

## First penalty in NSW for failure to test a PIRMP

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On 20 February 2026, the Land and Environment Court imposed a penalty of \$157,500 in *Environment Protection Authority v Clarence Colliery Pty Ltd* [2026] NSWLEC 13 for a breach of Pollution Incident Response Management Plan (PIRMP) testing requirements.

This is the first penalty in NSW for non-compliance with the PIRMP testing requirements.

The decision serves as a clear warning to all Environment Protection Licence (EPL) holders that PIRMP obligations are not administrative formalities and are a core compliance requirement under the environmental protection regime.

The Court confirmed that failure to comply with PIRMP obligations can result in substantial penalties, even where no pollution or environmental harm eventuates.

### Key lessons for EPL holders

Licence holders should review their PIRMP compliance systems in light of the Court's decision.

### PIRMPs are a statutory requirement

Section 153A of the *Protection of the Environment Operations Act 1997 (NSW)* (POEO Act) requires EPL holders to prepare and maintain a PIRMP that covers their licensed activities.

The PIRMP must contain the information prescribed by the POEO Act and the *Protection of the Environment Operations (General) Regulation 2022* (NSW) (Regulations) and be capable of practical implementation during an incident.

### PIRMPs must be tested following pollution incidents

Section 153E of the POEO Act requires EPL holders to test their PIRMP within one month of a pollution incident that causes or threatens material harm to the environment.

Testing must ensure that the PIRMP:

- is accurate and up to date; and
- can be implemented in a workable and effective way in response to a pollution incident.

Failure to undertake such testing within the required timeframe constitutes a continuing offence. This exposes EPL holders to penalties of up to \$120,000 for each day that the offence continues.

### Absence of environmental harm does not reduce regulatory exposure

The Court emphasised that PIRMP compliance plays a critical role in preventing and managing pollution incidents. Therefore, non-compliance is treated as a serious regulatory failure even where no environmental harm occurs.

### Staff training must be structured and documented

The Court was critical of the reliance on informal knowledge transfer or peer-to-peer training.

EPL holders should ensure their staff receive structured PIRMP training, including:

- incident notification requirements;
- internal escalation procedures;
- roles and responsibilities during an incident; and
- practical testing or simulation exercises.

## **Regulatory implications for EPL holders**

This decision signals that the Court is prepared to hand down significant penalties for PIRMP non-compliance.

For EPL holders, this means that PIRMP obligations must be treated as an active compliance obligation. Regular review, testing and staff training are essential to demonstrate that the PIRMP can be implemented effectively during a pollution incident.

## **Further information**

If your operation has recently encountered a pollution incident or if your PIRMP requires a compliance review to ensure alignment with the POEO Act and the Regulations, please reach out to Jimmy Gill, Royce Tout, or your usual ClarkeKann contact.