



City of Ryde

ENVIRONMENTAL
INCIDENTS FROM
BUILDING AND
CONSTRUCTION SITES
– ENFORCEMENT
POLICY

ADOPTED ON 8 July 2008

(Effective 1 August 2008)

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1.0 INTRODUCTION

1.1 Background

This Policy applies to building and construction sites and should be read in conjunction with the City's "umbrella" Enforcement Policy. A series of enforcement policies will be set up under the "umbrella" Enforcement Policy.

This Policy has been prepared to facilitate a consistent approach across the City of Ryde on the way environmental incidents from all building and construction works are managed and enforced pursuant to relevant environmental legislation.

This Policy will help align enforcement actions across the 3 enforcement arms of Council, namely the Rangers, Environmental Health Officers and Building Surveyors, as they monitor and regulate sediment control and erosion loss from building and construction activities.

This Policy can be applied to all Council's environmental enforcement activities relating to building and development sites and sets out the process on how incidents will be escalated between the enforcement arms of Council.

While there can be no quantitative measurement of an incident, the following definition has been used as a guide for determining what an environmental incident could be.

The Protection of the Environment Operations Act defines an incident as;

'an incident or set of circumstances during or as a consequence of which there is, has been or is likely to be a leak, spill or other escape of a substance, as a result of which pollution has occurred, is occurring or is likely to occur. It includes an incident or set of circumstances in which waste has been placed or disposed of on premises unlawfully, but it does not include an incident or set of circumstances involving only the emission of any noise or odour.'

For the purposes of this policy, the City Of Ryde will regard an environmental incident to be;

"An incident or set of circumstances that has either caused, or has the potential to cause material harm to the environment"

This broad definition allows Council Authorised Officers to use their discretion in deciding what level of action to be taken. If for example, a small amount of dirt outside a building and development site and can be easily fixed up by having someone sweep the dirt back up onto the site, this should not be considered a pollution incident, unless of course the Builder or Developer ignores the recommendation of Councils Authorised Officer.

If, however a significant amount of muddy water is flowing from a site with no erosion and sediment control systems in place whatsoever, this should be considered a pollution incident.

This policy was adopted by the City of Ryde on 8 July 2008 and is effective from 1 August 2008.

1.2 Purpose

To prepare and implement a common environmental enforcement Policy across the City of Ryde (CoR) on the ways environmental incidents from development and building sites are controlled and regulated to align with the City's "umbrella" Enforcement Policy and will:

- Confirm that CoR has a minimal tolerance approach to unlawful activity.
- Provide consistency in enforcement matters of environmental breaches, development non-compliance, and to ensure transparency, procedural fairness and natural justice.
- Acknowledge an obligation under relevant sections of Environmental legislation to ensure that the exercise of its regulatory power is carried out consistently and without bias for protection of the environment.

Note: In the event that any contradiction between this Policy and the City's "umbrella" Enforcement Policy exists, the "umbrella" Enforcement Policy will prevail only for the extent of the contradiction.

1.3 Objectives

The objectives of this Policy are:

- to inform the public of the principles and measures that Council's Authorised Officers will apply in its compliance and enforcement activities relating to environmental incidents from building and development sites;
- to provide guidance to authorised officers in the use of environmental enforcement options;
- to implement a fair and equitable environmental enforcement system consistently across the CoR and
- to regularise an environmental incident response procedure that follows the Risk Response Model detailed in the City's "umbrella" Enforcement Policy.

2.0 CRITERIA FOR RESPONSE

2.1 Principles for Response

Council Authorised Officers will:

- act in the public interest;
- act consistently, impartially and fairly according to law;
- promote consistency through effective liaison with field staff and the adherence to policies and procedures;
- not discriminate on the basis of race, religion, sex, national origin or political association;
- ensure that enforcement action is taken against the right person for the right offence;
- ensure that all relevant evidence is placed before courts or appeal tribunals;

- inform those being regulated of their legal obligations and have relevant personnel available during normal office hours to assist with enquiries about legislative requirements;
- discuss specific compliance failures or problems and provide advice on mechanisms that can be used to improve compliance;
- confirm advice in writing when requested and provide written advice in a clear and simple manner, explaining what and why remedial work is to be undertaken, over what time scale and ensuring legal requirements are explained;
- advise those being regulated of their right of appeal where provided by law and
- provide alleged offenders with an opportunity to discuss the circumstances of their case.

This Policy aligns with the values and principles of the City of Ryde along with the requirements of any relevant environmental legislation.

