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ENVIRONMENTAL OFFENCES IN NEW SOUTH WALES 1978.

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In 1978, there were 298 appearances for environmental offences before Courts of Petty Sessions in New South Wales. This represented 0.6 percent of the total number of appearances in Courts of Petty Sessions in that year, excluding appearances for drink/drive, drug and public drunkenness offences.

Breaches of any of the following Acts or Regulations constituted an environmental offence and were recorded by the Bureau.

1. Clean Waters Act, 1970.
2. Clean Air Act, 1961.
3. Public Health Act, 1902
4. Water Act, 1912-1966.
5. Navigable Waters Act.
6. Port Authority Smoke Control Regulations.
7. Port of Sydney Regulations.
8. Prevention of Oil Pollution of Navigable Waters Act, 1960.
9. Local Government Act, 1919.
10. Police Offences Act, 1901.

Note: The Bureau's collection does not include prosecutions under the Metropolitan Sewerage and Drainage Act and those offences which may have been dealt with by infringement notices, such as "littering" and "dumping rubbish on land".

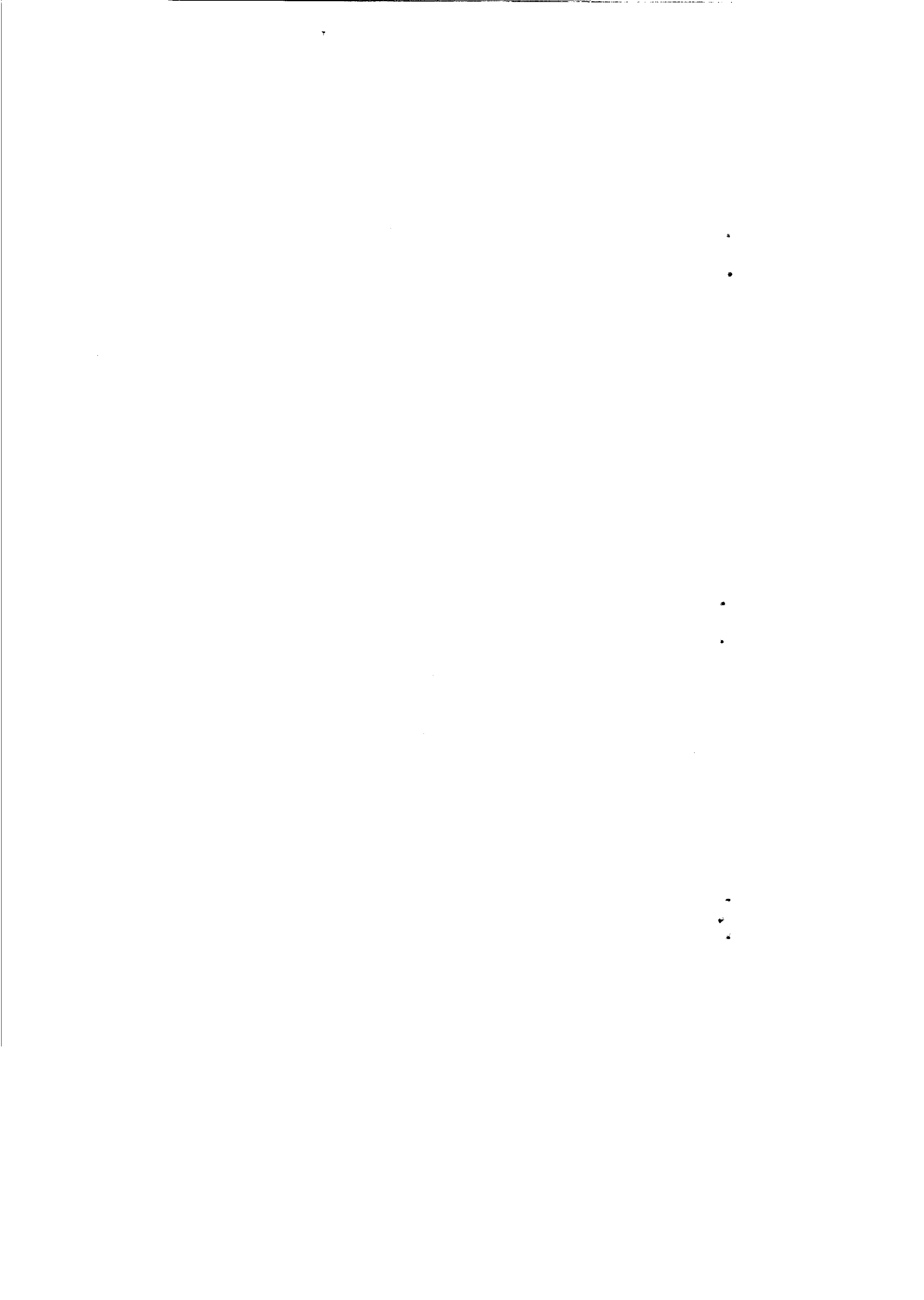


TABLE 1. Appearances for environmental offences before
Courts of Petty Sessions in N.S.W. 1978.

<u>OFFENCE</u>	<u>NUMBER</u>	<u>PERCENT</u>
A. Pollute Waters.	84	28.2
B. Scheduled premises not licenced.	9	3.0
C. Prescribed standard of air impurities exceeded - scheduled premises.	12	4.0
D. Not comply with notice to control air impurities - scheduled premises.	3	1.0
E. Emit black smoke from vessel.	2	0.6
F. Discharge oil from ship or land into navigable waters.	22	7.4
G. Deposit rubbish on land.	32	10.7
H. Deposit litter.	73	24.5
I. Occupiers fail to maintain and operate control equipment.	11	3.7
J. Occupiers fail to gain approval for work to be done on scheduled premises.	5	1.7
K. Fail to comply with notice - motor vehicle.	1	0.3
L. Motor vehicle emit excessive smoke/ Fail test.	37	12.4
M. Fail to comply with notice.	1	0.3
N. Use fuel burning equipment/open burning.	6	4.0
TOTAL	<u>298</u>	

Note: Scheduled premises are those workplaces which have been listed in the Acts.

