

ARTICLES

The Potential for Criminal Proceedings Under the Environment Protection Act 1993 (SA)

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Introduction

On 1 May 1995 the South Australian *Environment Protection Act 1993* ("the Act") came into force and in doing so brought about a major change in focus for environment protection legislation in that State. In particular, it brought about the integration of six different statutes which had each contained different authorisation and enforcement procedures. The new legislation provides that all prescribed activities of environmental significance require an environmental authorisation. Any authorisation granted covers the air, water, noise and waste aspects of the prescribed activity in the one permit. The Act contains criminal offences and penalties which are, on the whole, significantly larger and more draconian than under the repealed pollution control statutes. However, the creation of offences under the *Environment Protection Act 1993* (SA) and the use of the criminal law to ensure compliance with the legislation is only one option available to the Environment Protection Authority ("EPA") as an enforcement mechanism. The use of some of the civil remedies outlined in s104 of the Act is also a powerful means of ensuring compliance. Indeed, if the experience of the use of civil enforcement proceedings under the repealed *Planning Act 1982* and the present *Development Act 1993* is repeated in the environment protection area, arguably civil enforcement methods are a more effective means of ensuring such compliance.

In South Australia the use of the criminal law to enforce environmental legislation has been an infrequent occurrence. Prosecutions for breaches of such legislation were traditionally seen as a last resort. The bodies responsible for enforcement of previous environmental legislation in South Australia had a policy of persuading people to comply with the Acts they administer and resorting to legal action only when there remained no alternative. It appears from various public statements made by the office of the EPA that a similar policy will apply with respect to the *Environment Protection Act*. Prosecution for breaches of the Act has its place but the EPA will seek to negotiate and achieve a resolution of problems by alternative means. Appropriate powers to achieve this purpose can be found in the provisions dealing with environment protection orders, cleanup orders and cleanup authorisations.

Prosecutions can be costly and time consuming and often do not result in an ultimate resolution of the problems created by the breach of the Act. All too often they can become bogged down by legal technicalities. Days can be spent arguing about whether or not notices were validly issued or the proceedings properly commenced.

While such issues are often raised as part of the defence case in a prosecution, many would agree that in the case of prosecutions for environmental offences, they do not assist in resolving the harm caused to the environment by the alleged breach of the legislation.

However, prosecution in appropriate circumstances does have its role to play in terms of its deterrent effect if nothing else. It is, therefore, important to be aware of the range of offences created by the *Environment Protection Act* and the financial and other consequences of breaching such provisions.

Type of Offences Created by the Environment Protection Act 1993

Offences under the *Environment Protection Act* 1993 can be very generally placed into three classes:

- * Offences arising out of a breach of mandatory provisions in an environment protection policy.
- * General offences, such as the offence of causing environmental harm.
- * Offences associated with administrative matters under the Act.

This paper concentrates on the first two classes of offence because it is with respect to those offences that the consequences of a breach of the Act are most significant. The third class includes offences arising out of a failure by a person to assist authorised officers under the Act with enquiries (s90), failure to comply with an Environment Protection Order (s93) and a failure to provide information about the change of ownership or occupation of land which is subject to an environment protection agreement (s94) or a registered cleanup authorisation (s101) as well as a range of other matters. With a few exceptions, the consequences of breaching the administrative provisions is a fine (but not imprisonment in the case of a natural person) and fines are generally set at a lower level than for other offences. A list of the offences created under the legislation and the nature of the penalty applicable to them is attached as an appendix to this paper.

Breach of the Mandatory Provisions of an Environment Protection Policy

Environment Protection Policies (EPPs) may be drafted by the EPA and enacted by the Minister under the Act and must be directed towards securing the objects of the Act (s28). Policies are to be taken into account by the EPA when assessing applications for environmental authorisation or development applications referred to the EPA under the Development Act 1993. Section 27(2)(b) of the Act provides that the EPPs may set out controls or requirements known as "mandatory provisions" which are enforceable as offences under the Act. To date, six EPPs have been made under the Act. They are an important part of the system for environmental management and protection created by the Act because they contain the standards and requirements by which various activities must be assessed and to which those activities will be required to conform.

