



By Dr Sarah Wright

# Cracking down on waste crimes

## A strengthened legislative and enforcement response

Waste offences, particularly illegal waste dumping, remain an enforcement challenge for environmental regulators. The NSW Environment Protection Authority (EPA), the state's lead environmental regulator, has described waste dumping as a significant, ongoing and 'growing problem'.<sup>1</sup>





including mesothelioma and lung cancer.<sup>2</sup> It is important that those dealing with waste manage it properly, including ensuring it is disposed of at licensed facilities.

This article examines amendments made over the past decade to the main piece of NSW pollution legislation, the *Protection of the Environment Operations Act 1997* (NSW) (*POEO Act*), in order to ‘crack down on illegal dumping and waste activities.’<sup>3</sup> It also examines the importance of enforcement and sentencing, before considering recent penalties under the new legislative provisions which have resulted in imprisonment being imposed on two individuals and a large fine being imposed on a corporation.

### **STRENGTHENING THE LEGISLATIVE RESPONSE TO WASTE OFFENCES**

Prior to 1 October 2013 (when the first amendments discussed below were made), the *POEO Act* already contained a number of waste-related offences. This included the Tier 1 offence in s115(1) of wilfully or negligently disposing of waste ‘in a manner that harms or is likely to harm the environment’. It carries significant maximum penalties of \$5 million (for wilfulness) and \$2 million (for negligence) for corporations and, for individuals, \$1 million and/or 7 years’ imprisonment (for wilfulness) or \$500,000 and/or 4 years’ imprisonment (for negligence). The legislation also included a range of Tier 2 waste-related offences at that time: unlawful transporting or depositing of waste (‘waste dumping’) (s143(1)); unlawfully using a place as a waste facility (s144(1)); and land pollution (s142A(1)). The maximum penalties were \$1 million for corporations and \$250,000 for individuals. In addition, an offence of supplying false or misleading information about waste (s144AA(1)) carries a maximum penalty of \$250,000 for corporations and \$120,000 for individuals.

In 2013, two new waste offences were introduced with the aim of strengthening the offence provisions and sentencing options in order to ‘enable courts to crack down on illegal waste dumpers and break the business model of organised illegal waste activities.’<sup>4</sup> Monetary penalties may not provide a sufficient deterrent if fines are factored in as a cost of doing business,<sup>5</sup> or if a defendant lacks the means to pay. The new offences made imprisonment available for Tier 2 waste offences for the first time, although only for the new offences.

#### **Knowingly supplying false or misleading information about waste**

The first new offence in s144AA(2) is that of *knowingly* supplying false or misleading information about waste, with maximums of \$500,000 for corporations and \$240,000 and/or 18 months’ imprisonment for individuals. This *mens rea* offence carries twice the maximum monetary penalty of the equivalent strict liability offence in s144AA(1). The new penalties were introduced to ensure consistency with fraud offences in other legislative schemes.<sup>6</sup>

#### **‘Repeat waste’ offence**

The second new ‘repeat waste’ offence introduced imprisonment as a sentencing option for Tier 2 ‘repeat waste offenders’: a person convicted of a specified waste offence

**W**aste offences have the potential to cause serious environmental harm and health impacts. For instance, airborne asbestos particles resulting from loose fibres in waste can be inhaled and lead to diseases,

who is subsequently convicted of another waste offence within 5 years.<sup>7</sup> A maximum of 2 years' imprisonment can be imposed, in addition, or as an alternative, to the monetary penalty available for the relevant waste offence committed (such as waste dumping, land pollution or operating an illegal waste facility).<sup>8</sup> This offence made imprisonment available for Tier 2 strict liability offences for the first time and was said to provide a 'strong deterrent to those offenders who feel that the current fines are too small to warrant changing their unlawful behaviour'.<sup>9</sup> Additionally, provisions were added allowing the EPA to seize vehicles used in repeat waste offences.<sup>10</sup> If a person is convicted of a repeat waste offence, the Land and Environment Court of NSW (LEC) can order that the vehicle be forfeited.<sup>11</sup> It was stated that the seizure and forfeiture provisions would 'act as a circuit breaker for repeat offenders who would otherwise continue to break the law while they have access to their vehicle'.<sup>12</sup> In 2014 a provision was added allowing the EPA to require a person involved in waste transportation to install a GPS tracking device on a vehicle used to transport waste.<sup>13</sup> The tracking devices aim to deter waste dumping and allow the EPA to monitor vehicle movements and establish whether vehicles have visited known dumping locations.<sup>14</sup>