2.2 Factors for Response

The following factors will be considered and balanced in making a decision as to the type of environmental incident enforcement action that is applied:

- the seriousness of the harm or potential harm caused by the alleged offence;
- the level of malice or culpability of the suspect - was the offence intentional, reckless, negligent, or a mistake?;
- whether the suspect has a history of prior contraventions;
- the age, physical or mental health or special infirmity of the alleged offender;
- the alleged offender's background, including culture and language ability;
- whether the suspect cooperated with authorities when the offence was detected;
- the likelihood of the offence continuing or being repeated;
- any mitigating or aggravating circumstances;
- the standard of evidence that has been collected;
- the length of time since the alleged offence;
- whether the consequences of any conviction would be unduly harsh or oppressive;
- whether court orders are required to prevent a recurrence of the offence;
- the prevalence of the alleged offence and the need for deterrence, both specifically and generally:
- the cost of the proposed response option compared to the benefits of that option; and
- the likely public perception of the offence and the manner with which it is dealt.

However, the overriding consideration in taking environmental enforcement action will always be the public interest and the extent of harm caused or likely to be caused to the environment.

3.0 REQUIREMENTS

3.1 Detecting Environmental Incidents

Council receives information about suspected contraventions and or environmental incidents from members of the public, other agencies and monitoring activities.

Monitoring activities include:

- scheduled and random inspections;
- regular and random patrols; and
- targeted investigations.

3.2 Hierarchy for Response

The following hierarchy of actions detail how incidents escalate from minor offences through to significant offences. The hierarchy of actions includes;

a) Technical Breaches – “Minor Offences”

A technical breach is an informal warning that will be issued verbally to builders and developers.

A technical breach will be issued when for example systems are in place but they are not being maintained. It will be like a “tap on the shoulder” reminder for the builders as to what their responsibilities are.

An informal warning may be appropriate if:

- the person appears cooperative or past experience indicates that they would be willing to comply with an informal request;
- the problem can be rectified easily;
- time is a factor – it may be quicker to use an informal approach; and
- prosecution is unlikely if the person fails to comply.

As many technical breaches as are required can be issued against one site, although this is where the judgement call will come into play. If for example a building surveyor “encourages” someone to fix up a problem with an erosion and sediment control fencing on their site and after two days they go back and found it has not been fixed, this should then escalate to the issue of a Formal Warning (see below).

Based on the existing way complaints are managed at Council, it appears technical breaches will mainly be issued by Building Surveyors and occasionally Rangers during their regular touring of the area.

Environmental Health Officers usually only become involved when higher level action is required and so are unlikely to use Technical Breaches.

b) Formal Warnings – “Systems Not in Place or Potential for Pollution Incident”

Formal Warnings will be issued when pollution control equipment is not in place as required through the DA process, or there is, in the opinion of the Building Surveyor, Environmental Health Officers (EHO’s) or the Ranger a potential for pollution to occur. For example, poorly maintained stock piles or sites where no pollution control systems are in place.

A formal warning will also be used if:

- there has been an unsatisfactory response to an informal request;
- the person is uncooperative or past experience indicates that they are unlikely to comply unless a formal notice is issued;
- you are requesting information or records from a third party who may be concerned about their privacy or confidentiality obligations. The statutory requirement to provide the information or documents will protect the addressee against liability for a breach of privacy or confidentiality; or

Formal Warnings will be kept in triplicate. A sample Formal Warning is included as Appendix one of these Guidelines.

A copy of the Formal Warning will be either faxed or emailed to the person who, in the opinion of the Building Surveyor, EHO’s or Ranger, is in possession of the site. If a Formal Warning is to be issued against a Privately Certified site a copy of the Formal Warning will also be sent to the Private Certifier.

To be valid all formal warnings must:

- be addressed to the correct legal entity (this must be an individual or a corporation);
- state clearly what the warning is being given for and requires;
- give the addressee reasonable time to comply; and
- be signed by an authorised council officer

If on returning to site after a Formal Warnings has been issued and recommended action has not been taken, the issuing officer needs to elevate the action to a Clean Up Notice.

If a lack of action has also led to a significant pollution incident on the site, a Penalty Infringement Notice should also be issued.

c) Clean Up Notices

Clean up Notices under the Protection of The Environment Operations Act (POEO) 1997 will be issued when;

- the actions nominated in a Formal Warning are not taken;
- “an incident” has occurred or in the opinion of the Authorised Officer is likely to occur.

Clean Up Notices are likely to be issued by all three enforcement arms of Council.