The Act requires that where any policy designates a provision as being a "mandatory provision" then the policy must also declare whether contravention of the mandatory provision will be a Category A, Category B, or Category C offence. The level of penalty that will apply to offences is determined by the categorisation.

Some examples of mandatory provisions are as follows:

- (i) Clause 4(2) of the Environment (Waste Management) Policy 1994 provides that a person who carries on a business involving a prescribed activity (eg medical practice, dental practice, nursing home, veterinary practice etc) must ensure that medical waste (eg needles, human tissue, animal carcass, specimen or cultures etc) produced in the course of the business is placed in a prescribed container (eg rip proof, leak proof, impervious to moisture, puncture resistance etc) and collected or transported in a manner specified elsewhere in the policy.

Breach of that mandatory provision is a Category C offence. If the person's contravention was done intentionally or recklessly then it attracts a maximum fine of \$30,000 (s34(1)). Where there was no mental element present but simply a contravention of the mandatory provision, the fine is \$500.

- (ii) Clause 5(2) of the Environment Protection (Air Quality) Policy 1994 provides that a person must not cause or permit the burning of matter by fire in the open on any street, road or lane-way.

This is a Category C offence attracting a fine of \$30,000 if contravention was intentionally or recklessly carried out and a penalty of \$500 if a simple breach with no mental element involved.

- (iii) Clause 5(1) of the Environment Protection (Machine Noise) Policy 1994 provides that a person the maximum noise levels specified in the schedule for such machines. This is also a Category C offence attracting penalties of the same amounts as described in paragraph (a) and (b) above.

General Offences

Part 9 of the *Environment Protection Act* is designated "General Offences". However, the classification of general offences in this paper extends beyond those included in that part. For example, there are a range of offences created in relation to breaches of the Act associated with environmental authorisations. Thus, it is an offence to carry out works for construction or alteration of a building or structure for use for a prescribed activity of environmental significance or the installation or alteration of any plant or equipment for such an activity without environmental authorisation in the form of a works approval (s35(1)). Similar offences arise for the undertaking of a prescribed activity without an environmental authorisation in the form of a licence (s36(1)) or contravention of a condition of an environmental authorisation (s45(5)). However, clearly the most important offences created by the Act are those in Part 9. They revolve around the concept of "environmental harm" a term defined in some detail in s5 of the Act. Basically, the Act provides that the causing of environmental harm (ie any harm or potential harm to the environment of whatever degree or duration and including an environmental nuisance) by polluting the environment is an offence and the degree of such harm determines the level of penalty applicable.

Thus, the most serious level of offence is that of causing serious environmental harm (s79). If done intentionally or recklessly and with the knowledge that such harm will or might result, a maximum penalty of \$1 million may be imposed on corporate offenders. Natural persons incur a penalty of a \$250,000 fine, seven years imprisonment or both. It is also an offence, subject to defence provisions discussed shortly, to, without any mental element, simply pollute the environment and thereby cause serious environmental harm (s79(2)). Penalties are less. Corporate offenders incur a maximum fine of \$250,000 and natural persons a fine of \$120,000.

"Serious environmental harm" is defined by s5 of the Act as:

- (i) Actual or potential harm to the health or safety of human beings that is of a high impact or on a wide scale, or other actual or potential environmental harm (not being merely an environmental nuisance) that is of a high impact or on a wide scale; and
- (ii) harm which results in actual or potential loss or property damage of an amount or amounts in aggregate exceeding \$50,000.

The term 'loss' includes reasonable costs and expenses that would be incurred in taking all reasonable and practicable measures to prevent or mitigate the environmental harm and to make good any resulting environmental damage. Thus, it can be seen that actions which result in relatively medium level environmental damage and cleanup costs (that is, any amount beyond \$50,000) will attract the potential operation of the most serious offence provisions within the Act. It is also clear from the definitions that ecological harm which poses no direct threat to the health or safety of humans will still fall within the offence provisions.

The second level of offence is that of causing "material environmental harm" which is described in s80 of the Act. "Material environmental harm" occurs where:

- (i) there is an environmental nuisance of a high impact or on a wide scale; or
- (ii) the environmental harm involves actual or potential harm to the health or safety of human beings that is not trivial, or other actual or potential environmental harm that is not trivial; or
- (iii) it results in actual or potential loss or property damage of an amount or amounts exceeding \$5,000.

