is an environmental protection order?

An environmental protection order (EPO) is a written statutory tool issued by the Department of Environment and Science (the department) to a person or company to undertake specific actions within specific timeframes to remedy a risk or prevent further harm. The legislative provisions for EPOs are contained in sections 358 to 363 of the *Environmental Protection Act 1994* (the Act).

An EPO may require a person¹ to:

- 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; or
- take stated action by a stated date.

Why have I been issued an EPO?

You have been issued an EPO because the department has identified non-compliance with one or more of the matters stipulated in section 358 of the Act which are:

- you have not complied with a requirement to conduct or commission an environmental evaluation and submit it to the authority; or
- you have not complied with a requirement to prepare a transitional environmental program and submit it to the authority; or
- because of an environmental evaluation, the department is satisfied unlawful environmental harm is being, or is likely to be, caused by an activity carried out, or proposed to be carried out, by the person; or
- to secure compliance with:
 - general environmental duty; or
 - an environmental protection policy; or
 - a condition of an environmental authority; or
 - a development condition of a development approval; or
 - a prescribed condition for carrying out a small scale mining activity; or
 - a condition of a site management plan; or
 - an audit notice; or
 - a surrender notice; or
 - a rehabilitation direction; or
 - a regulation; or
 - an accredited environmental risk management plan (ERMP); or
- if you have are or have been contravening a provision relating to:

¹ Section 360(2) of the Act.

- direction notices (section 363E of the Act);
- noise standards (section 440Q of the Act);
- depositing prescribed water contaminants in waters (section 440ZG of the Act);
- air contamination (chapter 8 part 3E of the Act);
- fuel standards (chapter 8 part 3F of the Act).

When does the department decide to issue an EPO?

EPOs will be issued on a case-by-case basis, and the department is likely to assess factors which include:

- the type of environmental harm that is being or is likely to be caused;
- the extent to which an individual, corporation or environmental authority (EA) holder is not complying with their general environmental duty; and
- if any previous compliance action has been taken by the department in relation to the matter (e.g. the approving of a transitional environmental program).

What are my responsibilities upon receiving an EPO?

Following receipt of an EPO, you are obligated to complete the requirements and conditions that are stipulated on the notice, within imposed timeframes.

How can I find out if the requirements of an EPO have been met?

The EPO will remain in force for the period stated in the EPO or until further notice from the department. If the EPO states that the order remains in force until further notice from the department, and the department is satisfied that the requirements of the EPO have been complied with (e.g. through a site inspection, report or other investigation), the department will provide written notice to confirm that the EPO is no longer in effect.

Pursuant to section 363 of the Act, if the recipient ceases to carry out the activity to which the EPO relates, the recipient must give written notice to the department within 10 business days after ceasing to carry out the activity. Failure to comply with this requirement is an offence under the act.

When the recipient has notified the department that the activity to which the EPO relates has ceased and the department is satisfied that the activity has ceased (e.g. through a site inspection, report or other investigation), the department will provide written notice to confirm that the EPO is no longer in effect.

What happens if I sell my place or business while an EPO is in place?

If an EPO has been issued to you that relates to a place or business, and you intend to dispose of that place or business (i.e. sell) whilst the EPO is in place, before agreeing to sell the place or business, you must give written notice to the buyer about the existence of the EPO.² If you do not provide this written notice about the EPO, the buyer can rescind their agreement, by way of written notice, before the completion of the agreement. Failure to comply with this requirement is an offence under the Act.

Who can I contact about the EPO I have received?

The EPO you have received includes the name and telephone number of a departmental officer that you can contact for assistance in relation to the EPO or the matters surrounding the issuing of the EPO.

² Section 362 of the Act.

Is an EPO able to be amended?

An EPO may be amended by the department if there have been minor errors or omissions identified. The department will advise you by way of written correspondence when a minor amendment has occurred to correct those errors.

More serious errors that include errors of calculation, typing errors, errors of punctuation or of formatting which give rise to unintended changes of meaning can also be corrected by the department. If these are corrected the department will advise you by way of written correspondence.

Significant amendments that affect your rights or liabilities will be detailed to you by way of a new direction notice, accompanied by a cover letter clearly stating the changes that have been made in the new direction notice. Significant amendments include, for example, imposing stricter requirements that you need to take or a change in the timeframe for when the requirements are to be completed.

What happens if I do not action the requirements of an EPO?

An EPO sets out reasonable requirements and/or stated actions that you are required to complete. These requirements and/or stated actions will address the non-compliance(s) that have led to the issuing of the EPO. Failure to comply with an EPO is an offence under the Act and the following penalties apply:

- The maximum penalty for an individual for wilfully contravening an EPO is 6250 penalty units or five years imprisonment.
- The maximum penalty for a corporation for wilfully contravening an EPO is 31,250 penalty units.
- The maximum penalty for an individual for contravening an EPO is 4500 penalty units.
- The maximum penalty for a corporation for contravening an EPO is 22,500 penalty units.

Failing to provide written notice to a buyer of the existence of an EPO:

- The maximum penalty for an individual is 50 penalty units.
- The maximum penalty for a corporation is 250 penalty units.

Failure to provide written notice within 10 business days of ceasing the activity to the department is an offence.

- The maximum penalty for an individual is 50 penalty units.
- The maximum penalty for a corporation is 250 penalty units.

Alternatively, and in accordance with the department's [enforcement guidelines](#), the department may issue a penalty infringement notice (PIN) for any of the above listed offences.

The State Penalties Enforcement Regulation 2014 prescribes the number of penalty units for an offence. Section 3 of the Penalties and Sentences Regulation 2015 prescribes the monetary value of a penalty unit.

Review of decisions and appeals

The provisions regarding review of decisions and appeals may be found in sections 519–539 of the Act.

A person, who is dissatisfied with certain decisions of the department, may be able to apply to have the department review that original decision. A decision to issue an EPO is an original decision and can be reviewed. If an EPO is issued, a dissatisfied person is the recipient of the notice.

Generally, a request to have a decision reviewed must :

- be made within 10 business days of the decision being notified to the person;
- be supported by enough information to enable the department to decide the application for review; and
- be made using the application for review of original decision form (ESR/2015/1573).³

Where an application has been made for a decision to be reviewed, the applicant may also apply to the relevant court for a stay of the decision to secure the effectiveness of the review.

Once the original decision has been reviewed, a person who is dissatisfied with the review decision may be able to appeal against that decision to the relevant court within 22 business days after receiving notice of the review decision.

A person whose interests are or would be adversely affected by a decision of the department may also be able to request a statement of reasons for a decision or a statutory order review under the *Judicial Review Act 1991*.

For further information about reviews and appeals see the information sheet – Internal review and appeal to the Planning and Environment Court (ESR/2015/1742)³.

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Date: 09 October 2015

Version history

Version	Effective date	Description of changes
1.00	9 October 2015	Initial upload.
2.00	6 July 2016	The document template, header and footer have been updated to reflect current Queensland Government corporate identity requirements and comply with the Policy Register.
2.01	2018	The document template, header and footer have been updated to reflect current Queensland Government corporate identity requirements and comply with the Policy Register.

Disclaimer

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³ This is the publication number. The publication number can be used as a search term to find the latest version of a publication at www.des.qld.gov.au.