Procedural Guide

Environmental Protection Act 1994

Releases to waters from building sites and small construction sites (less than 2500m^2)

This document has been prepared to provide officers, authorised under the *Environmental Protection Act 1994* (EP Act), with a tool for undertaking erosion and sediment control (ESC) compliance inspections and guidance to apply enforcement provisions under the EP Act at building and smaller construction sites less than 2500m^2.

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Framework

This procedural guide is applicable across all of Queensland. It is prepared for officers of the department; however local governments may adopt these procedures to encourage greater consistency in the administration and enforcement of the EP Act for land development and construction sites across Queensland.

A complimentary state-wide procedural guide has been prepared to address releases to waters from land development/construction sites 2500m^2 and greater.

Context

Stormwater run-off from construction sites has a high potential to cause water contamination and/or environmental harm. Under section 440ZG of the *Environmental Protection Act 1994* (EP Act) it is an offence to unlawfully deposit a prescribed water contaminant in or in such a way where it could reasonable enter a roadside gutter or stormwater drain. Prescribed water contaminants are listed in Schedule 10 of the Environmental Protection Regulation 2019 and include cement, concrete, clay, sediment, stones and plaster, among other construction related materials.

It is the responsibility of the occupier of a building and smaller construction sites to ensure appropriate measures are in place to prevent environmental harm and uphold the General Environmental Duty (GED) under section 319 of the EP Act.

The assessment of appropriate measures in relation or stormwater run-off is required when determining if an offence may have occurred and if the GED has been upheld.

Purpose

The purpose of this document is to provide guidance to officers authorised under the EP Act relating to:

- determining the lawfulness of releases to waters for building and construction activities on land less than 2500m^2[1] in area
- undertaking inspections of stormwater management and erosion and sediment control during the construction phase of building and small-scale construction sites (e.g. commercial, medium and high-density residential, detached housing, mixed and industrial development)
- the enforcement provisions of the EP Act on development sites involving small-scale land disturbance on land less than 2500m^2, including development occurring as a result of building works, plumbing and drainage works, and small-scale Material Change of Use and Reconfiguring a Lot applications under the *Planning Act 2016*.

When implemented, the practices described in this procedural guide will help achieve water quality objectives and management goals, which in turn will help protect or enhance environmental values of Queensland waterways.

[1]Development on sites below 2500m^2 are currently not required to be assessed under the State Planning Policy State Interest Water Quality Assessment benchmark provisions or equivalent provisions within a Local planning instrument (Planning Scheme). 2500m^2 is also the standard (default) contributing catchment area where the Best Practice Erosion and Sediment Control document (IECA 2008 as amended) recommends the use of sediment basins ('Type 1' sediment control devices). Sites below this 2500m^2 land area will generally not required to prepare detailed ESC plans or to use Type 1 controls.

How to use this document

This procedural guide contains the following appendices:

- Appendix 1: Advisory notes: Standard work method to assess the lawfulness of releases to waters from building/construction sites less than 2500m^2.
- Appendix 2: Checklist: Rapid Standard work method to assess the lawfulness of releases to waters from building/construction sites less than 2500m^2.
- Appendix 3: Diagram: Flowchart: General Compliance and Enforcement considerations and responses for land development/construction sites less than 2500m^2.
- Appendix 4: Additional resources.

Officers should use the advisory notes in Appendix 1 for the standard work method when they require detailed explanations of how to undertake a compliance inspection. As officers become more familiar with undertaking site inspections they may wish to use the checklist version for the standard work method.

For either version, if no actual or potential water contamination is identified in Part A, no enforcement action is required. However, if there is actual or potential water contamination identified in Part A, authorised officers can refer to Part B to assess the lawfulness of the release and Part C to assist in making consistent and proportional enforcement responses to offences.

If no actual or potential water contamination is identified in Part A, then good practice erosion and sediment control should be recorded in the site/operator compliance history and, where suitable, be specifically acknowledged in the post inspection letters as a positive encouragement mechanism.

