

Elements of offence: s142A POEO Act – Pollution of land

If answer to this question is "no"

ELEMENT NO: 1 HAS THERE BEEN "POLLUTION"?	
<p><u>Questions to be answered</u></p> <p>Has matter been placed in or on, or otherwise, been introduced into or onto land, in the following circumstances:</p> <p>(a) will the matter cause (or is it likely to cause) degradation of the land, resulting in actual or potential harm to the health or safety of human beings, animals or other terrestrial life or ecosystems, or actual or potential loss or property damage, that is not trivial?</p> <p>OR</p> <p>(b) does the matter have a prescribed nature, description or class that does not comply with any prescribed standards?</p>	<p><u>Evidence/Avenues of enquiry</u></p> <ul style="list-style-type: none"> • Witness statements and documentary evidence to determine the effect the introduction of the matter has had: <ul style="list-style-type: none"> ○ truck driver(s); ○ people at premises and source. • Take multiple samples of the matter in order to determine what the component elements of the matter are • Is the matter causing any degradation to the land? <ul style="list-style-type: none"> ○ Take photographs and samples of the matter and the land ○ Witness statements ○ Obtain expert evidence • Is the matter causing harm to the environment? Consider soil, water, air. <ul style="list-style-type: none"> ○ Take photographs and samples of the matter and the land ○ Witness statements ○ Obtain expert evidence

If the answer to either question is "yes" → **There has been "POLLUTION"**

If the answer to either question is "no" → **There has not been "POLLUTION"**

Check whether breach of other pollution offences.

If the substance is waste and the place is an unlawful waste facility, check ss 144 and 143 POEO.

If the substance has caused harm or likely harm, check ss 115 and 116 POEO.

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

ELEMENT NO: 2
POLLUTION TO "LAND"

Has there been pollution to land, (not water)?

If yes → **Pollution of land
Breach of s142A
POEO Act**

If it applies to water → **No breach of s 142A.
Check s 120(1) POEO,
which applies to water**

DEFENCES

Questions to be answered	Evidence/Avenues of Enquiry
<p>Honest and reasonable mistake:</p> <ul style="list-style-type: none"> • Did the defendant honestly and reasonably believe in a state of facts, which, if true, would make the defendant's act innocent? • Authority conferred by regulation: did the pollution result from a lawful activity which was regulated? • Authority conferred by licence: was the activity regulated by an EPL held by the person? 	<ul style="list-style-type: none"> • Interview with the person to determine their state of mind or whether they hold the necessary EPL. • Check regulations to determine water activity was regulated.

If the answer to any of these questions is "yes" → **A defence has been established.
No breach of s 142A POEO.**

If the answer to any of these questions is "no" → **No breach of a 142A POEO**