Table 1 shows that the offences "pollute waters" and "depositing litter" constituted over half the appearances for environmental offences in 1978. "Excessive smoke being emitted from a motor vehicle" and "depositing rubbish on land" each accounted for more than 10 percent of the appearances. In contrast, from 1974 to 1976 "depositing litter" alone, dominated the appearances for environmental offences (see Table 2).

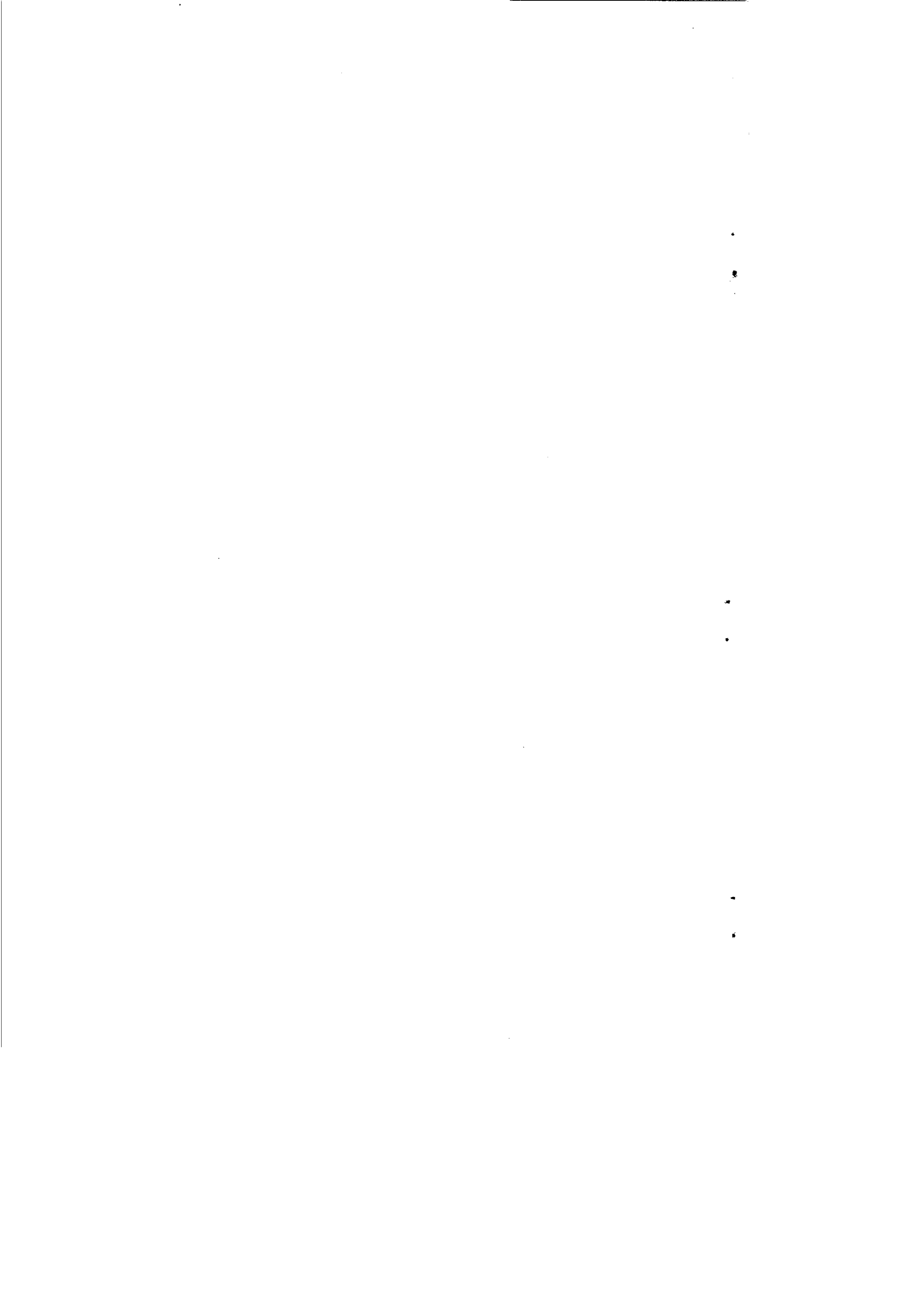


TABLE 2. Trends in the proportion of "pollute waters" and "depositing litter" appearances, 1974 to 1978.

	1974		1975		1976		1977		1978	
	No.	%	No.	%	No.	%	No.	%	No.	%
Pollute waters	5	2.6	15	2.6	53	9.3	43	17.5	84	28.2
Deposit litter	104	53.6	123	55.7	310	54.2	75	30.5	73	24.2

The proportion of appearances for "pollute waters" increased almost 11 times over the period 1974 to 1978. This increase may have been due to increased numbers of water pollution offences or alternatively to the prosecuting bodies' concentrating more on water pollution offenders.

At the same time there was a general decrease in the proportion of appearances for the offence "depositing litter". It dominated the appearances for environmental offences in 1974, 1975 and 1976. However, in 1977 the proportion of appearances for this offence dropped by almost 25 percent.

This decrease was a result of the extensive use of the infringement notice, especially by local councils, during that year.

Corporate bodies (i.e. Companies registered in New South Wales) were responsible for 60 percent of the 298 appearances for environmental offences in 1978. This figure may be compared with the prosecution figures supplied in the 1978/79 Annual Report¹ of the State Pollution Control Commission. It shows that of the 113 prosecutions for breaches of the environmental acts in the 78/79 financial year, 103 were directed at Corporate bodies.