Matters devolved to local government

The Environmental Protection Regulation 2019 (EP Regulation) states that the following matters are devolved to local government:

- environmental nuisance – sections 440 and 443 of the EP Act (to the extent it relates to environmental nuisance), including offences relating to nuisance
- water contamination – chapter 8, part 3C of the EP Act, including the offence of depositing prescribed water contaminants in waters under section 440ZG.

If a matter is devolved, the local government becomes responsible for the administration and enforcement of those devolved matters for its local government area. Local government have powers to use statutory instruments under the EP Act in relation to devolved matters. An information sheet is available for further information.

Legal requirements

Stormwater run-off from land development and infrastructure development sites has a high potential to cause water contamination and/or environmental harm. This is regulated under the EP Act, specifically s.440ZG and s.319 (all section references refer to the EP Act unless otherwise specified).

- Section 440ZG, it is an offence to:
  - unlawfully deposit a prescribed water contaminant[2] in waters or in a roadside gutter or stormwater drainage or at another place, in a way that the contaminant could reasonably be expected to wash, blow, fall or otherwise move into waters a roadside gutter or stormwater drainage

[2] Prescribed water contaminants are listed in Schedule 10 of the Environmental Protection Regulation 2019.
Note: the offence contemplates that an offence may occur before the actual depositing of a contaminant has occurred at another place, i.e. "could reasonably be expected" thus compliance action can be initiated by an Authorised Officer if they are of the reasonable belief that the offence could occur.

  - unlawfully release stormwater run-off into waters, a roadside gutter or stormwater drainage that results in the build-up of earth in waters, a roadside gutter or stormwater drainage.

- Under section 319, persons in Queensland carrying out activities which may cause environmental harm must comply with the general environmental duty (GED). Demonstrating that all reasonable and practicable measures have been adopted to prevent and minimise environmental harm is a defence for offences such as release of prescribed water contaminants.
- Reference must be made to s.493A when a decision is made about the unlawfulness of water contamination, for instance where the release is authorised under a development approval.
- Schedule 1 EPP Water and Wetland Biodiversity provides a process for protecting Queensland waters by establishing environmental values and water quality objectives for many waters of the State[3].
- For waters not included in Schedule 1, the EPP Water and Wetland Biodiversity provides a process for determining the environmental values and water quality objectives.
- Section 15, Environmental Protection (Water and Wetland Biodiversity) Policy 2019 (EPP Water and Wetland Biodiversity) establishes a hierarchy of preferred management options for wastes, including water contaminants which, when applied, protects or enhances the environmental values of waters.

This Procedural Guide does not limit the discretion that authorised officers are required to exercise. The department's Enforcement Guidelines provide broader guidance on the department's approach to compliance and enforcement for all legislation under its jurisdiction.

It is recognised that complementary enforcement provisions of other legislation may also be considered during enforcement decisions such as those that exist under the *Planning Act 2016* (Planning Act).

Development assessment conditions, under the Planning Act, may reference the stormwater management design objectives published in the *State Planning Policy – Water Quality State Interest* (see the Department of Local Government, Racing and Multicultural Affairs website for latest version) and specifically in the Assessment Benchmarks – water quality and Appendix 2 – Stormwater management design objectives Table A: Construction phase-stormwater management design objectives.

[3] The department website has maps of catchments where Environmental Values (EV) and water quality objectives (WQO) have been established or are under development.

Appendix 1: Advisory notes: Standard work method for assessing the lawfulness of releases to waters from building/construction sites (less than 2500m^2)

PART A - Assessment of actual or potential water contamination

Sediment build up

Has the activity caused, or does it have the potential to cause, sediment build up, through act or omission, in the receiving waters environment?

Under section 440ZG, it is an offence to unlawfully deposit 'prescribed water contaminants' in waters, roadside gutters, stormwater drainage or to place contaminants where, and in such a way that, they could run into such places. Prescribed water contaminants (a full list of which can be found in schedule 10 of the EP Regulation) include:

- clay, gravel, sediment (including from building activities), stones and similar organic and inorganic matter
- earth, which section 440ZD of the EP Act defines as sand, soil, silt or mud.