### Amendments targeting asbestos waste

In 2018 further amendments targeted strengthening the response to asbestos waste and increasing the deterrent effect of offences and maximum penalties.<sup>15</sup> The amendments were made in response to recommendations of the Independent Commission Against Corruption (ICAC) and NSW Ombudsman reports.<sup>16</sup> From 25 January 2019 the maximum monetary penalties for land pollution, waste dumping and unlawful waste facility offences doubled to \$2 million for corporations and \$500,000 for individuals for breaches involving asbestos waste.<sup>17</sup> Two new offences were added to the *POEO Act*: (1) unlawfully disposing of asbestos waste; and (2) causing or permitting the re-use or recycling of asbestos waste.<sup>18</sup> Again, these new offences carry larger maximums of \$2 million for corporations and \$500,000 for individuals. Equivalent offences were previously contained in the regulations, with maximums of merely \$44,000 for corporations and \$22,000 for individuals.<sup>19</sup> ICAC recommended in a 2017 report that '[g]iven the considerable public health risk posed by the illegal disposal of asbestos there is merit in having a specific, clear and serious standalone offence for the disposal of asbestos waste to emphasise the seriousness of the offence'.<sup>20</sup> The Government responded by 'elevating' the offences from the regulations into the *POEO Act* and significantly increasing the maximums.<sup>21</sup>

The 2018 amendments also introduced a new sentencing consideration into the *POEO Act*: 'the presence of asbestos in the environment'.<sup>22</sup> The precise role this provision will play in the sentencing process is unclear, particularly for offences where the maximum penalty automatically doubles if the waste contains asbestos. The courts must already consider the harm or likely environmental harm caused by an offence, and the presence of asbestos is relevant to that consideration.<sup>23</sup>

It is a well-established sentencing principle that 'the more serious the lasting environmental harm involved the more serious the offence, and ordinarily, the higher the penalty'.<sup>24</sup> Proof of 'substantial' harm is an aggravating factor.<sup>25</sup> While prosecutors have been successful in establishing substantial harm in some cases involving asbestos, establishing actual (as opposed to likely) harm may be difficult, particularly in terms of health impacts to humans. Offenders are sentenced within a few years of the offence, whereas asbestos-related diseases may not become evident until 20 to 40 years after exposure.<sup>26</sup> In the two cases where the new sentencing factor was considered, the offences occurred before the subsection was inserted and Pain J noted:

'To the extent that the subsection may be construed as requiring that greater weight be given to the presence of asbestos in the environment as an aggravating factor than was required prior to its introduction, it should not be applied retrospectively to these offences.'<sup>27</sup>

Accordingly, the exact role the new sentencing consideration will play may not be fully explored until the LEC sentences an offence that occurred after the amendment took effect on 20 December 2019.

### Are further tools required?

In short, the amendments over the past decade have introduced mechanisms to help strengthen the response to waste offenders. However, the *POEO Act* still lacks tools available under other legislative regimes and in other jurisdictions, such as further alternative sentencing orders (ASOs).<sup>28</sup> A number of ASOs can already be imposed under the *POEO Act* as additional or alternative orders to fines and imprisonment, including orders to carry out or pay for an environmental project, publication orders and training orders.<sup>29</sup> However, there are no provisions allowing the court to ban offenders from operating in a particular industry, or to continue in that industry only under supervision, for a specified length of time.<sup>30</sup> A discussion of these orders is beyond the scope of this article. I did, however, previously argue that such orders 'would provide courts with additional sentencing tools to address persistent offenders and poor environmental managers to protect the environment and community from further offences and potential harm'.<sup>31</sup> The Government should consider adding these orders to the legislation.