1. Report of the State Pollution Control Commission for the year ended 30 June, 1979, pp. 184 to 187.

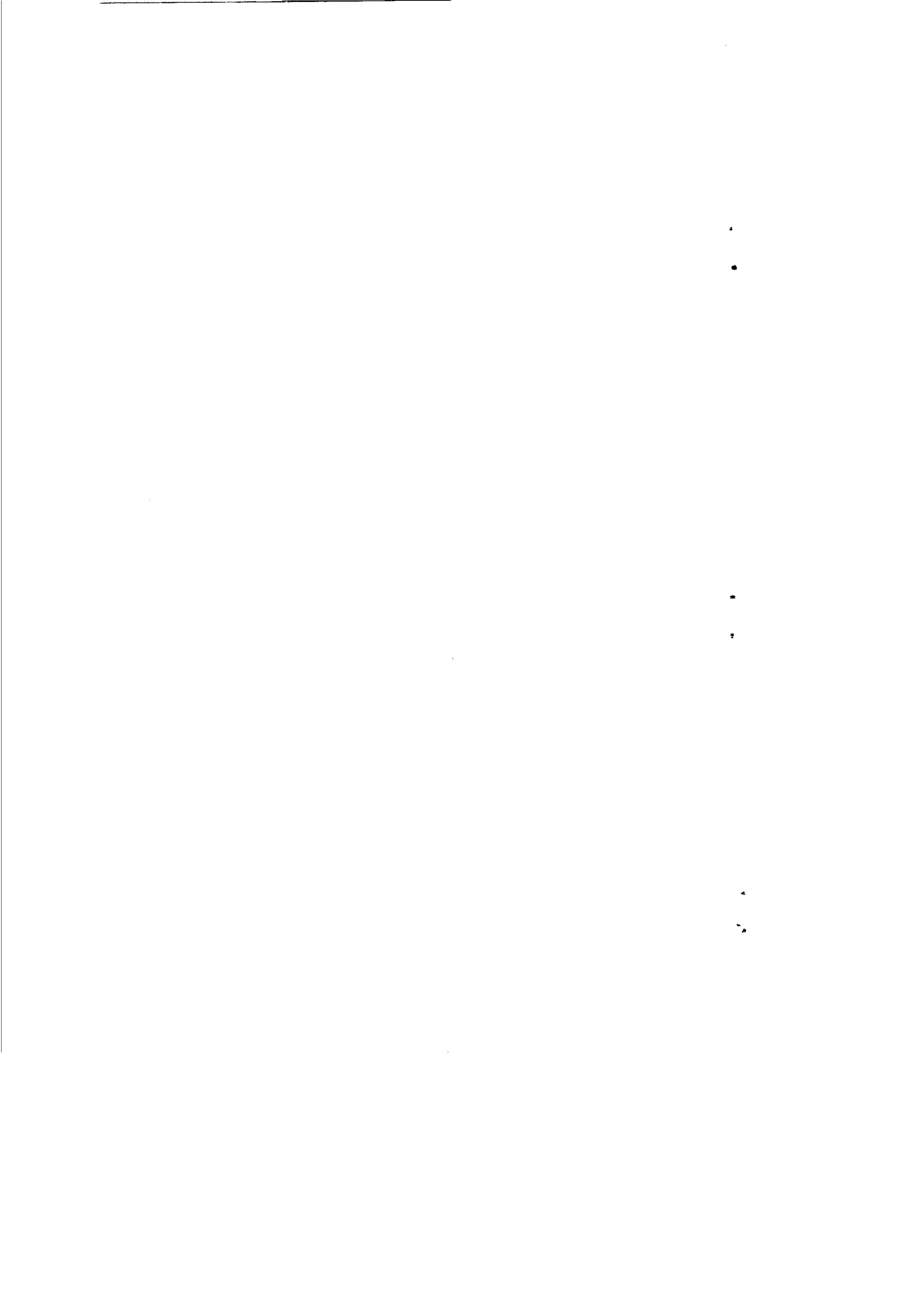
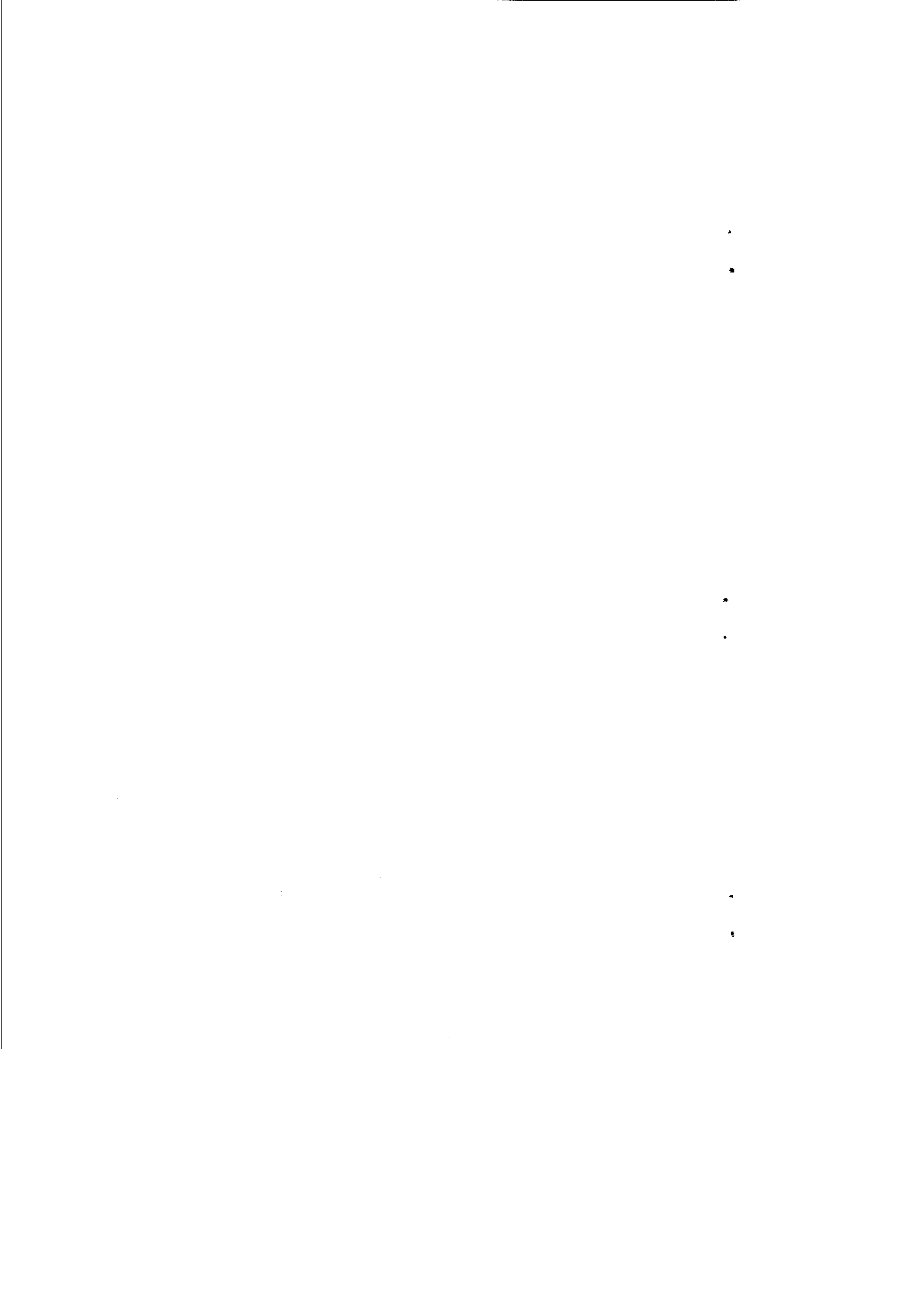