Such build-up will usually be evident by accumulation of coarse sediment in the kerb and channel at the front of the building site, tracks of soil carried offsite by vehicles and stockpiles (e.g. soil or brickies loam). Finer components such as silt and clay may have been released and washed through to the receiving waters during a rainfall event. These finer components may still be visible in the stormwater drainage system or waterway immediately downstream of the release point.

Releases

Has the activity caused, or does it have the potential to cause, releases, flows or discharges containing prescribed water contaminants or earth (sand, soil, silt or mud) to waters, roadside gutters or stormwater drainage?

If releases, flows or discharges are causing, have caused, or have the potential to cause unlawful water contamination, complete Part B. In dry weather, it may be necessary to complete Part B to determine if the activity has the potential to cause water contamination in a subsequent rain event.

If there are relevant conditions that limit releases from site and flows or discharges are occurring from the site to waters, roadside gutters or stormwater drainage then water quality sampling should be undertaken in accordance with the department Monitoring and Sampling Manual 2018 Environmental Protection (Water) Policy 2009[4]. Samples should be accompanied by digital images of the discharge and written observations (often known as contemporaneous note).

If the answer to either 1 or 2 is yes, proceed to Part B.

If the answer to both is no, then no further action is required at this time.

[4] Refer to current version available on the department's website.

PART B - Assessing the lawfulness of depositing prescribed water contaminants or release of stormwater run-off

Part B of this guideline establishes practices which assist in defining what may constitute reasonable and practicable, which in turn assists with determining whether the requirements under the GED have been fulfilled.

Assessment of compliance with section 493A

Is the release of the prescribed contaminant(s) and/or the build-up of sediment expressly authorised by a provision listed under s.493A (2)?

Under s.493A, an act which causes serious or material environmental harm, or a breach of s.440ZG, is unlawful, unless it is authorised by one of the provisions listed in s.493A (2). These provisions include a release of a contaminant to waters authorised under a development condition of a development approval.

If a contaminant release is expressly permitted under any provision listed under s.493A the release is considered lawful, providing the release is within the permitted discharge limits (e.g. concentration and/or load or volume). If a release is not expressly permitted by a provision listed under s.493A, or the any approval is silent on the matter, the lawfulness of the release needs to be determined by assessing compliance with s.319 General Environmental Duty (GED).

Assessment of compliance with the general environmental duty (GED)
Section 319 GED requires that all reasonable and practicable measures be taken to avoid or minimise environmental harm including water contamination and environmental nuisance. Demonstrating compliance with GED constitutes a defence against those offences.

Erosion control
Soil cover

Soil cover is maximised, for example by:

- *clearing is limited to only the area necessary to undertake building work*
- *clearing of existing soil cover only occurs immediately before building work starts*
- *areas of bare soil not being actively worked are covered as soon as possible with a temporary covering that can be walked on during the building stage (e.g. spray-on soil binder[5], mulch (gravel, straw, wood) or that can be easily removed and replaced each day (e.g. plastic sheeting or geo-textile).*

Drainage control followed by erosion control are the most effective ways to prevent water contamination and (unlike sediment barriers) targets both coarse and fine sediment. Clearing for building work should be restricted to the actual footprint required for the immediate works and the clearing should not occur until works are about to commence. An example of non-compliant practice would be cutting a building site for the slab and failing to stabilise the exposed soil surface and/or construct drainage and erosion controls for an extended time period, which may be the basis for initiating compliance action.

Areas of the site where works are complete or where works are not currently occurring are required to be provided with a soil cover to prevent erosion. There are a range of soil covers available depending on the situation[6].