Where "material environmental harm" is done intentionally or recklessly and with knowledge that material harm will or might result the penalty for a corporate body is \$250,000 and for a natural person \$120,000, 2 years imprisonment or both (s80(1)). Where there is simply material harm caused without any mental element then the lesser penalty of \$120,000 for body corporates and \$60,000 for natural persons is applicable (s80(2)).

Generally, the law requires that any statutory offence requires a mental element or "mens rea". That is, the person accused of committing the offence must have an intention to do it or knowledge of the wrongfulness of the Act. Section 79(1) and s80(1) both require the mental element for the offence to be established because the person must have caused serious or material environmental harm by polluting the environment intentionally or recklessly and with knowledge that the environmental harm will result. On the face of it, s79(2) and s80(2) require no mental element because they simply provide that a person is guilty of an offence if by polluting the environment they cause serious or material environmental harm. However, to make very clear the fact that no mental element is required, s126 of the Act provides that, unless there is an express provision to the contrary (as there is in s79(1) and s80(1)), it is not necessary to prove any intention or other state of mind in order to establish the commission of the offence against the Act.

Where a person is charged with an offence under s79(1) or s80(1) and the court is not convinced that the requisite mental element is present (ie, that the defendant acted intentionally or recklessly and with knowledge of the likely harm), the court may convict the defendant of a breach of the provisions of ss(2) of those sections (ie, that the defendant polluted the environment causing the relevant degree of environmental harm (s79(3), s80(3))). Further, if the court finds that the level of environmental harm was material rather than serious as alleged the court may convict the defendant of a breach of the lesser offence (s81).

There is a further offence of causing an environmental nuisance by polluting the environment intentionally or recklessly and with the knowledge that an environmental nuisance will or might result. A penalty of \$30,000 applies. An environmental nuisance means

- (i) any adverse effect on an amenity value of an area that: (i) is caused by noise smoke dust fumes or odour; and (ii) unreasonably interferes with or is likely to interfere unreasonably with the enjoyment of the area by persons occupying a place within, or lawfully resorting to, the area; or
- (ii) any unsightly or offensive condition caused by waste.

Where the offence committed by a person is one of a continuing nature such as the ongoing pollution of the environment rather than a "one off" incident, the Act provides for additional penalties to be imposed for each day during which the contravening act or omission continues (s123).

Under s132 offences under the Act lie within the criminal jurisdiction of the Environment Resources and Development Court ("the ERD Court"), which is a specialist Court established expressly to deal with appeals and civil and criminal enforcement action under the *Environment Protection Act 1993*, the *Development Act 1993*, the *Heritage Act 1993* and related legislation (s132). Offences under the Act are either summary or indictable offences. Where the prosecution of an indictable offence is undertaken under the *Environment, Resources and Development Court Act 1993* the Court is required to deal with it using the procedures applicable to a summary offence. Thus, trial by jury in respect of indictable offences is not an option in the ERD Court. Furthermore, s7(4) of the same Act provides that where proceedings for an indictable offence are brought in the ERD Court the Court is not able to impose a fine exceeding the maximum fixed by the *Environment Protection Act* or \$120,000 (whichever is the lesser) nor can it impose a term of imprisonment exceeding the maximum fixed by the Act or two years (whichever is the lesser). Of course, if the EPA elects to prosecute indictable offences in another court (such as the District Criminal Court or the Supreme Court) such limitations on penalty do not apply. In the latter part of 1995 there were suggestions that the ERD Court may have its criminal jurisdiction removed. Whilst these rumours appear to have dissipated, it should be noted that such a step would arguably have undermined the effectiveness of the ERD Court which had been set up as a specialist environmental court. The limitations imposed by the *Environment Resources and Development Court Act 1993* on the prosecution of indictable offences in the Court will mean that the EPA will always need to consider whether any major breach will be more appropriately dealt with in another court. It is preferable that this option apply rather than a removal of all the ERD Court's powers in relation to criminal matters.

Proceedings for a summary offence against the Act can only be commenced by an authorised officer (appointed by the EPA in accordance with the procedure outlined in s85).

Prosecutions for summary offences may be commenced at any time within 3 years after the date when the offence was allegedly committed or where the Attorney-General gives authorisation, at any later time within 10 years of the date of the alleged commission of the offence.

