Illegal Dumping

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Introduction

Illegal dumping is the unlawful deposit of waste larger than litter on land. This can be waste materials dumped, tipped or otherwise deposited onto private or public land where no licence or approval exists to accept such waste. This can vary from small bags of rubbish in an urban environment to larger scale dumping of materials in isolated areas, such as bushland.

Illegal dumping is particularly prevalent on lands adjacent to Council Waste Facilities. Illegal dumping also includes illegal land filling, which is waste used as fill material with the consent of the owner or occupier of the land but without the necessary Council or NSW Environment Protection Authority (EPA) approvals.

What is illegally dumped?

- General household rubbish
- Large domestic items (for example mattresses, furniture and whitegoods)
- Construction, demolition and excavation waste
- Garden organic material
- Hazardous waste
- Abandoned vehicles, car parts and shopping trolleys.

Responsibility

Appropriate Regulatory Authority (ARA)

Council is the ARA only for activities in the Bega Valley Shire. This consists of the land within its boundaries and the water, generally down to the low water mark. To determine whether or not regulatory action is required on an activity within the Shire the Ranger needs to establish if Council is the ARA.

Generally Council will be the ARA unless:

- the activities are on the Schedule of the Protection of the Environment Operations Act 1997,
- there is an NSW EPA Licence to regulate water pollution from the activity, or
- a public authority or the State carries out the activity.

In all the above situations, the NSW EPA is the ARA. Council cannot regulate its own activities, nor is it able to regulate activities carried on by other government departments. For example, the NSW EPA is the ARA regarding a council’s road work activity, regardless of whether Council uses its own staff of external contractors.
Process
Council receives a notification of an illegal dumping incident from any person.

Details recorded in Authority
Full details of incident are to be recorded in Authority by recipient of the call (call centre or other customer service staff, duty officer) and actioned via the relevant work flow.

The investigating Ranger is to enter his/her details and notes as the responsible officer into Authority.

What to do on-site? - Search for evidence
All employees on site shall complete a site specific risk assessment including the documentation of any hazards and controls that may be required.

Ensure correct PPE is worn before commencement of investigation - hat, sunglasses, boots, gloves, sunscreen etc. Under no circumstances is an inspection of illegally dumped waste to be undertaken using bare hands. A shovel or trowel should also be considered for use to uncover materials.

If hazardous materials are uncovered the inspection is to cease immediately and an additional risk assessment is to be undertaken at a safe distance.

Start by searching for evidence on site of ownership of the waste, such as package labels, invoices or mail with addresses, names and phone numbers. It is important to observe Council’s workplace health and safety requirements whilst undertaking this task.

Identify and talk to witnesses
Identify and talk to potential witnesses, such as occupiers of neighbouring premises. Find out what they observed in relation to the illegal dumping. For example, ‘did they notice when the waste was dumped?’, ‘did they see the person dumping the waste or their vehicle?’, ‘are there any possible related neighbourhood activities, such as building work or people moving house.

Record evidence
Photograph and record dumping evidence, for example type and amount of waste, likely method of dumping, dumping location (consider drawing a mud map), premises identification, surrounding land use, potential for harm to the environment, health or property. Take samples to identify the materials.

Decide on the clean-up option
Decide whether the waste needs to be cleaned up immediately. For instance, if the waste is hazardous or likely to cause significant harm to the environment, people or property, then it should be cleaned up immediately. This should be actioned to the relevant Town Team.

Deter other illegal dumpers
Consider the likelihood of others dumping in the same location if the waste is not cleaned up immediately. By dumping waste on land where other waste is already present, offenders rationalise their behaviour on the grounds that what they would add would make very little overall difference.

Interview witnesses and suspects as soon as possible
Many people will voluntarily answer the questions of a law enforcement Officer, particularly at the scene of the incident or soon after the incident has occurred. A caution must be given to the person who is answering...
questions voluntarily as soon as the investigating officer believes that there is sufficient evidence to establish that the person committed the offence.

- People who are cooperative should be interviewed quickly. Record any response to provide evidence of the suspect's level of understanding. Anything said by the suspect after this caution can be admissible against them.

- Have the dumped waste removed by issuing a clean-up notice (verbally in the first instance) to the person who is reasonably suspected (if identified) of causing or having caused the illegal dumping. Note, If you issue an oral clean-up direction, you must confirm the direction in writing within 72 hours for it to remain valid (POEO, 1997 s93(3)).

- If unable to have the dumped material removed quickly, then secure the dumped material with advisory or investigatory stickers and tape, and distribute educational material or standard letters to surrounding properties.

What to do back at the office?

Back in the office, Rangers should follow up on leads obtained from the site inspection and information from witnesses. Examples of leads include company names obtained from witness, phone numbers or company names found in the waste, retailers details on packaging, vehicle registration numbers observed by witnesses, property addresses where waste is dumped or where waste came from, telephone numbers found in the waste and the names of persons of interest provided by witness.

Legal Action

Decisions to prosecute either by Penalty Infringement Notice or Court Attendance Notice should only be made after following the Enforcement and Compliance Guidelines.

Other clean up actions are also possible through the Protection of the Environment Operations Act 1997. Details are outlined in the following flow chart.