[5] Things to consider when using soil binders or soil stabilisers: Check with the supplier or manufacturer that the product can be planted over, is safe to use in residential areas, and is not toxic or harmful to plants, animals, and waterways; Spray-on binders can be difficult to see on the ground unless a coloured dye is added. Talk to the supplier about options; and products may need to be re-applied after a certain time especially in areas of vehicular traffic. Check with the supplier about expected product life.

[6] Refer to Erosion and Sediment Control Fact Sheets for additional information on soil covers available.

Stockpile protection

Are stockpiles protected, for example by:

- *Covering stockpiles when not in use*
- *Ensuring stockpiles are not placed on top of sediment barriers (e.g. sediment fences)*
- *Ensuring stockpiles are not located in overland flow paths. If unavoidable, run-off is directed around the stockpile (not for sites less than 450m^2).*

Stockpiles can be covered using builder's plastic (weighted down) when not in use to protect them from erosion by wind or rain. If stockpiles must be located in an overland flow path then water can be diverted around the stockpile using a perimeter bank of compacted spoil covered in turf, or a row of sandbags on the upslope side.

Kerb to lot groundcover

- *Has exposed soil between the lot boundary and the kerb been covered, for example with turf?*
- *Are stockpiles fully contained within the lot (not on the verge) or in accordance with local government requirements (e.g. in accordance with a footpath closure permit issued by the relevant local government)?*

Maintaining a kerb-to-lot groundcover prevents soil from eroding, filters overland flow and helps keep your site looking well maintained. Grass cover between the lot boundary and the kerb should not be relied upon by itself. All other erosion and sediment control measures should be in place.

Drainage control
Downpipes and stormwater diversion

- *If the roof is in place, have permanent or temporary downpipes been connected to all gutter outlets to connect all roof water run-off to the underground stormwater system?*
- *If there is an area of land upslope of the building site greater than 1500m^2, have catch drains been provided to divert upslope run-off around bare areas of the site and been implemented as follows:*
  - *i. catch drains are lined with geofabric, UV resistant plastic or turf*
  - *ii. catch drains are located within the building site*
  - *iii. catch drains discharge to the roadway or to a stormwater drain safely without causing erosion.*

Sediment control
Entry/exit areas

Have measures been adopted to establish a formal stable entry/exit area, for example a rock-pad? Are implemented measures well maintained and appropriate to prevent run-off, by for example:

- *A rock-pad is at least 2m wide, when site constrains allow it?*
- *Formal entry/exit point extends from the kerb to the building slab*?*

- *For lots with clayey soils, entry/exit point incorporates geofabric overlaid with 40-75mm diameter rock laid at least 150mm thick?*
- *Formal entry/exit point is covered with an additional layer of 25-50mm diameter gravel within the verge to make it safe for pedestrians?*
- *Formal entry/exit point includes a bund to direct upslope run-off to a sediment trap on the lot?*
- *Formal entry/exit point has been replaced or refreshed if clogging of the material with sediment has occurred?*

*It is important that the rock-pad extends to the building slab and also includes a bund. If these features are absent, then the rock-pad can easily become a conduit for run-off from bare soil on the site to pass between the gap in the sediment fences. Rock-pads frequently become clogged with soil so it is important that the rock is either refreshed or replaced when this occurs

Stormwater inlet protection

- *For lots which fall away from the road to an internal stormwater inlet pit, the pit should be protected to prevent entry of coarse sediment into the pit, for example by covering and maintain the pit with a filter cloth and surrounding the pit with a sediment collection pit. The pit should be maintained in good working order.*
- *Have other erosion and drainage controls been installed (e.g. soil cover and downpipes)?*

If the lot drains to an internal stormwater inlet pit, it must be protected. Stormwater inlet protection prevents coarse sediment from entering and blocking stormwater pipes, which can flood properties.

If soil or sediment gets onto the road an offence may have already been committed.