Who can be Liable?

Where it can be quite clearly shown that a natural person or a corporation has breached a provision of the Act then liability for that offence will attach to them. Both corporations and natural persons who employ staff or engage contractors to act as their agents in particular matters should be aware that the conduct and state of mind of those employees or agents will be imputed to them for the purposes of proceedings for offences against the Act providing the employee or agent was acting within the scope of his or her actual, usual or ostensible authority (s127). If a natural person is convicted of an offence as a result of the imputation of conduct or a state of mind of an employee or agent to that person the natural person cannot be punished by a term of imprisonment but only a fine (s127(2)).

Liability under the Act can extend beyond the obvious examples of corporations and individuals and will in appropriate cases attach to what the Act describes as "officers of the body corporate".

An "officer" is defined in s3 of the Act to include the directors or chief executive officer of the corporation, a receiver or manager of any property of the body corporate or a liquidator and in relation to the contravention of the Act by the corporation includes an employee vested with management responsibility in respect of the matters to which the contravention is related. It is the last category which creates considerable interest. Arguably, a wide range of people may be included under the category of "persons with management responsibilities", particularly in large organisations. The term "director" is separately defined to include persons acting in a position of the member of the governing body of the corporation by whatever name called and any person whose directions or instructions are customarily followed by the directors or members of the governing body.

The significance of the definition of "officer of the body corporate" becomes apparent upon consideration of the provisions of s129 of the Act. Section 129 provides that if a corporation commits an offence under the Act any officer of that corporation is, (subject to the general defence in s124), also guilty of an offence. The penalty applicable to the officer will be the same penalty as would apply to a natural person who committed the offence except that the offender cannot be liable to be punished by imprisonment, s129(2). Thus if a corporation commits an offence against the provisions of s79(2) of the Act by polluting the environment and causing serious environmental harm an officer of that corporation is at risk of also being prosecuted and fined up to \$120,000.

Where the officer knowingly promoted or acquiesced in the contravention of the Act by the corporation the officer is also guilty of an offence and has no immunity from punishment by imprisonment (s129(3)). In February 1995 a company director in Western Australia was prosecuted and imprisoned for a contravention of the Western Australian *Environment Protection Act* under provisions not dissimilar to the South Australian legislation.

The prosecution of an officer of a corporation pursuant to s124 does not depend on the corporation first being prosecuted and convicted. Section 124(4) enables an officer of the corporation to be prosecuted and convicted regardless of whether or not the corporation has also been prosecuted.

What Defences are Available?

The basis for defences in criminal proceedings under the Act can be found in s84 and s124. Section 84 provides a possible defence to charges that a person has caused serious or material environmental harm or an environmental nuisance. The defence can apply in three situations:

- (i) if maximum pollution levels were set by an environmental protection policy or conditions of an environmental authorisation and the defendant had not breached those levels then despite the fact pollution or harm to the environment may have occurred the defendant will be able to establish the defence;
- (ii) if an environment protection policy or conditions of an environmental authorisation provided that compliance with certain specified provisions would satisfy the general environmental duty and the defendant had complied with such requirements, then the defendant has a defence in relation to charges alleging pollution of the environment which occurred despite such measures;

- (iii) if the defendant can prove that the pollution resulted in actual or potential harm only to the defendant or the defendant's property or to some other person or their property with their consent then the defence will be established.

The s84 defence can apply in all proceedings under the Act whether of a criminal or civil nature.

The general criminal defence contained in s124 may apply to all offences under the Act whether or not another defence (such as s84) might also be applicable. To establish the defence, it must be proved that the alleged offence did not result from any failure on the part of the defendant to take all reasonable and practicable measures to prevent the commission of the offence or offences of the same or similar nature. It is available to both corporations and natural person and in situations where conduct or state of mind has to be imputed to those persons.

Where an employer or corporation seeks to establish the defence by reference to the establishment of proper workplace systems and procedures then the Act requires that proof be given of:

- (i) appropriate systems in place for the reporting of any contravention or risk of contravention from any one within the work force to the governing body of the corporation or to the employer or to a person or body with the responsibility to report to those persons; and
- (ii) that the governing body of the corporation or the employer actively and effectively promoted and enforced compliance with the Act and with the established systems and procedures within all relevant areas of the workforce.

