

**Elements of offence: s120(1) POEO Act – A person who pollutes waters is guilty of an offence**

If answer to this question is "no"

**ELEMENT NO: 1  
HAS THERE BEEN "POLLUTION"?**

Questions to be answered	Evidence/Avenues of enquiry
<p>(a) has any matter been placed on or in, or introduced onto or into waters so that the physical, chemical or biological condition of the waters is changed? OR (b) has any matter been placed on or in, or introduced onto or into waters so that the matter makes or is likely to make the water unclean, noxious, poisonous or impure, detrimental to health, safety, welfare or property of persons, undrinkable for farm animals, poisonous or harmful to aquatic life, animals, birds or fish in or around waters, or unsuitable for irrigation, or obstructs or interferes with, or is likely to obstruct or interfere with persons in the exercise or enjoyment of any right in relation to the waters? OR (c) has any matter been placed on or in, or introduced onto or into waters that is of a prescribed nature, description or class that does not comply with any standard prescribed in respect of that matter</p>	<ul style="list-style-type: none"> <li>Witness statements and documentary evidence from:                             <ul style="list-style-type: none"> <li>truck driver(s);</li> <li>people at premises and source regarding whether matter was introduced to water and whether they observed any effect from this action.</li> </ul> </li> <li>What are the component elements of the matter? Take multiple samples of the matter.</li> <li>Is the matter causing any degradation/harm/change to the water?                             <ul style="list-style-type: none"> <li>Take photographs and samples of the matter and the water in several places at several times as necessary</li> <li>Witness statements regarding whether they have observed any degradation/harm/change</li> <li>Obtain expert evidence regarding whether any degradation/harm/change has occurred.</li> </ul> </li> <li>Is the matter causing interference to the use of the waters?                             <ul style="list-style-type: none"> <li>Take photographs and samples of the matter and the water</li> <li>Witness statements regarding whether they have observed any interference</li> <li>Obtain expert evidence regarding any interference caused</li> </ul> </li> <li>Is the matter not being used in a manner that complies with any standard prescribed in respect of that matter?                             <ul style="list-style-type: none"> <li>Take photographs and samples of the matter and the water</li> <li>Obtain expert evidence regarding prescribed standards and whether there is compliance</li> </ul> </li> </ul>

If the answer to ANY of these questions is "yes" → **There has been "POLLUTION"**

If the answer to ALL questions are "no" → **There has not been "POLLUTION"**

Check whether breach of other pollution offences.

If the substance is waste and the premises 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  
WATERS**

Questions to be answered	Evidence/Avenues of enquiry
<p>Has there been pollution to:</p> <ul style="list-style-type: none"> <li>Any river, stream, lake, lagoon, swamp, wetlands, unconfined surface water, natural or artificial watercourse, dam or tidal waters (including the sea); OR</li> <li>Any water stored in artificial works, any water in water mains, water pipes or water channels, or any underground or artesian water.</li> </ul>	<ul style="list-style-type: none"> <li>Photos</li> <li>Observations of the polluted area</li> </ul>

If the answer to either question is "yes" → **There has been water pollution**  
Breach of s 120(1) POEO

If the answer to both questions is "no" → **There has been no water pollution.**  
If there has been pollution to land, check s 142A POEO

**DEFENCES**

Questions to be answered	Evidence/Avenues of enquiry
<ul style="list-style-type: none"> <li>Honest and reasonable mistake: did the defendant honestly and reasonably believe in a state of facts, which, if true, would make the defendant's act innocent?</li> <li>Was this the discharge of pollutants within a sewer with approval?</li> <li>Was this a valid discharge of treated sewage from a certified on-board treatment system installing vessel in accordance with Part 7 of the Marine Pollution Regulation 2006?</li> </ul>	<ul style="list-style-type: none"> <li>Interview with person to determine state of mind or whether any exceptions apply, whether there was authority to pollute.</li> <li>Check s 56 POEO and Pt 7 of Marine Pollution Regulation 2006</li> </ul>

If the answer to any of these questions is "yes" → **A defence has been established.**  
No breach of s 120(1) POEO.

If the answer to any of these questions is "yes" → **Breach of s 120(1) POEO**