TABLE 3. Appearances for offence by type of offender, 1978.

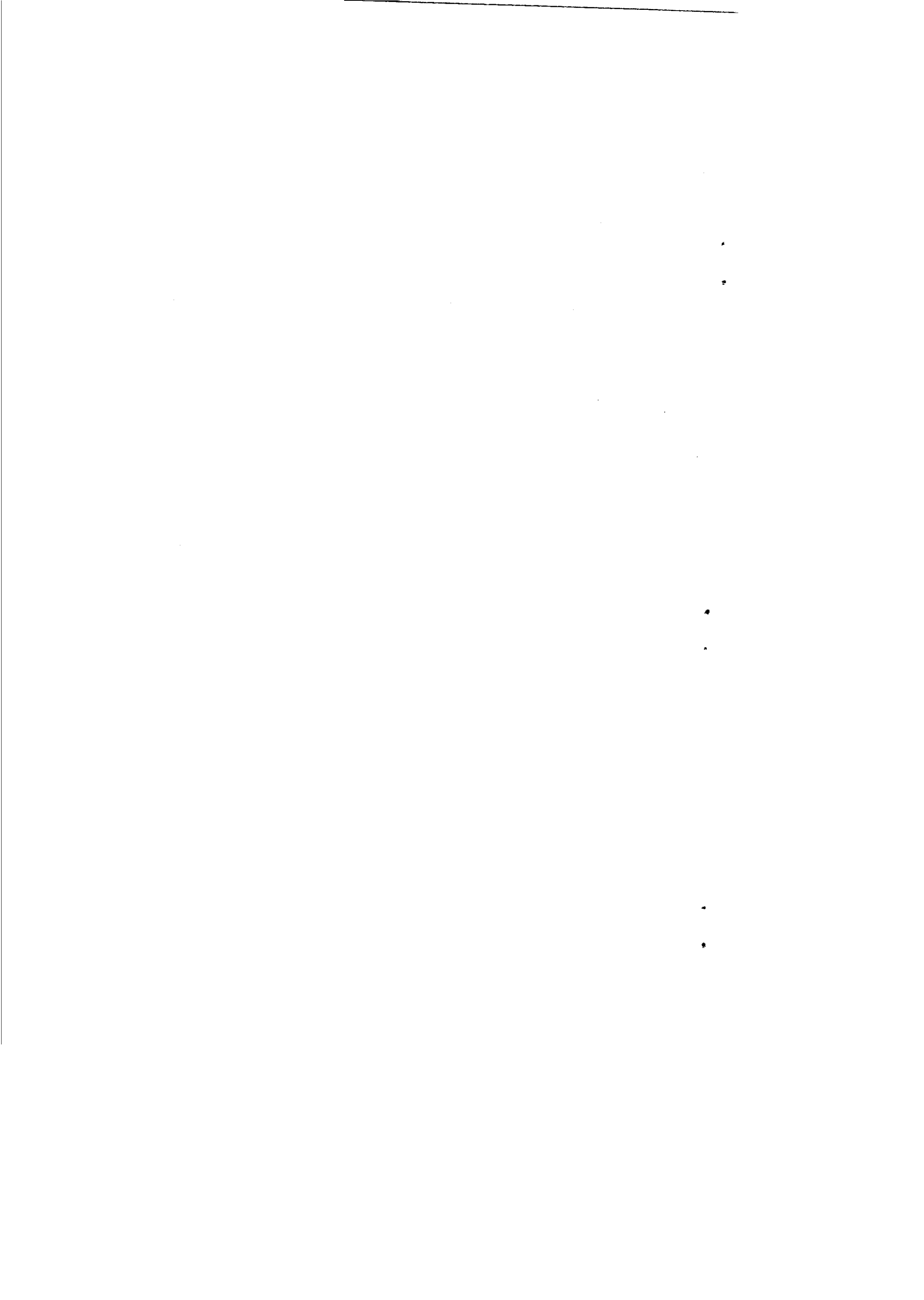
<u>OFFENCE.</u>	<u>TYPE OF OFFENDER.</u>					
	Corporate Body		Individual			
	No.	%	Male.		Female.	
		No.	%	No.	%	
A. Pollute Waters.	75	89.3	9	10.7	0	0.0
B. Scheduled premises not licenced.	9	100.0	-	-	-	-
C. Prescribed standard of air impurities exceeded - scheduled premises.	12	100.0	-	-	-	-
D. Not comply with notice to control air impurities - scheduled premises.	3	100.0	-	-	-	-
E. Emit black smoke from vessel.	0	0.0	2	100.0	0	0.0
F. Discharge oil from ship or land into navigable waters.	10	45.5	12	54.5	0	0.0
G. Deposit rubbish on land.	0	0.0	28	87.5	4	12.5
H. Deposit litter.	0	0.0	65	89.0	8	11.0
I. Occupiers fail to maintain and operate control equipment.	11	100.0	-	-	-	-
J. Occupiers fail to gain approval for work to be done on scheduled premises.	5	100.0	-	-	-	-
K. Fail to comply with notice - motor vehicle.	1	100.0	0	0.0	0	0.0
L. Motor vehicle emit excessive smoke/Fail test.	30	76.7	7	23.3	0	0.0
M. Fail to comply with notice.	0	0.0	1	100.0	0	0.0
N. Use fuel burning equipment/Open burning.	5	80.0	1	20.0	0	0.0