Coarse sediment barrier

- *Is a sediment barrier present to allow sediment to settle, for example by installing sediment fences downslope of all areas of bare soil in accordance with the following:*
  - *I. Is the sediment fence buried at least 200mm into the ground?*
  - *II. Are support posts provided at intervals no greater than 2m?*
  - *III. Does the sediment fence extend at least 450mm above ground level?*
  - *IV. Are returns in the sediment fence provided?*
    - a. *If sediment fences are not installed, is the site less than 500m^2 and less than 2 per cent slope and have alternate sediment barriers been provided?*

Sediment fences are the most commonly used coarse sediment barrier. Sediment fences act like a small dam to slow the water to allow coarse sediment to settle out. It is therefore important that the sediment fence is buried into the ground, provided with supports and include returns to prevent water from flowing around the sides of the fence. Please note, sediment fences do not impede the movement of fine, clayey and silty material.

For smaller sites, alternative coarse sediment barriers such as mulch or rock berms, sediment socks, fibre rolls, or low sediment fences can be considered.

Note: Temporary removal of erosion and sediment control measures may be implemented where absolutely necessary to carry out building works. In doing so, the responsible party must ensure measures are reinstated as soon as possible after necessary works are completed or before activity ceases for the day, to ensure compliance under s.440ZG and s.319 of the EP Act and in accordance with procedural guide.

Other pollutants (prescribed water contaminants)
Cement, plaster and paint

- *Pollutants such as paint, plaster and cement are prevented from entering the stormwater system, for example by:*
  - *i. washing equipment only in a contained area that cannot reach the stormwater system*
  - *ii. containing run-off when cutting materials with water-cooled saws*
  - iii. *ensuring cement-wash from exposed aggregate driveways is contained in a collection trench and residue is disposed of without release to the stormwater system.*

Sediment is not the only pollutant generated on building sites. Water contaminants can also be created by activities such as washing equipment, cutting materials with water-cooled saws or exposing the aggregate in driveways. General waste and litter such as plastic or polystyrene packing may also be present on site. The contaminants created by these activities must also be managed and prevented from reaching the stormwater system.

Appendix 2: Standard work method for the assessment of the lawfulness of releases to waters from building and smaller construction sites (less than 2500m^2) – Checklist

This document has been prepared to provide officers authorised under the *Environmental Protection Act 1994* (EP Act) with an assessment tool for undertaking Erosion and Sediment Control Practices (ESC) compliance inspections at smaller construction sites in Queensland and to aid the decision making process in applying enforcement provisions under the EP Act.

PART A —Assessment of actual or potential water contamination		
1)	Has the activity caused or does it have the potential to cause sediment build up in the receiving environment, through act or omission?	Y ☐ N ☐
2)	Has the activity caused or does it have the potential to cause releases, flows or discharges containing prescribed water contaminants to waters, roadside gutters or stormwater drainage?	Y ☐ N ☐
	If the answer to either 1 or 2 is 'yes', proceed to Part B ***If both answers are 'no', no further action is required at this time*** ***Good erosion and sediment control practice should be recorded in the site/operator compliance history.*** ***Good erosion and sediment control practice should be specifically acknowledged in the post inspection letters as a positive encouragement mechanism.***	
PART B—Assessment of lawfulness of depositing prescribed water contaminants or release of stormwater run-off		
1)	Is the release of the prescribed contaminant(s) and/or the build-up of sediment expressly permitted by a development condition of a relevant development approval? ***(If the answer is 'yes', no further action is required at this time. If the answer is 'no', proceed to question 2)***	Y ☐ N ☐
2)	Use the following questions to assess compliance with the General Environmental Duty (GED) (s319).	
Erosion control		
3)	*Is soil cover maximised, for example by:* *a) clearing of existing soil cover is limited to only the area necessary to undertake building work* *b) clearing of existing soil cover only occurs immediately before building work starts* *c) areas of bare soil not being actively worked are covered.*	Y ☐ N ☐ Y ☐ N ☐ Y ☐ N ☐
4)	*Are stockpiles protected, for example by:* *a) ensuring stockpiles are not placed on top of sediment barriers (e.g. sediment fences)*	Y ☐ N ☐
	b) ensuring stockpiles are not located in overland flow paths. If unavoidable, run-off is directed around the stockpile	Y ☐ N ☐