### ENFORCING THE LAW AND SENTENCING OFFENDERS

While a strong legislative regime is important, '[t]he making of laws is not an end in itself'.<sup>32</sup> Enforcement and sentencing play important roles in upholding the law,<sup>33</sup> including by punishing offenders and encouraging compliance through the deterrent impact of prosecution and penalties. Monetary penalties must be large enough to deter the offender and others in the waste industry who 'might be tempted to [break the law] by the prospect that only light punishment will be imposed by the courts'.<sup>34</sup> Some significant monetary penalties totalling \$225,000<sup>35</sup> and \$250,000<sup>36</sup> have been imposed on individuals in previous waste matters. However, even large penalties may have little deterrent impact on defendants that

cannot afford to pay a fine. Chief Judge Preston has noted that where non-custodial sentences fail to act as a deterrent, such as for persistent offenders, the type of punishment may need to be escalated to imprisonment.<sup>37</sup>

### The use of imprisonment in environmental offences

Imprisonment is the harshest sanction available. A court cannot impose imprisonment unless no other penalty is considered appropriate.<sup>38</sup> While imprisonment has been available for Tier 1 offences since the *POEO Act* commenced (and under its predecessor legislation),<sup>39</sup> few offenders have been imprisoned. Until 2018 no offender had been imprisoned for a *POEO Act* offence,<sup>40</sup> and only one offender was imprisoned under the predecessor legislation, the *Environmental Offences and Penalties Act 1989 (NSW) (EOP Act)*.<sup>41</sup> However, few *POEO Act* offences have been prosecuted where imprisonment was a sentencing option, and even fewer where imprisonment was raised. The LEC has sentenced seven individuals for Tier 1 *POEO Act* offences since the Act commenced.<sup>42</sup> All offences were charged based on negligence rather than wilfulness. Five of the offenders were charged with Tier 1 waste offences. Imprisonment was raised for three defendants, but a fine and community service were imposed.<sup>43</sup> Only three cases have been determined under the new Tier 2 waste offences where imprisonment was available.<sup>44</sup> Imprisonment was sought and imposed in two of those cases (discussed below).<sup>45</sup>

In the 2009 decision of *Plath v Rawson (Rawson)*, Preston CJ discussed the circumstances where imprisonment had been considered appropriate in previous environmental prosecutions, namely:

- (a) where the offender's conduct involves a considerable degree of wilfulness and deception ...
- (b) where an actuating reason for the offender's conduct is to make a profit or save an expense ...
- (c) where the offender's conduct posed a high level of risk to or actually caused considerable harm to the environment and the public ...
- (d) where the offender's conduct is over an extended period or is of a repetitive nature ...
- (e) where deterrence, both individual and general, makes the custodial sentence appropriate.<sup>46</sup>

In *EPA v Gardner (Gardner)* – the only case where imprisonment was imposed for a Tier 1 offence (under the *EOP Act*) – Lloyd J described the circumstances as the ‘most serious case of environmental crime to have come before this Court’ and representing the worst case scenario.<sup>47</sup> All of the factors Preston CJ identified in *Rawson* were present in *Gardner*.<sup>48</sup> The defendant operated a caravan park near the Karuah River. He installed a concealed system of underground pipes to pump effluent into the river instead of paying for it to be removed from tanks. An average of 128,710 litres of effluent was pumped into the river each week over 128 weeks, resulting in the defendant saving approximately \$138,621. Justice Lloyd noted the deliberate, repeated nature of the acts involved in the offence and that it was financially motivated. Furthermore, it ‘had the most serious consequences of environmental harm and likely environmental harm imaginable’, which affected ‘the

community as a whole’.<sup>49</sup> The defendant was sentenced to 12 months’ imprisonment and fined \$250,000.