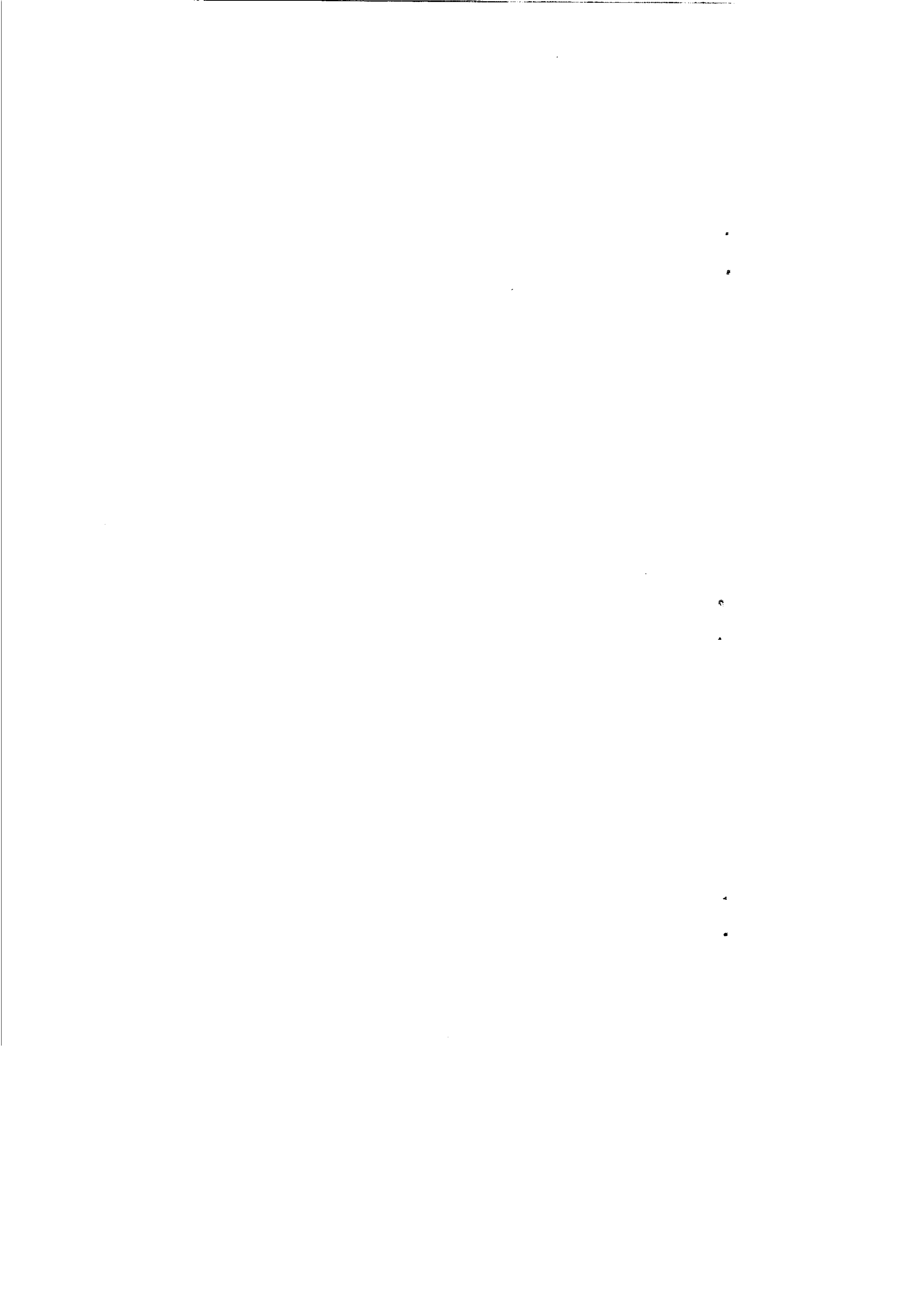
Note: Some of the offences are exclusively related to corporate bodies as indicated by the words scheduled premises.



Some offences are more associated with corporate bodies than others. For example almost 90 percent of the "pollute water" offences appearing before the courts were committed by companies. Conversely, individuals (especially males) were responsible for all the "deposit litter" offences appearing before the courts in 1978.

The above statistics have dealt with the number and type of environmental offences, as well as the type of offender that appeared before Courts of Petty Sessions in 1978. The next part of this bulletin considers the outcome of the courts with respect to those offences.