Thus, for an employer or corporation to obtain the benefit of the s124 defence provisions, it will not be sufficient to simply prove that the employer or corporation had undertaken an environmental audit which resulted in the production of a guide or manual for future sound environmental management. They must also prove that the recommendations in that guide were and are being actually implemented and promoted by the management of the organisation. They should be able to produce evidence of proper systems for the reporting of incidents with pollution potential to the people at management level. It would also be advisable to have in place induction programs for new employees which stressed the importance of adhering to the established systems and procedures.

If a person wishes to rely on the general defence in s124 or any other defence under the Act they may only do so if written notice of that intention has been given to the EPA within the periods prescribed by s125 of the Act. Presumably this is to avoid the EPA being met with a defence in the course of a trial which could have resulted in the proceedings discontinuing at an earlier date had the EPA known about the defence facts at that time. Obviously there may be circumstances where the Authority will drop criminal proceedings where it believes a strong defence is available. This saves time and money for all parties.

Some Procedural Matters

Where a decision has been made to commence criminal proceedings the Act contains evidentiary aids designed to make the prosecution's case a little easier. S139 contains provisions that allegations that a specified matter was a pollutant, that analysis of substances produced a particular result and that an environmental nuisance constituted an unreasonable interference with another person's enjoyment of a place are all deemed to be proved in the absence of proof to the contrary. For example, if a person being prosecuted for a breach of the Act wishes to contest such matters, that person must produce evidence to prove that a specified matter was not a pollutant or that their activity was not such as to unreasonably interfere with another person's enjoyment of a place. It is not the obligation of the EPA to do that as part of its primary case.

In addition to the penalties prescribed by the Act, in any prosecution where the court finds a person guilty of a contravention of the Act that resulted in environmental harm, s133 gives the court the power to make a range of orders requiring the making good of any environmental harm, the carrying out of specified projects for the restoration or enhancement of the environment in a specific place, the publication of the contravention of the Act and its environmental and other consequences and the payment of compensation to others who suffer injury, loss or damage to property as a result of the contravention. These provisions add another dimension to the overall costs of breaching the Act. In some cases the remedying of environmental harm could be very costly and time consuming. Furthermore, the conviction for an offence against the Act and the imposition of a penalty does

not prevent the use of other civil remedies under the Act in relation to the contravention. The general defence in s124 is not available in any civil proceedings under the Act.

The Environment Protection Authority is also able to seek an order from the court that a convicted person meet the technical costs of the prosecution (eg, taking of samples, conduct of tests, examination or analysis (s135)). In addition, where a corporation has been ordered to make a payment, any related body corporate within the meaning of that term in the Corporations law, is also jointly and severally liable to make the payment. Thus, if the corporation against whom the original order is made is unable or fails to pay, another corporation related to it, which does have the requisite capacity, will by virtue of the provisions of s137 incur that liability.

Conclusion

The importance which Parliament has attached to the *Environment Protection Act* 1993, and its provisions is reflected to some extent in the approach which the Act has taken to breaches of the legislation. Penalties are high and in the case of corporate offenders, the provisions extend to attach liability to the corporate officers. The Act makes it clear that "officer" includes not only the directors of the body corporate but any one with management functions relating to the matters to which the contravention related. The potential for a range of employees of a body corporate to be held liable is new to South Australia and reinforces the notion that responsibility for a corporation's actions should extend beyond merely the directors of that corporation.

Prudent action by employees with management responsibility should ensure that their employer has adequate environmental management systems in place and that everyone within the organisation abides by them. Where such systems are not in place, employees should agitate for them. That the request has been made and that the employee has sought unsuccessfully to obtain improvements in the company's environmental management systems should be documented by the employee if for no other reason than to assist an employee in establishing the employee's entitlement to rely on the general criminal defence under s124 in the event of a prosecution of the corporation and the employee as an officer of the corporation.

Whilst it may be acceptable to have a policy that prosecution should only occur when more conciliatory approaches to compliance have failed, there still needs to be political will, clout and resources available to and exercised by the EPA to initiate criminal proceedings in appropriate cases. Prosecutions in such situations which are given wide publicity will undoubtedly have a deterrent effect. The prosecution and imprisonment of a company director in Western Australia earlier this year attracted extensive publicity and highlighted for all, the risks inherent in continual non compliance with environmental legislation.