In *Rawson* and some subsequent cases, the absence of some of the factors listed by Preston CJ in *Rawson* where imprisonment had previously been considered appropriate (see (a)–(e) above), or the absence of similar facts to those present in *Gardner*, were referred to as indicating that the circumstances did not cross the threshold for imprisonment.<sup>50</sup> However, in the two recent waste cases discussed below where imprisonment was imposed,<sup>51</sup> the *Gardner* case and the list of factors referred to in *Rawson* were not specifically referred to in determining whether imprisonment was appropriate. In relation to the repeat waste offence, this is understandable given the nature of the offence and legislative aim of making imprisonment available to punish repeat waste offenders.

### Prosecuting the new Tier 2 offences: *Hanna, Mouawad and Aussie Earthmovers Pty Ltd*

While imprisonment has rarely been imposed by the LEC, two recent cases under the new waste offence provisions demonstrate that the court will impose imprisonment in appropriate cases. *EPA v Hanna*<sup>52</sup> concerned the first (and so far only) offender sentenced for the repeat waste offence. The defendant’s ‘long record’ included 13 prior convictions for waste dumping or land pollution offences, with fines totalling over \$400,000, and 29 penalty notices.<sup>53</sup> Chief Judge Preston noted that most of the fines and penalty notices had not been paid.<sup>54</sup> Hanna, the defendant, had also previously had a 3-month suspended sentence of imprisonment imposed by the LEC in a contempt matter for breach of an injunction which essentially restrained waste dumping.<sup>55</sup> In the repeat waste matter, Preston CJ noted Hanna had last been convicted by the LEC<sup>56</sup> just over a year before committing the repeat waste offences.<sup>57</sup> In the prior matter, Hanna was fined a total of \$225,000 for two waste dumping and two land pollution offences. Chief Judge Preston essentially noted that the defendant could ‘have been under no doubt’ as to what was required to lawfully dispose of waste given that prior judgment.<sup>58</sup>

Hanna pleaded guilty to five repeat waste offences – one regarding transporting and depositing waste and four regarding land pollution. The defendant operated a business involving transportation of building and demolition waste. He organised letter box drops of flyers offering free ‘clean top soil, clay, crushed bitumen or shale’ to residents of Sydney suburbs. The charges related to waste materials taken to four residential properties. The landowners had responded to the flyers seeking clean top soil. However, at the direction of the defendant, waste materials (including asbestos) had been taken to and deposited on the properties, rather than the clean fill requested.

Chief Judge Preston stated that the defendant’s conduct ‘blatantly flaunted the proscription against repeat waste offending’.<sup>59</sup> His Honour held that the offences were deliberate, premeditated or planned, committed for financial gain to avoid tipping fees for lawful disposal (thereby increasing profits), and caused ‘substantial’ harm.<sup>60</sup> Chief



Judge Preston noted the defendant was aware that the waste was or might be contaminated and might contain asbestos, and that depositing that waste on residential properties created a ‘risk of harm to the environment and to human health’, yet he chose to do so anyway.<sup>61</sup> The offences were considered to be of medium to high range objective seriousness.

Chief Judge Preston determined it was appropriate to impose imprisonment. His Honour stated:

‘Mr Hanna has not been deterred in the past by the ever increasing severity of punishment by way of fines for past waste offences he has committed. Clearly, punishment by way of fine has not deterred Mr Hanna from re-offending. Only a change in the type of penalty from fine to imprisonment is likely to deter him from re-offending.’<sup>62</sup>

An aggregate sentence of 3 years’ imprisonment was imposed, as well as a publication order, an order to pay the EPA’s costs and an order requiring the defendant to arrange removal and lawful disposal of the waste deposited at three of the properties (the fourth owner had already cleaned up their property). Chief Judge Preston stated that the imposition of imprisonment would deter others by ‘sending a strong message that repeat waste offending will be punished by imprisonment not merely fines.’<sup>63</sup>