Of the 298 appearances for environmental offences, 280 resulted in convictions. For all but one of the offence types, 80 percent or more of the offenders received a fine. This has been the predominant trend for the four years preceding 1978. For the other 18 cases, the outcomes were divided between not guilty, withdrawn and dismissed or a 556A dismissal/recognizance (i.e. where the court finds the charge proved but does not proceed to a conviction and dismisses the charge or discharges the defendant conditionally on his entering a recognizance to be of good behaviour).

The table below shows the amount of the fines imposed for 144 of the environmental offences heard in 1978. This information was collected from two of the agencies authorised to prosecute environmental offenders, namely, the State Pollution Control Commission and the Maritime Services Board.

TABLE 5. Fines for environmental offences in 1978.
Offences.

Amount	Water	Air	Navigable Waters	Total
Less than \$100	0	16	5	21
\$100 less than \$200	5	13	4	22
\$200 less than \$300	7	17	5	29
\$300 less than \$400	3	9	0	12
\$400 less than \$500	1	9	2	12
\$500 less than \$1,000	21	4	2	27
\$1,000 less than \$1,500	5	4	1	10
\$1,500 less than \$2,000	4	0	1	5
\$2,000 less than \$3,000	3	3	0	6
TOTAL	49	75	20	144

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Although the figures in table 5 represent only half of all cases receiving fines, it can be seen that "pollute waters" offences appear to attract larger fines compared with the fines for breaches of the Clean Air and Navigable Waters Acts. The majority of the fines for polluting waters occurred within the \$500 to \$1,000 range.

It should be remembered that the size of the fine which may be imposed is predetermined to some extent by the fact that the majority of prosecutions for environmental offences are heard before Courts of Petty Sessions. While the maximum penalties, for environmental offences, provided by statute range up to \$50,000 the maximum fine which can be imposed by a Court of Petty Sessions is \$2,000.

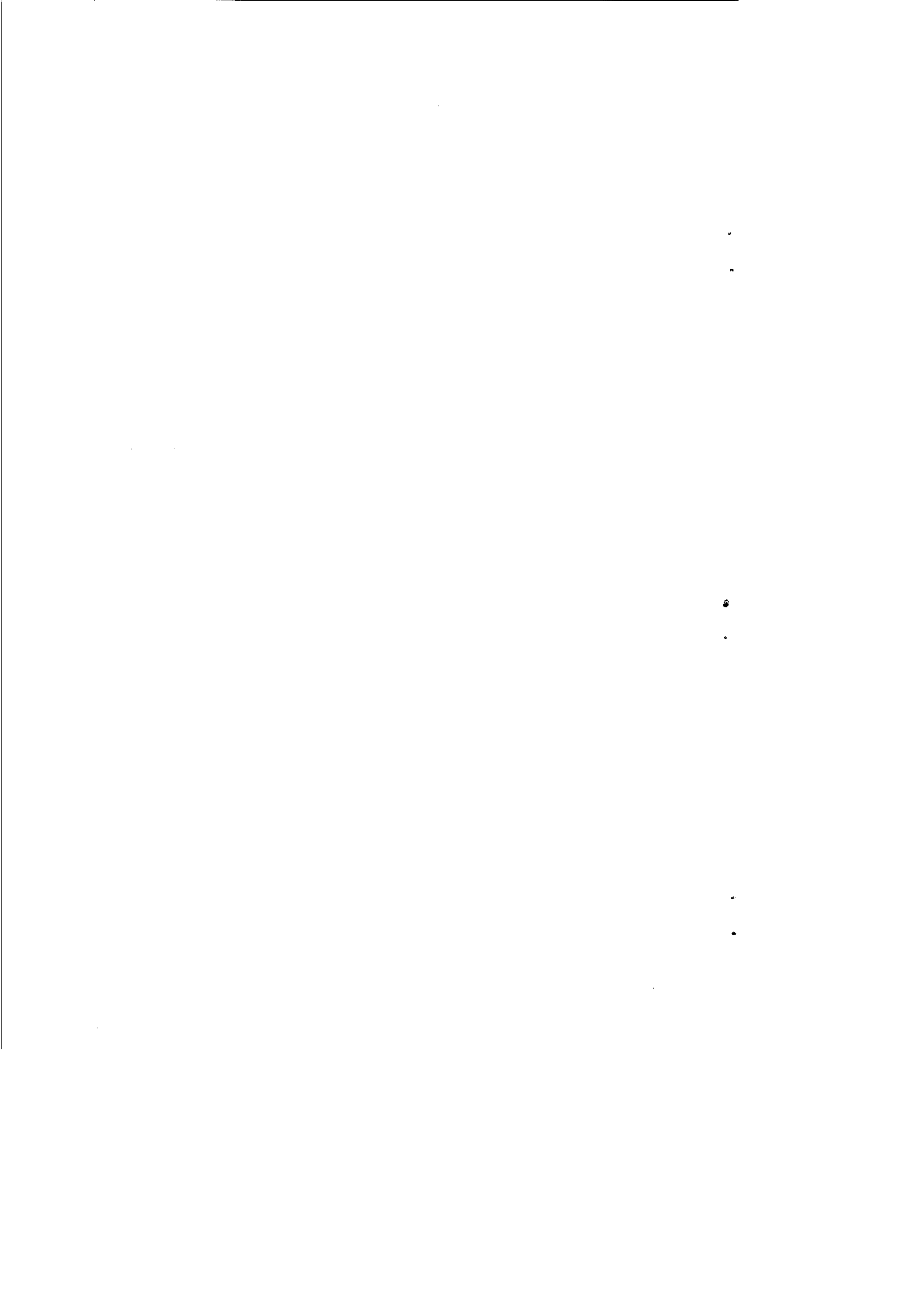


Table 6 shows the time taken to finalise environmental offences compared with all offences (except drink/drive, drug and drunkenness offences) that appeared before Courts of Petty Sessions in 1978.