Environmental Health Officers will use Clean Up Notices when they are called out to sites or they are responding to complaints from the public.

Rangers will apply Clean Up Notices when they identify activities that have caused pollution incidents or sites that are taking actions that will make pollution incidents “likely to occur”. They also may issue Clean Up Notices when attending to complaints either through working hours or after hours.

Building Surveyors will mostly apply Clean Up Notices when they return to sites that have received Formal Warnings and not responded appropriately. They may also use Clean Up Notices when they visit sites where the required enforcement action is beyond the scope of a Formal Warning.

d) Other Notices and Orders

Council has the power to issue a wide range of other notices and orders under various pieces of legislation. Authorised officers can also issue notices in certain circumstances.

Building Surveyors, for instance, may use the enforcement provisions of the Environmental Planning and Assessment Act 1979 to regulate environmental breaches through notices and orders.

The issuing of a Prevention Order under the POEO Act is also available to authorised officers to require measures that need to be put in place to manage future operations from causing pollution events. These are distinct from an environmental incident requiring action by Clean Up Notice.

A notice or order may impose requirements on the addressee which may lead to prosecution if they fail to comply. Therefore, before deciding to issue a notice or order, it is important to consider whether the circumstances merit this course of action or whether it would be more appropriate to make an informal request.

Where a person is afforded the right to make representations to a Notice, Council requires those representations to be made in writing. This ensures representation documents can be recorded and filed in Council’s record system. After written representations are considered, representations in person may be made if Council feels appropriate.

e) **Complaint Response Times**

Complaints will be investigated and actioned in accordance with priority. Action should be instigated within time frames nominated in the Risk Response Model of City's Umbrella Enforcement Operating Guidelines 2007.

Generally, response should be as follows:

- i. Urgent and life threatening matters are a priority and should be actioned on the day of complaint or the first working day. The severity of such incidents may be such that they may result in death, or ill health, or cause severe damage to property or the environment. Examples include: unsafe buildings, collapsed buildings, fire damaged buildings.
- ii. General compliance issues within 10 working days. The severity of such incidents is such that there is no immediate potential for physical harm to persons, property or the environment, however there is potential for adverse amenity impacts. Examples include: alleged unlawful works and uses, work carried out not in accordance with the development consent.
- iii. Nuisance matters actioned within 10 working days. Examples include minor alleged non-compliance that does not have an immediate adverse impact.

3.3 Display Signage

A sign which requires business hours and after hours contact numbers for the applicant, the builder, and the certifier will be provided by Council. These signs will be provided with development approval notices and the appropriate display of the sign included as a development consent condition.

Failure to comply with the conspicuous display of these signs at the development site will be regarded as an offence under the Environmental Planning and Assessment Act 1979 and may result in the issue of notices, orders and legal proceeding.

3.4 Reporting

Complaints or information about suspected environmental incidents can be lodged with the Council's Customer Service Centre on:

Telephone: 9952 8222

Facsimile: 9952 8070

E-mail: ryde.nsw.gov.au

Anonymous complaints will not be investigated unless there is the potential for a serious risk to health, safety or the environment.

All reports of investigations are strictly confidential. However, information will generally be made available about the outcome of investigations and the reasons for decisions provided the information will not cause harm to an informant, witness, or the alleged offender; or significantly prejudice the administration of justice.

4.0 MANAGING COMPLAINTS

4.1 Access to Information

Authorised Officers will have access to a wide range of information on building and development sites both during and after normal office hours. Council will manage data on building sites and this data will be accessible after hours to all Authorised Officers, including Rangers.

4.2 Complaint Response Management System (CRMS)

It is important for people involved in the receipt of complaints to have good quality guidance as to where those complaints are to be directed.

As a guide:

- i. Complaints about any building site that is not causing direct harm to the environment.

These are to be directed in the first instance to the Building Surveyors whether these sites are privately certified or not.

After hours complaints of this nature are to be directed to the Rangers. If the complaint is accurate the most appropriate action is either a Technical Warning or a Formal Warning.

- ii. Sites that are causing direct harm to the environment.

These complaints are to be directed to, during business hours, the Environmental Health Officers, and after hours the Rangers.

If the Environmental Health Officers are not in the position to respond during business hours the complaints should be passed onto the Rangers.

Likely response to these types of complaints would be the issue of either a Clean Up Notice and/or an Penalty Infringement Notice.

All verbal complaints shall be registered in Councils CRMS system. All written complaints shall be registered by Councils Records department.