*EPA v Mouawad* is the second case in which imprisonment was imposed (to be served by way of intensive correction order) under the new waste offences.<sup>64</sup> The defendant pleaded guilty to two s144AA(2) charges of knowingly supplying false or misleading information about waste. Aussie Earthmovers Pty Ltd (Aussie Earthmovers) was engaged by a construction company to, among other things, remove asbestos-contaminated soil (waste) from a development site (the site) and arrange for the waste to be disposed of at a landfill licensed to accept the waste. The defendant was employed by Aussie Earthmovers and was its representative regarding the project and person responsible for arranging trucks to remove the waste from the site. The defendant subcontracted another company to remove and dispose of the waste. The other company transported and disposed of 134 truckloads of waste (approximately 1,400 tonnes).

As part of the arrangements between the parties, Aussie Earthmovers was to provide the construction company with tipping dockets evidencing that each truckload of waste had been disposed of at a licensed landfill. The first offence related to the supply of a false ticket list report to the construction company which purported to have been issued by a landfill operator in relation to ‘the purported disposal of approximately 84 truckloads of asbestos-contaminated soil’ at the landfill.<sup>65</sup> The other charge related to the supply of 29 false waste disposal dockets indicating the ‘purported disposal of 29 truckloads of asbestos-contaminated soil at a landfill site.’<sup>66</sup> At the time of sentencing it had been confirmed that one of the 134 truckloads of waste had been disposed of at the landfill, but there were no records of the remaining truckloads being disposed of at that landfill and it was unknown where that waste had been disposed of.

While Pain J made clear the defendant had not been charged in relation to disposal of the waste, Her Honour noted that the:

‘offending conduct significantly undermined the regulatory objective of ensuring the proper disposal of asbestos waste as the location of the asbestos waste disposed of is unknown ... The disposal of asbestos waste at an unknown location gives rise to the potential for harm.’<sup>67</sup>

Justice Pain held that there were a number of aggravating factors, namely: the offences were committed without regard for public safety; the offences were committed for financial gain; and the level of planning involved, namely the ‘actions giving rise to [the] offences [were] reasonably elaborate.’<sup>68</sup> The offences were considered to be of high objective seriousness. Further, there was a need for general and specific deterrence given the defendant ‘remain[ed] in the building and construction business and must deal with building waste.’<sup>69</sup>

Her Honour concluded there were limited mitigating factors and that a fine alone would not be appropriate.<sup>70</sup>

Justice Pain determined that 12 months’ imprisonment was appropriate but, based on a corrections office assessment report and the defendant’s ‘personal circumstances’, imposed an intensive correction order (ICO) directing the sentence to be served by way of intensive correction in the community.<sup>71</sup> The ICO required 250 hours of community service work to be undertaken. A publication order was also made and the defendant ordered to pay the EPA’s costs of \$60,000.

Aussie Earthmovers was also prosecuted for two s144AA(2) offences of knowingly supplying false or misleading information about waste in relation to the supply of the false ticket list report and waste disposal dockets. The company failed to appear and was found guilty in its absence.<sup>72</sup> At the time of that hearing the company had no directors or secretaries and the Australian Securities and Investments Commission had proposed to deregister the company. The company was held liable on the basis that ‘Mr Mouawad’s actions and state of mind can be attributed to the Defendant as the controlling mind and will of the Defendant in relation to both charges.’<sup>73</sup> The offences committed by Aussie Earthmovers were also considered to be of high objective seriousness. As the company did not appear at the sentencing hearing, no mitigating factors were raised. Justice Pain concluded that a ‘high penalty is warranted.’<sup>74</sup> Her Honour applied the totality principle and fined the company \$400,000 for the first offence and \$50,000 for the second (the maximum for each offence was \$500,000). The total penalty of \$450,000 is the largest monetary penalty imposed in an EPA prosecution for waste offences, including for Tier 1 offences. While the fine may have little impact on Aussie Earthmovers due to its circumstances, the penalty plays an important role in terms of general deterrence of the broader regulated community.