Under the various pieces of environmental protection and management legislation which existed prior to the proclamation of the *Environment Protection Act* there were a range of offence provisions. People were rarely prosecuted for offences under the repealed legislation and this resulted in criticism from some quarters, that the State government lacked the necessary will to enforce its legislation. If the EPA is to gain credibility and respect in both the South Australian and wider community it must be seen to enforce the criminal enforcement provisions on appropriate occasions. Indeed, it has a responsibility to do so as one of its functions outlined in s13 of the Act. The State government must also ensure that the EPA is adequately resourced to enable it to investigate and prepare an appropriate prosecution. Without adequate resourcing and appropriate enforcement action the entire efficacy of the environmental management and protection system in South Australia established by this Act will be undermined.

APPENDIX

Offences under the Environment Protection Act, 1993

1. Breach of Mandatory Provisions of Environment Protection Policies

S34(1)	Intentional or reckless contravention of mandatory provision of an environment protection policy:	
Penalty:	Category A offence:	Body corporate \$250,000 fine; Natural person \$120,000 fine or two years imprisonment or both.
	Category B or C	\$30,000 fine

S34(2)	Contravention of mandatory provision of an environment protection policy:	
Penalty:	Category A	Body corporate \$120,000 fine; Natural person \$60,000 fine.
	Category B	\$4,000 fine.
	Category C	\$500 fine.
Expiation fee:	Category B	\$300 expiation fee.
	Category C	\$500 expiation fee.

2 General Offences

Environmental Authorisations

S 35(1) Offence to carry out works for construction or alteration of a building or structure for use for a prescribed activity of environmental significance or the installation or alteration of any plant or equipment for such activity without environmental authorisation in form of works approval.

Penalty: Body corporate \$120,00 fine; Natural person \$60,000 fine.

S36(1) Offence to undertake prescribed activity of environmental significance without environmental authorisation in form of licence

Penalty: Body corporate - \$120,000 fine; Natural person - \$60,000 fine.

S45(5) Offence for the holder of an environmental authorisation to contravene a condition of the authorisation.

Penalty: Body corporate - \$120,000 fine; Natural person - \$60,000 fine.

S58(5) Offence to claim protection applying to voluntary environmental audits over certain information when person knows that the information may not be included in the report of the results of the audit program

Penalty: \$40,000 fine.

S60 Where an environment protection agreement is registered on land it is an offence if the owner or occupier of the land upon cessation of ownership or occupation fails to notify the EPA in writing of the name and address of the new owner or occupier.

Penalty: \$4,000 fine.

Beverage Containers

S68(1) Retailer must not sell a beverage in a container unless: (a) the EPA has approved a class of containers to which the container belongs as either category A or B containers; and (b) the EPA has approved the refund marking for a class of containers and the container contains the appropriate refund marking.

Penalty: \$2,000 fine; expiation fee \$200.

S68(2) Offence to supply beverage in a container to a retailer for sale by the retailer or sell a beverage in a container for consumption unless requirements of s68(1) are satisfied.

Penalty: \$4,000 fine; expiation fee \$300.

S68(3) Offence to sell beverages of certain categories unless the retailer's premises are situated within collection area for containers of that category and purchasers are given adequate notice of the location of collection depots for such containers

Penalty: \$2,000 fine; expiation fee \$200.

S70(1) Offence for a retailer to sell beverages of a Category A type and fail to accept delivery of empty containers of that class or to pay the refunded amount prescribed for containers of that class.

Penalty: \$2,000 fine; expiation fee \$200.

S71(1) Offence for a person operating or in charge of a collection depot to refuse or fail to accept delivery of empty Category B containers or to pay the appropriate refund amount

Penalty: \$2,000 fine; expiation fee \$200.

S72(3) Offence for a retailer to sell a beverage in a prohibited container

Penalty: \$2,000 fine.

S72(4) Offence to supply a beverage in a prohibited container to a retailer for sale by the retailer or sell a beverage in a prohibited container for consumption.
 Penalty: \$4,000 fine.

