



Concordia Pacific

Environmental, Government and Town Planning Law

FACT SHEET FOR SMOKY VEHICLE OFFENCES

The New South Wales Department of Environment Conservation, Climate Change and Water (“DECCW”) has an active program to fine the operators of “smoky vehicles” for offences against clause 9 of the *Protection of the Environment Operations (Clean Air) Regulation 2002* – primarily heavy diesel-powered trucks that are used for commercial transport. According to the DECCW’s most recent annual report, covering the 2008 – 2009 Financial Year, 382 Penalty Infringement Notices (“PINs”) were issued and 10 prosecutions were taken in Local Court, with fines ranging from \$400 - \$3,000.

The operators of heavy-duty trucks should be aware of the following:

- Clause 9 of the Regulation provides that the owner of a motor vehicle is guilty of an offence if the vehicle emits “excessive air impurities” – in other words, smoke - while being used.
- An offence is established whenever a vehicle emits smoke for a continuous period of 10 seconds or more.
- Fines may be imposed based on observations of smoke emissions by officers of the DECCW, the Police, or the RTA. In addition, members of the public who observe smoky vehicles can report their observations to the DECCW over the Internet, and the evidence that they provide can be used in a prosecution.
- Evidence that a breach has occurred must be based on “Test Method 31” which requires that the observer must correctly identify the vehicle generating the emissions and must be satisfied that the emissions are visible not just because of heat or the condensation of water vapor; and that details be recorded concerning the location where the emissions were seen, the type of motor vehicle, registration number, and the colour and darkness of the smoke.
- The RTA has recently installed a Vehicle Emissions Enforcement System (“VEES”) in the M₂ East Tunnel, which enables smoky vehicle offences to be automatically detected and recorded. The Land and Environment Court has accepted that evidence from a VEES can be relied on to prove a smoky vehicle offence – see *Environment Protection Authority v Bowport All Roads Transport Pty Ltd* (2009) NSWLEC 103.
- The fine for a smoky vehicle offence that may be imposed through a Penalty Infringement Notice is \$400 in the case of a corporation.

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Level 8, 70 Castlereagh Street, Sydney NSW 2000

T: 02 9233 4914 M: 0434 006 948 E: conpacific@tpg.com.au

W: www.concordiapacific.com.au



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- The DECCW is likely to commence a prosecution in Local Court if several PINs have been issued to the owner; similarly, an owner is likely to be prosecuted in the Land and Environment Court if it has been convicted several times in Local Court. The maximum penalty that may be imposed by a Local Court for a smoky vehicle offence is \$22,000, while the Land and Environment Court can fix a penalty up to \$44,000.
- The factors that may be taken into account by a court when it determines the penalty to be imposed for a smoky vehicle offence may include: the age of the vehicle; the number of kilometers traveled; the nature of the maintenance and testing that has been done; whether the owner was aware that the vehicle was causing smoky emissions before the offence was detected; and whether the owner has previously received PINs or been convicted of smoky vehicle offences.
- Because significant penalties can be imposed, it is advisable for the owner of a diesel-powered truck to take proactive steps to avoid committing an offence, including carrying out regular maintenance; doing on-road smoke testing; not overloading vehicles; arranging for drivers and mechanics to attend a “Diesel Emissions Awareness Course” at a TAFE; and obtain accreditation as a participant in the RTA’s Clean Fleet Program.

Concordia Pacific has 30 years of experience in environmental law. If you have been charged with a smoky vehicle offence, we can appear for you in Court and can help you limit the consequences of any prosecution. Please contact us on **9233 4914** if you require our assistance.

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