	c) has exposed soil between the lot boundary and the kerb been covered (e.g. with turf)? *d) are stockpiles fully contained within the lot (not on the verge)?*	Y ☐ N ☐ Y ☐ N ☐
Drainage control		
5)	*If the roof is in place, have permanent or temporary downpipes been connected to all gutter outlets to connect all roof water run-off to the established stormwater system?*	Y ☐ N ☐
6)	*If there is an area of land upslope of the building site greater than 1500m^2 in area, have catch drains been provided to divert upslope run-off around bare areas of the site and been implemented as follows:* *a) catch drains are lined with geofabric, UV resistant plastic or turf* *b) catch drains are located within the building site* *c) catch drains discharge to the roadway or to a stormwater drain safely without causing erosion.*	Y ☐ N ☐
Sediment control		
7)	*Have measures been adopted to establish a formal stable entry/exit area, for example a rock-pad? Are implemented measures well maintained and appropriate to prevent run-off, by for example:* • *a rock-pad is at least 2m wide, when site constrains allow it?* • *formal entry/exit point extends from the kerb to the building slab*?* • *for lots with clayey soils, entry/exit point incorporates geofabric overlaid with 40-75mm diameter rock laid at least 150mm thick?* • *formal entry/exit point is covered with an additional layer of 25-50mm diameter gravel within the verge to make it safe for pedestrians?* • *formal entry/exit point includes a bund to direct upslope run-off to a sediment trap on the lot?* *a) formal entry/exit point has been replaced or refreshed if clogging of the material with sediment has occurred?*	Y ☐ N ☐ Y ☐ N ☐
8)	*For lots which fall away from the road to an internal stormwater inlet pit, is the pit should protected in order to prevent entry of coarse sediment into the pit, for example by covering and maintain the pit with a filter cloth and surrounding the pit with a sediment collection pit? Is the pit should maintained in good working order?*	Y ☐ N ☐

9)	*Is a sediment barrier present to allow sediment to settle, for example by installing sediment fences downslope of all areas of bare soil in accordance with the following:* *a) is the sediment fence buried at least 200mm into the ground?* *b) are support posts provided at intervals no greater than 2m?* *c) does the sediment fence extend at least 450mm above ground level?* *d) are returns in the sediment fence provided?* *If sediment fences are not installed, is the site less than 500m^2 and less than 2 per cent slope and have alternate sediment barriers been provided?*	Y ☐ N ☐ Y ☐ N ☐
Other pollutants		
10)	*Pollutants such as paint, plaster and cement are prevented from entering the stormwater system, for example by:* *a) washing equipment only in an area that cannot reach the stormwater system* *b) containing run-off when cutting materials with water-cooled saws* c) *ensuring cement-wash from exposed aggregate driveways is contained in a collection trench and residue is disposed of without release to the stormwater system.*	Y ☐ N ☐

PART C – Compliance and enforcement considerations and responses

The department has a wide range of enforcement measures available for managing compliance with the legislation it administers. Enforcement measures include:

- verbal warnings and warning letters in response to breaches of legislation[7]
- penalty infringement notices (PIN)
- administrative actions
- civil proceedings for court orders
- enforceable undertakings
- prosecution.

Authorised officers are required to exercise discretion when making compliance and enforcement decisions. Refer to the *Enforcement Guidelines (Department of Environment and Heritage Protection, 2016)* for additional information and guidance.

A flow chart in Appendix 3 has been developed to guide the compliance and enforcement considerations and response for offences under s.440ZG.

Key enforcement considerations

Liability

Determining who is liable for an offence is critical to ensure compliance and enforcement actions are successful. Due to the nature of construction and development practices and the numbers of different sub-contractors and deliveries which can occur, it can be difficult to identify the party who is directly responsible for a deposit or release unless an act is directly observed by the authorised officer.