## CONCLUSION

Over the past decade, the Government has made amendments to strengthen the response to waste offenders to protect the environment and community from harm. These amendments include new offences, increased monetary penalties for offences involving asbestos waste, and the availability of imprisonment for the Tier 2 repeat waste offence and for knowingly supplying false or misleading information about

waste. The sentences imposed by the LEC in prosecutions against three offenders under the new provisions put the waste industry on notice and signal that significant penalties may be imposed, including imprisonment. ■

**Notes:** **1** NSW EPA, *Illegal Dumping Research Report* (Report, 2015) 90; NSW EPA, 'Inquiry into the Performance of the NSW Environment Protection Authority' (Submission No. 156 to Legislative Council General Purpose Standing Committee No. 5, August 2014) 24. **2** *EPA v Hanna* [2013] NSWLEC 41 (*Hanna* 2013), [29] quoting NSW Health Department, *Asbestos and Health Risks*. **3** Parliament of NSW, *Parliamentary Debates*, Legislative Assembly, 30 May 2013, 21355 (Robyn Parker, Minister for the Environment). **4** *Ibid.*, 21354; see *Protection of the Environment Operations Amendment (Illegal Waste Disposal) Act 2013* (NSW). **5** *Parliamentary Debates*, above note 3. **6** *Ibid.*, 21356. **7** *POEO Act*, s144AB. **8** *Ibid.* **9** *Parliamentary Debates*, above note 3, 21355. **10** *POEO Act*, s210B(1). **11** *Ibid.*, s210C(1). **12** *Parliamentary Debates*, above note 3, 21356. **13** *POEO Act*, s144AC(1); inserted by *Protection of the Environment Legislation Amendment Act 2014* (NSW), sch 2.1, [5]. **14** M Sansom, 'GPS trackers fitted to vehicles that dump illegally', *Government News* (online), 20 March 2017, citing Gabrielle Upton, Minister for the Environment <<https://www.governmentnews.com.au/gps-trackers-fitted-trucks-dump-illegally/>>. **15** Parliament of NSW, *Parliamentary Debates*, Legislative Council, 24 October 2018, 64 (Scot MacDonald); see *Protection of the Environment Operations Amendment (Asbestos Waste) Act 2018* (NSW). **16** *Parliamentary Debates*, above note 15, 64, citing ICAC, *Investigation into the Conduct of a Regional Illegal Dumping Squad Officer and Others* (Report, 2017) and NSW Ombudsman, *Asbestos – How NSW government agencies deal with the problem* (Report, 2017). **17** *POEO Act*, ss142A(1), 143(1) and 144(1). **18** *Ibid.*, ss144AAA(1) and 144AAB. **19** *Protection of the Environment Operations (Waste) Regulation 2014* (NSW), cls 80(1) and 81; repealed by the *Protection of the Environment Operations Amendment (Asbestos Waste) Act 2018*, sch 2.2, [1] and [3]. **20** ICAC, above note 16, 59. **21** *Parliamentary Debates*, above note 15, 64. **22** *POEO Act*, s241(1)(f). **23** *EPA v Mouawad (No. 2)* [2020] NSWLEC 166 (*Mouawad (No. 2)*), [28] – Aussie Earthmovers was the second-named defendant. **24** *Camilleri's Stock Feeds Pty Ltd v EPA* (1993) 32 NSWLR 683, 701. **25** *Crimes (Sentencing Procedure) Act 1999* (NSW), s21A(2)(g). **26** *Hanna* 2013, [30] quoting WorkCover NSW, *Working with Asbestos Guide*. **27** *Mouawad (No. 2)*, [28]; applied in *EPA v Abbas* [2021] NSWLEC 57, [74]–[82] (Pain J). **28** S Wright, 'Extending the range of alternative sentencing orders: It's time to stop the business of pollution and

