Elements of offence: s115 POEO Act – Disposal of waste in a manner that harms or is likely to harm the environment

If answer to this question is "no"

ELEMENT NO: 1

IS THE SUBSTANCE WASTE?

Questions to be answered

(a) Is substance causing an alteration in the environment?

(b) Is substance discarded, rejected, unwanted, surplus or abandoned?

(c) As for (b), but is substance also intended for sale or for recycling, processing, recovery or purification by a separate operation from that which produced the substance?

(d) Is the substance:

- (i) a processed, recycled, re-used or recovered substance produced wholly or partly from waste; and
- (ii) applied to land by:
  - (A) spraying, spreading or depositing the material on the land; or
  - (B) ploughing, injecting or mixing into the land; or
  - (C) filling, raising, reclaiming or contouring the land.

NOTE: a substance may still be a waste even if it has been re-processed, re-used or recycled.

Evidence/Avenues of enquiry

- Where has the substance* come from:
  - address;
  - name of facility;
  - identity of people involved.
- Photos of delivery trucks, including logos on sides of trucks and number plates.
- Witness statements:
  - truck driver(s);
  - people at premises;
  - people at source of substance.
- Documentary evidence from drivers, people at premises and from source of substance.
- What was the substance used for prior to being placed in current location or brought onto these premises?
- Was the substance, or any part of the substance, or any precursor input into or part of the feedstock for the substance a discarded, rejected unwanted, surplus or abandoned substance?
- Is the substance or any part of the substance a discarded, rejected or surplus substance from a manufacturing, refining or production or some other process.

If the answer to ANY of these questions is "yes" → **Materials is "WASTE"**

If the answer to ALL of these questions is "no" → **Material is not a "WASTE"** → Check whether breach of other pollution offences.

Check whether there is "pollution" under ss 142A and 120(1) POEO.

If the substance has been deposited in a public place or an open private place check s 145 POEO.

If the substance was leaked, spilt or escaped in a manner which causes harm or likely harm, check s 116 POEO.

ELEMENT NO: 2

HAS THE WASTE BEEN DISPOSED OF?

Questions to be answered

- Has the waste been dumped, abandoned, deposited, discarded, rejected, discharged or emitted?
- Has any one caused or permitted the disposal of waste?

Evidence/Avenues of enquiry

- Statement from defendant and witnesses regarding what was done with the waste.
- Photos, video, surveillance footage and observations demonstrating what happened or is likely to have happened to the waste.
- Expert opinion regarding whether the waste was disposed of.

If the answer to any of these questions is "yes" → **There has been "DISPOSAL"**

If the answer to this question is "no" → **There has not been "DISPOSAL"** → Check whether breach of other waste offences.

If the waste has been transported, check s 143 POEO.

If the waste is stored, being treated or sorted, check s144 POEO.

ELEMENT NO: 3

WAS THE PERSON WILFUL OR NEGLIGENT?

Questions to be answered

- Did the person dispose of the waste deliberately in a manner that was likely to harm the environment?
- Was the risk of harm foreseeable to a person in the position of the person?

Evidence/Avenues of enquiry

- Statement from the defendant regarding their state of mind.
- Photos, video, surveillance footage and witness statements as evidence of the fact that the disposal of the waste was wilful/negligent

If the answer to either of these questions is "yes" → **The person was "WILFUL/ NEGLIGENT"**

If the answer to this question is "no" → **The person was not "WILFUL/ NEGLIGENT"** → Check whether breach of other waste offences.

If the waste has been transported, check s 143 POERO.

If the waste is stored, being treated or sorted, check s 144 POEO.

ELEMENT NO: 4

WAS THERE HARM OR LIKELY HARM TO THE ENVIRONMENT?

Questions to be answered

- Has there been any direct or indirect alteration to the environment that has the effect of degrading the environment?
- Is such an alteration likely?

Evidence/Avenues of enquiry

Witness statements and documentary evidence to determine the effect the introduction of the matter has had: truck driver(s); people at premises and source. Is the matter having any effect on the land? Take photographs and samples of the matter and the land; witness statements; obtain expert evidence

If the answer to either of these questions is "yes" → **Disposal of waste in a manner which harms or is likely to harm the environment**

Breach of s 115 POEO Act

If the answer to both questions is "no" → **No breach of s 115 POEO Act** → Check whether breach of other waste offences.

If the waste is transported, check s 143 POERO.

If the waste is stored, being treated or sorted, check s 144 POEO.

DEFENCES

Questions to be answered

- Lawful authority: did the defendant have lawful authority to dispose of the waste?
- General defence: was the cause of the offence one over which the defendant had no control and did the defendant take reasonable precautions to exercise due diligence to prevent the commission of the offence?

Evidence/Avenues of enquiry

- Interivew with defendant to determine whether they exercised due diligence and took reasonable precautions and whether they had lawful authority.
- Observations regarding cause of offence.
- Expert opinions regarding cause of offence
- Witness statements regarding cause of offence.

If the answer to any of these questions is "yes" → **Defence established no breach of s 115 POEO.**

If the answer to all of these questions is "no" → **No breach of s 115 POEO.**