TABLE 6. Time taken to finalize environmental offences compared with other offences appearing before N.S.W. Courts of Petty Sessions, 1978.

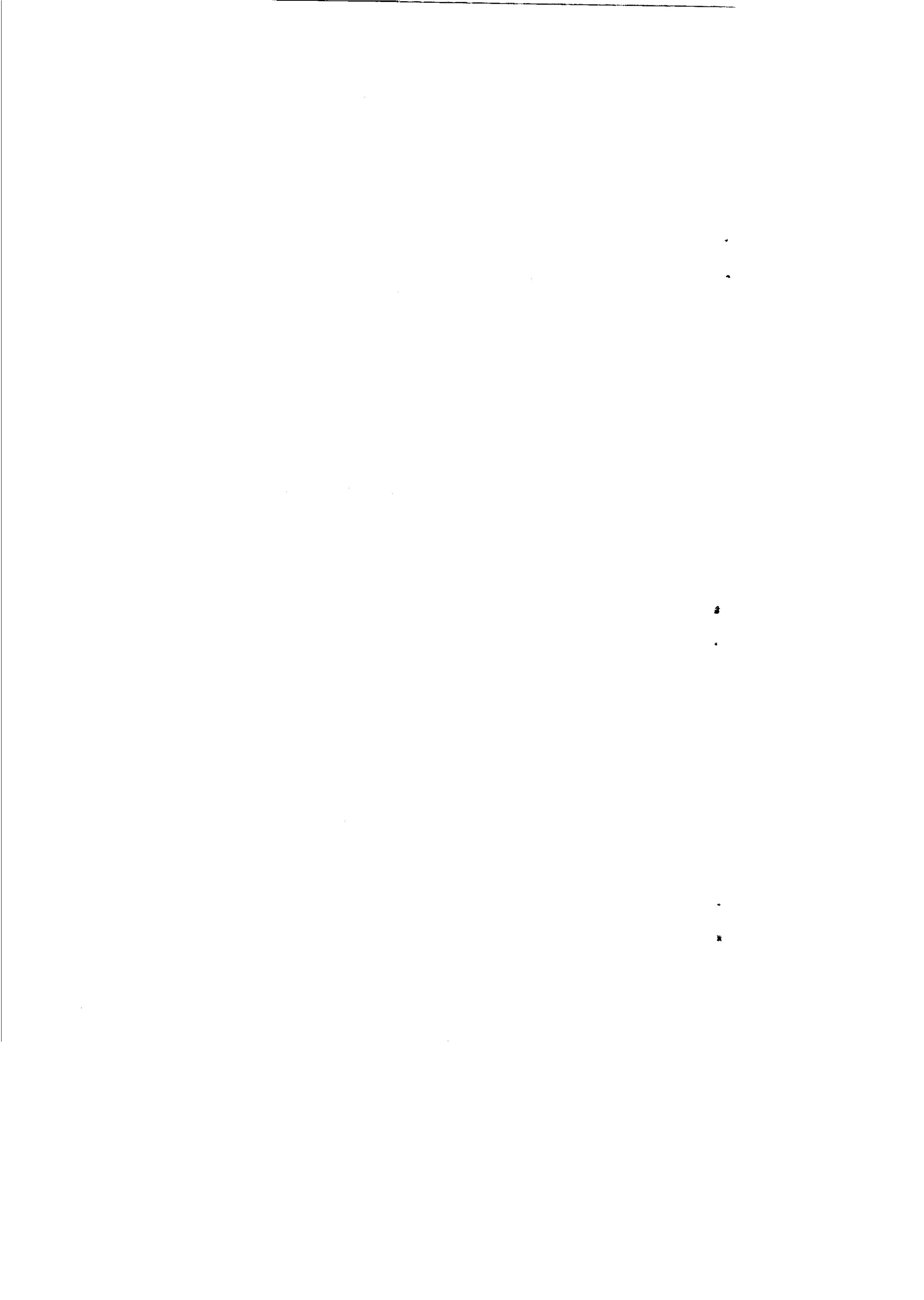
<u>Time taken.</u>	<u>Other Offences.</u>	<u>Environmental offences.</u>
	% of total finalized. (cumulative)	% of total finalized. (cumulative)
Less than 1 week	34.1	0.0
Less than 2 weeks	41.5	0.0
Less than 3 weeks	47.5	0.3
Less than 4 weeks	52.5	0.3
Less than 5 weeks	57.8	0.3
Less than 10 weeks	69.9	2.6
Less than 20 weeks	85.1	29.1
Less than 30 weeks	91.8	62.3
Less than 50 weeks	96.4	87.9

Note: Other offences include offences against the person; sexual offences; prostitution; fraud; break enter & steal; larceny; unlawful possession of property; found with intent; driving offences; betting & gaming; firearms & dangerous weapons; damage property; vagrancy; offensive behaviour and other.

Within 10 weeks from the date of offence almost 70 percent of other petty session appearances had been finalised. In contrast, only 2.6 percent of the environmental offences appearing before the courts were finalised in the same time.

Between 10 and 20 weeks from the date of offence, the number of environmental offences finalised in the courts had risen to about 30 percent, only half the percentage of finalised fraud cases.

Thirty weeks after the offence date, 92 percent of other offence appearances in Petty Sessions had been completed compared with only 62 percent of environmental offences.



Approximately one year after the environmental offences took place, 12 percent of them still remained unfinalised.

It is ironic that the length of time taken to determine the outcome of an environmental offence appearance reflects the length of time it takes for the environment to re-establish equilibrium following its degradation.

It is significant that despite the wealth of legislation concerning the natural environment so few environmental offences reached the courts and those that did took a substantial length of time to be finalised.