Response times to complaints to be in accordance with the Risk Response Model and description of ratings detailed on page 8 of the City's Enforcement Operating Guidelines.

5.0 LEGAL

5.1 Civil Proceedings

Civil proceedings may be brought in the Land and Environment Court or the Local Court to remedy or restrain serious breaches of law, including threatened or anticipated breaches.

Such proceedings are instituted by Council's solicitors acting on the instructions of the General Manager or other officer with delegated authority to initiate such proceedings.

Preliminary advice should be obtained from Council's General Counsel before initiating any proceedings.

5.2 Prosecution Procedures

Criminal proceedings may be commenced where there is sufficient evidence to prove beyond reasonable doubt that a serious offence has been committed.

If the investigating officer considers prosecution to be the most appropriate course of action preliminary advice should be sought from Council's General Counsel and, if sufficient evidence has been gathered, a report should be prepared and submitted to the Council.

Where prosecution has been selected as the appropriate option, Council will not necessarily proceed against all those who may be potentially liable under the legislation.

The general principles that will be applied are that proceedings will be instituted against those who are primarily responsible for the offence and where offences are committed by employees, agents or officers of a corporation in the course of their employment, proceedings will usually be instituted against the corporation.

In taking action against employees their compliance with management procedures or directions will be taken into consideration. Action will normally only be taken against the directors of corporations where there is a failure to exercise due diligence or where there is evidence linking a director or manager with the corporation's illegal activity.

The time for commencing proceedings ranges from 6 months to 3 years, depending on the particular offence. However, all matters will be prepared for hearing as quickly as possible.

The charge or charges laid should appropriately reflect the nature and extent of the alleged offences.

Matters heard in the Local Court may not attract the full penalties provided by the legislation and, where offences have been committed wilfully, consideration should be given to having matters heard before a higher Court.

5.3 Penalty Infringement Notices

These will be applied when a pollution incident that is likely to cause material harm to the environment has occurred or when there is an ineffective response to a Clean Up Notice.

A Penalty Infringement Notice (PIN) can be issued under the provisions of the Protection of the Environment Operations Act 1997 or the Environmental Planning and Assessment Act depending of the circumstances of the incident.

The enforcement of inadequate sedimentation control measures can usually be actioned under either legislation when relating to a development site.

5.4 Grievances

Any person who is aggrieved by a decision can contact Council officers to discuss the decision.

Formal complaints can be lodged with Council by mail, fax or e-mail:

Mail: The General Manager
 City of Ryde
 Locked Bag 2069
 NORTH RYDE NSW 1670

Facsimile: 9952 8070

E-mail: ryde.nsw.gov.au

5.5 Privacy

Council must observe the Information Protection Principles set out in the *Privacy and Personal Information Protection Act 1998*.

Personal information may be shared with other agencies for law enforcement purposes and Council will share such information where appropriate.

6.0 OTHER MATTERS

6.1 Education and Training

A leaflet outlining the requirements of the Policy will be prepared and distributed to all participants in the building and development sector in the Ryde area. This distribution will continue for a minimum of 12 months after the development of the Guidelines.

Copies of the leaflet and other information material will also be distributed through Council shop fronts and also by Council Authorised Officers.

Support for Council Building Surveyors in the Application of the Protection of the Environment Operations Act (1997) will be provided.

Council Building Surveyors currently utilise the enforcement provisions of the Environmental Planning and Assessment Act (1979) in nearly all cases in order to achieve on site compliance. This Act is useful when dealing with building sites that have not put in place any erosion or sediment control system.

If a site has a system in place that is being poorly maintained, this Act can still be applied yet most councils utilise the enforcement provisions of the POEO Act (1997).

To that end, Building Surveyors will be supported in their development of their knowledge in the application of this Act on building and development sites particularly the use of Clean Up Notices.

6.2 Authorisations

Council will delegate authority and authorise certain staff under relevant legislation in order for them to carry out their investigative duties and take necessary action. Council views the power to enter private property very seriously and will ensure that the exercise of these functions is in accordance with legislation.

All Authorised Officers who carry out inspections on private land will:

- Have delegation to enter the premises and carry out investigations as specified in Councils delegations; and
- Be authorised by Council where this is required by specific legislation to permit inspections on private property; and
- Carry photographic identification demonstrating authorisation to enter private property under each specific Act; and
- Be conscious of any requirements relating to OH&S.

6.3 Review Period

This environmental enforcement Policy will be reviewed at three (3) yearly intervals by its anniversary date or at any such other time as required by the City of Ryde to reflect changes in enforcement legislation.