Ozone Protection

S75 Offence to manufacture, store, sell, use, service or dispose of or allow the escape of a prescribed substance or any product containing a prescribed substance.
 Penalty: Body corporate \$60,000 fine; Natural person \$30,000 fine.

S76(3) Offence to contravene a notice issued under s76(1) prohibiting the sale or use within South Australia of any products, or products of a specified class that have been manufactured inside or outside the State by process involving the use of a prescribed substance.
 Penalty: Body corporate \$60,000 fine; Natural person \$30,000 fine.

S77 Offence to sell or supply products for sale which contain a prescribed substance unless they are labelled in accordance with regulations.
 Penalty: Body corporate \$60,000 fine; Natural person \$30,000 fine.

Serious Environmental Harm

S79(1) Offence to cause serious environmental harm by polluting the environment intentionally or recklessly and with the knowledge that serious environmental harm will or might result. Penalty: Body corporate \$1m fine; Natural person \$250,000 or 4 years imprisonment or both.

S79(2) Offence to pollute the environment causing serious environmental harm.
 Penalty: Body corporate \$250,000 fine; Natural person \$120,000 fine.

Material Environmental Harm

S80(1) Offence to cause material environmental harm by polluting the environment intentionally or recklessly and with the knowledge that material environmental harm will or might result.
 Penalty: Body corporate \$250,000 fine; Natural person \$120,000 fine or two years imprisonment or both.

S80(2) Offence to pollute the environment causing material environmental harm.
 Penalty: Body corporate \$120,000 fine; Natural person \$60,000 fine.

Environmental Nuisance

S82 Offence to cause an environmental nuisance by polluting the environment intentionally or recklessly and with the knowledge that an environment nuisance will or might result.
 Penalty: \$30,000 fine.

S83(1) Offence to fail to notify the EPA (as soon as reasonably practicable after becoming aware of the occurrence of an incident) of the incident where serious or material environmental harm from pollution is caused or threatened in the course of an activity undertaken by a person.
 Penalty: Body corporate \$120,000 fine; Natural person \$60,000 fine.

3. Administrative Offences

S89(2) Where an order for seizure of property is issued under Part 10 of the Act it is an offence to remove or interfere with the thing to which the order relates without the approval of the EPA in certain circumstances
 Penalty: \$4,000 fine.

S90(1) Offence to hinder, threaten, obstruct, refuse to answer questions etc of an authorised officer
 Penalty: \$4,000 fine.

- S90(2)** Offence to assault an authorised officer or person assisting an authorised officer in the exercise of powers under the Act.
 Penalty: \$8,000 fine or two years imprisonment or both.
- S92** Offence for authorised officer to use offensive language, use or threaten to use force against a person, etc.
 Penalty: \$4,000 fine.

Environment Protection Orders

- S93(8)** Offence to fail to comply with an environmental protection order. Penalties vary, eg:
- (a) if order was to secure compliance with a requirement of the Act and a penalty is fixed for breach of that requirement then that penalty;
 - (b) if the activity complained of is a domestic activity and the order is for the purpose of securing compliance with the general environmental duty or giving effect to an environment protection policy \$500 fine;
 - (c) in any other case \$4,000 fine.

There is also the ability to impose an expiation fee which is as follows:

- In circumstances described in (a) above - the expiation fee fixed by the provision.
- In circumstances described in (b) above - \$100 fee.
- In circumstances described in (c) above - \$300 fee.

- S93(9)** Offence to hinder or obstruct a person from complying with an environment protection order
 Penalty: \$4,000 fine.

Environment Protection Agreements

- S94(5)** Offence for owner or occupier of land on which an environment protection agreement is registered to fail to notify EPA of name and address of new owner or occupier.
 Penalty: \$4,000 fine.

Information Discovery Order

- S96(5)** Offence to fail to comply with an information discovery order issued under the Act.
 Penalty: \$8,000 fine.

Clean Up Orders

- S99(8)** Offence to fail to comply with a clean up order.
 Penalty: Body corporate \$120,000 fine; Natural person \$60,000 fine.
- S101(6)** Offence for an owner or occupier of land over which a clean up authorisation has been registered, to fail to advise the EPA of the new owner or occupier's name and address
 Penalty: \$4,000 fine