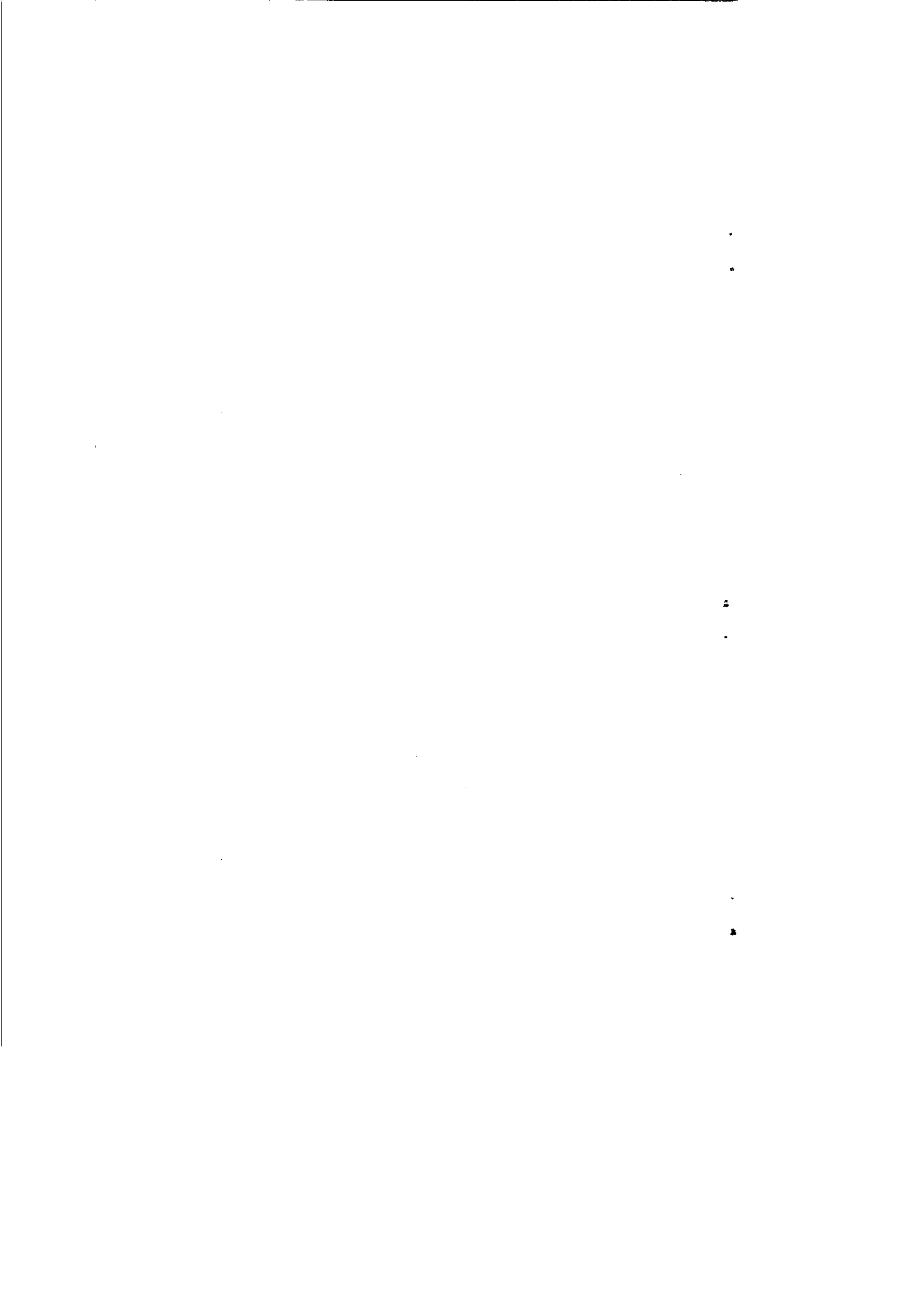
The main prosecuting agencies dealing with environmental offenders are the legal sections of the State Pollution Control Commission, the Maritime Services Board and Local Governments. These agencies employ inspectors who investigate breaches of the environmental acts. It is left to the agencies' discretion whether to institute criminal proceedings. Normally, the State Pollution Control Commission can order other Government instrumentalities to do anything within their power to protect the environment but if they refuse the matter may only be resolved by referring it to the Premier.

One of the issues raised by this bulletin requiring further research is the association between environmental offences and "corporate crime". Corporate bodies were responsible for 60 percent of the environmental offences that appeared before N.S.W. Court of Petty Sessions in 1978. This facet of "corporate crime" has had very little exposure from criminologists and as a result, "corporate crime" has been conceived only in terms of financial chicanery, whilst the degradation of the environment by companies has been largely unrecognized.

Some of the statistics presented in this bulletin highlight gaps in the way the present legal process deals with environmental offenders.

1. Environmental offence appearances in 1978 were less than 1 percent of the total number of appearances before N.S.W. Courts of Petty Sessions, while no environmental offence appearances were recorded in the higher courts in 1978.

This represents a very small number of prosecutions initiated by the agencies authorised to enforce breaches of the environmental acts. However, we may be wrong in assuming that the number of prosecutions handled by these agencies is an indication of environmental protection. Some success may have been achieved by negotiating with the offenders resulting in a voluntary compliance with the environmental regulations but we are not aware of any evidence which substantiates this claim.



2. It should be emphasised that while the criminal courts are being used as a means of environmental control, the cases were dealt with according to the ordinary rules of the criminal process. The statistics are therefore more likely to reflect principles and attitudes of the criminal process than those of environmental protection.

This is surely evident when we consider that each of the 280 environmental offenders convicted in courts of petty sessions received a fine of not more than \$3,000.

Provisions are made by statute for a maximum penalty of \$50,000 to be applied to environmental offenders, however the maximum fine a Court of Petty Sessions can apply is \$2,000. These penalties allow the environmental offender to regard the fine as simply a "licence to pollute".

3. The excessive length of time taken to finalize the cases of environmental offenders as compared to other offenders appearing before the courts in 1978 is a matter for concern.