The EP Act (s.440ZE) makes provision for the occupier of a place (e.g. the builder who has possession of the building site) to be liable for an unlawful deposit of earth or contaminants caused by another person, if they do not remove the contaminant or stop the earth being exposed at the place within a reasonable timeframe after becoming aware of the deposit or release. An occupier's liability for another person's actions is limited to the 'place' of deposit which does not include waters (s.440ZE (5)).

If an offence is observed (for example a stockpile is present on the site and is not covered and is not protected with a down-slope sediment fence) but it is unclear whether this has been committed by a sub-contractor or the occupier. It would not be appropriate to take action by way of a PIN to the occupier without first bringing the issue to their attention, allowing them time to rectify and determining:

a) who has committed the deposit or release?

b) who is responsible for the site?

c) when did they become aware of the deposit or potential release?

The following two scenarios illustrate some issues that may arise in relation to identifying the party directly responsible for a deposit or release.

Scenario 1: Occupier present

The occupier or person undertaking building works **is** present on site, and:

a) all controls are in place

b) all the controls are not in place, but:

   i. no actual release or deposit to the stormwater system has occurred

   ii. the controls have either been temporarily removed for site access or the deficiencies can be easily reinstated prior to rainfall and prior to the end of the days works.

[7] Refer to the *Procedural Guide Strategic Compliance Warnings* for further information.

In situations where the answer is 'yes' to either of the above then no compliance action should be taken. However, to encourage a culture of best practice by the building and construction industry a recognition may be given through acknowledging good practice in post inspection letters.

Where the answer is "no' then there may be sufficient grounds to demonstrate that the occupier (represented by the site supervisor) was aware of the issues and is therefore responsible for the deposit. A request to rectify before close of business would be made.

Scenario 2: Occupier not present

The occupier or person undertaking building works **is not** present on site and;

a) not all controls are in place

b) all the controls are in place, and:

   i. actual release or deposit to the stormwater system has occurred

   ii. the controls have been temporarily removed and cannot be easily reinstated prior to rainfall and prior to the end of the days works.

In this situation it is necessary to bring the issue/offence to the attention of the occupier (e.g. builder) and allow them reasonable time to rectify before they can be held accountable for the deposit under s.440ZE.