waste offending', *Australian Environment Review*, Vol. 33, No. 4, 2018, 91–4. **29** *POEO Act*, s250; see S Wright, 'Re-examining the approach to alternative sentencing orders in New South Wales pollution law', *Environmental and Planning Law Journal*, Vol. 35, 2018, 606–34. **30** Wright, above note 28. **31** *Ibid.*, 94. **32** BJ Preston, 'Principled Sentencing for Environmental Offences' in L Paddock, D Qun, LJ Kotzé, DL Markell, KJ Markowitz and D Zaelke (eds), *Compliance and Enforcement in Environmental Law: Toward More Effective Implementation*, Edward Elgar, 2011, 313. **33** *Ibid.* **34** *Bankstown City Council v Hanna* [2014] NSWLEC 152 (*Bankstown v Hanna*), [6]. **35** *Ibid.* **36** *EPA v Charles Anthony Leslie Gardner* [1997] NSWLEC 169 (*Gardner*); *EPA v Foxman Environmental Development Services (No. 2)* [2016] NSWLEC 120 – Foxman was the third-named defendant. **37** *Bankstown v Hanna*, [97]. **38** *Crimes (Sentencing Procedure) Act 1999* (NSW), s5(1). **39** *EOP Act*. **40** *EPA v Dib Hanna Abdallah Hanna* [2018] NSWLEC 80 (*Hanna*). **41** *Gardner*. **42** *EPA v Coggins* [2003] NSWLEC 111; *EPA v Barrett* [2003] NSWLEC 182; *EPA v S J Perry* [2004] NSWLEC 715; *EPA v Pal* [2009] NSWLEC 35 (*Pal*); *EPA v Wattke* [2010] NSWLEC 24 (*Wattke*) – second-named defendant was Geerdink; *EPA v BMG Environmental Group Pty Ltd* [2012] NSWLEC 69 – the individual, Barnes, was the second-named defendant. **43** *Pal*; *Wattke*. **44** *Hanna*; *EPA v Complete Asbestos Removal Pty Ltd* [2016] NSWLEC 167 – second defendant, Endacott, was an individual; *Mouawad (No. 2)*; *EPA v Mouawad (No. 3)* [2021] NSWLEC 16 (*Mouawad (No. 3)*). **45** *Hanna*; *Mouawad (No. 2)*; *Mouawad (No. 3)*. **46** [2009] NSWLEC 178, [181] (*Rawson*) (citations omitted). **47** *Gardner*. **48** *Rawson*, 181. **49** *Gardner*. **50** See *Rawson*, [182]–[186]; *Plath v Chaffey* [2009] NSWLEC 196, [82]–[85]; *Betland v EPA* [2010] NSWLEC 183, [59]–[63]. **51** *Hanna*; *Mouawad (No. 2)*; *Mouawad (No. 3)*. **52** *Hanna*. **53** *Bankstown v Hanna*, [1], [93] and [95]; *Hanna*, [156]. **54** *Bankstown v Hanna*, [121]; *Hanna*, [189]. **55** *Hanna* 2013. **56** *Bankstown v Hanna*. **57** *Hanna*, [190]. **58** *Ibid.*, [122]. **59** *Ibid.*, [101]. **60** *Ibid.*, [118], [121]–[122], [126] and [127]. **61** *Ibid.*, [123]. **62** *Ibid.*, [221]. **63** *Ibid.*, [260]. **64** *Mouawad (No. 3)*; *Mouawad (No. 2)*. **65** *Mouawad (No. 2)*, [6]. **66** *Ibid.* **67** *Ibid.*, [18] and [25]. **68** *Ibid.*, [29]–[44]. **69** *Ibid.*, [64]. **70** *Ibid.*, [72]–[74]. **71** *Ibid.*, [75]–[76]; *Mouawad (No. 3)*, [1]–[4]. **72** *EPA v Aussie Earthmovers (No. 2)* [2020] NSWLEC 98. **73** *Ibid.*, [64]. **74** *Mouawad (No. 2)*, [87].

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