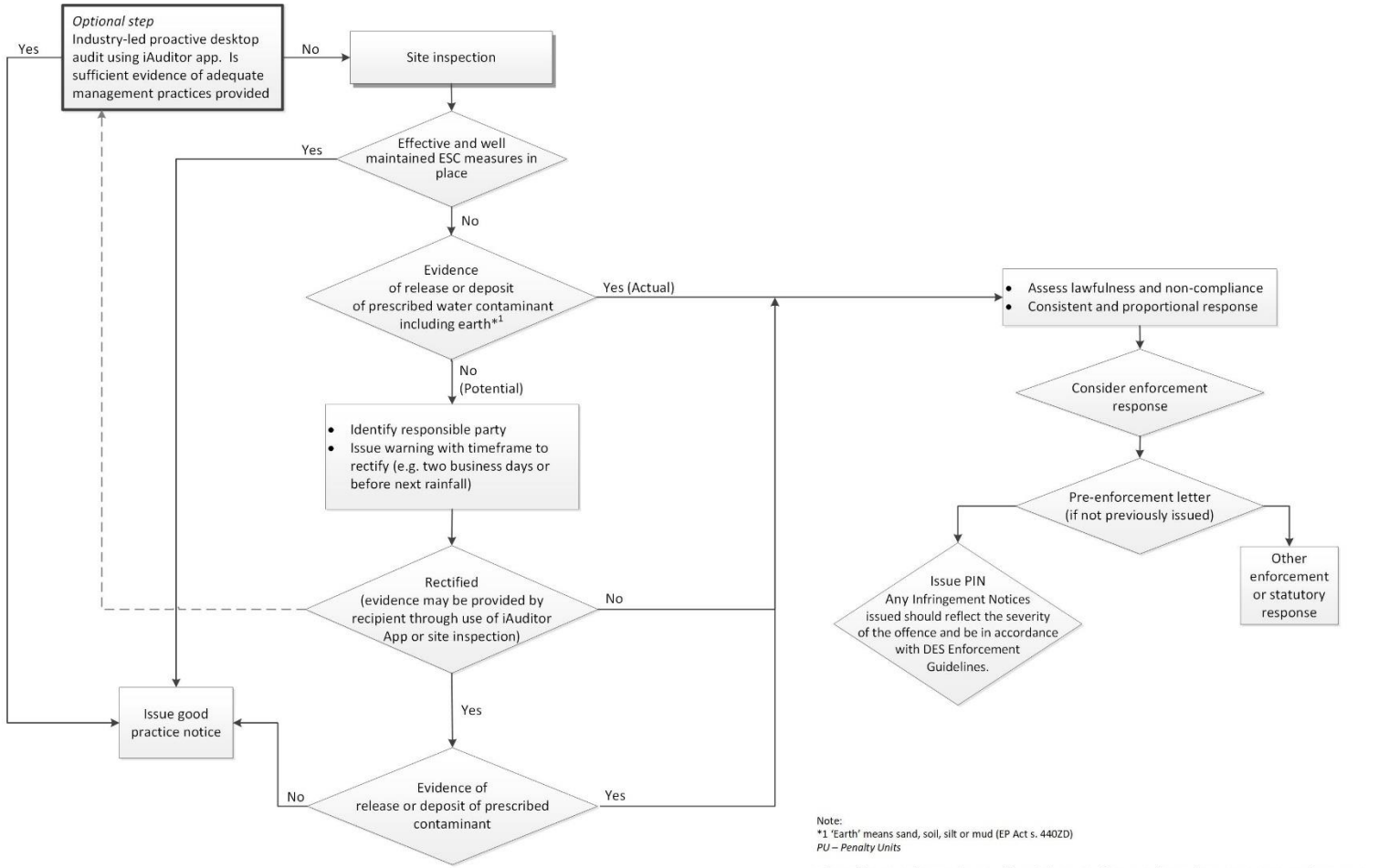
It is recommended that in these situations the occupier (as identified by the signage on site and any follow-up enquiries with the relevant local government) is given a warning directly by telephone or via email identifying that a prescribed water contaminant has been deposited on the site or the potential for release exists. A period of up to 24 hours is considered appropriate for the occupier to notify the authorised officer the rectification is complete.

In the absence of confirmation, further action will be taken.

Evidence gathering

When investigating a s.440ZG offence, it is important to obtain evidence that can establish, beyond reasonable doubt, that the contaminant could reasonably be expected to wash, blow, fall or otherwise move into waters, a roadside gutter or stormwater drainage. It is important to gather evidence that clearly demonstrates the proximity of the contaminant to the waterway, or a statement that addresses the issue in a detailed way including measured distances, gradient of the land etc.

Appendix 3: Flowchart: General compliance and enforcement considerations and response for building and smaller construction sites less than 2500m^2



Appendix 4: Additional resources

For small-scale land building activities including building, plumbing and drainage works and small-scale construction, implementation of best practice ESC management may encompass:

a) As the minimum, the installation, operation, management, maintenance and monitoring of control measures which are consistent with the Best Practice Erosion and Sediment Control Document (IECA 2008 as amended) 'Appendix H Building Sites.

b) The guidance provided in the House Sites Toolkits, including Erosion and Sediment Control Fact Sheets (Healthy Waterways, 2016) and instructional videos, available on the Water by Design website.

c) Consideration of, adaptation and reinforcement or placement of additional measures due to site-specific erosion risk factors including steep slopes, dispersive or erodible soil types, climate and seasonal rainfall patterns.

d) Incorporation in the design, installation, operation, management, maintenance and monitoring of control measures which are consistent with the measures set out below.

Further information

For copies of supporting information visit www.des.qld.gov.au.

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