

Guide to Notices

Under the Protection of the Environment Operations Act 1997

Department of **Environment & Climate Change** NSW



Note that the Environment Protection Authority (EPA) is now part of the Department of Environment and Climate Change NSW (DECC). DECC staff exercise certain functions of the EPA under environmental legislation. For more information or help with notices, contact your nearest DECC office.

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DECC 2009/387
ISBN 9 781 74232 297 1
June 2009

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Acronyms

ARA: appropriate regulatory authority

DECC: Department of Environment and Climate Change NSW

EPA: NSW Environment Protection Authority (EPA), now part of the Department of Environment and Climate Change NSW (DECC). DECC staff exercise certain functions of the EPA under environmental legislation.

POEO Act: *Protection of the Environment Operations Act 1997*

POEO (General) Regulation 2009: Protection of the Environment Operations (General) Regulation 2009

1 Introduction

This document is a guide to the powers available to the NSW Environment Protection Authority (EPA) and other regulatory authorities to issue notices for environment protection under the key NSW pollution prevention and control legislation, including the *Protection of the Environment Operations Act 1997* (POEO Act).

Note that the EPA is now part of the Department of Environment and Climate Change NSW (DECC). DECC staff exercise certain functions of the EPA under environmental legislation.

1.1 The appropriate regulatory authority concept

The POEO Act enables certain regulatory responsibilities of the EPA and of local authorities, such as councils, to be carried out through the medium of an ‘appropriate regulatory authority’ (ARA) – see s.6 of the Act. Table 1 shows the ARAs and their responsibilities.

Table 1: Appropriate regulatory authorities and their responsibilities

| Authority | Responsible for: |
|--|---|
| Environment Protection Authority (EPA) | <ul style="list-style-type: none"> • All scheduled activities • Activities and premises regulated by environment protection licences, including all licences to control water pollution from non-scheduled activities • Activities carried on by the state or a public authority, whether at premises occupied by the state or a public authority or otherwise • Matters arising under Chapter 7, clause 97 (Burning of biomaterials in electricity generating works) of the POEO (General) Regulation 2009 • Non-scheduled activities on the route of the Inner West Light Rail System operating in Sydney (except for buildings or other structures that are taken to be included in the route by cl.13(1)(b) of the Transport Administration (General) Regulation 2000) (cl.89 of the POEO (General) Regulation 2009) • Outdoor entertainment activities, being concerts, festivals, cinematic and theatrical events and sporting events, and any rehearsals, sound checks or other preparations for the activities, carried on outdoors and involving the use of sound amplification equipment, and 200 or more people, at any of the following venues (cl.90 of the POEO (General) Regulation 2009): <ul style="list-style-type: none"> – Trust lands within the meaning of The <i>Royal Botanic Garden and Domain Trust Act 1980</i> including the Royal Botanic Gardens and Domain – Trust lands within the meaning of the <i>Centennial Park and Moore Park Trust Act 1983</i> including Centennial Park and Moore Park – Darling Harbour area within the meaning of the <i>Sydney Harbour Foreshore Authority Regulation 2006</i> – Trust lands within the meaning of the <i>Parramatta Stadium Trust Act 1988</i> including Parramatta Stadium – Trust lands within the meaning of the <i>Sydney Cricket and Sports Ground Act 1978</i> including the Sydney Cricket Ground and Sydney Football Stadium – Sydney Olympic Park Development Area within the meaning of the <i>Sydney Olympic Park Authority Act 2001</i> – the Opera House premises within the meaning of the <i>Sydney Opera House Trust Act 1961</i>. |

Table 1 (continued)

| Authority | Responsible for: |
|--|--|
| Marine authority (that is, the Minister administering the <i>Ports Corporatisation and Waterways Management Act 1995</i> or the Waterways Authority) | <ul style="list-style-type: none"> Noise control notices regarding vessels in navigable waters, and premises used in connection with vessels that are situated adjacent to, or partly or wholly over, navigable waters (s.263 of the POEO Act) |
| Marine Parks Authority | <ul style="list-style-type: none"> Non-scheduled activities in marine parks except those for which the EPA is ARA or for which a public authority other than a local authority or the Marine Parks Authority, is declared under s.6(3) of the POEO Act to be the ARA (cl.85 of the POEO (General) Regulation 2009) |
| Maritime Authority | <ul style="list-style-type: none"> Non-scheduled activities involving a non-piloted vessel in navigable waters, except those in marine parks or those for which the EPA is ARA or for which a public authority (other than a local authority or the Maritime Authority) is declared under s.6(3) of the POEO Act to be the ARA (cl.86 of the POEO (General) Regulation 2009) |
| Director General of the Department of Environment and Climate Change (the DG of DECC) | <ul style="list-style-type: none"> Non-scheduled activities in Kosciuszko National Park except those for which the EPA is ARA or for which a public authority, other than a local authority or the DG of DECC, is declared under s.6(3) of the POEO Act to be the ARA (cl.87 of the POEO (General) Regulation 2009) |
| Local councils | <ul style="list-style-type: none"> All other non-scheduled activities in a council area |
| Lord Howe Island Board | <ul style="list-style-type: none"> All other non-scheduled activities on Lord Howe Island |
| Western Lands Commissioner | <ul style="list-style-type: none"> All other non-scheduled activities in the Western Division of the state, except in local council areas |
| Sydney Catchment Authority (SCA) | <ul style="list-style-type: none"> Certain functions of the EPA or any other regulatory authority (including ARAs) for certain non-scheduled activities carried out or proposed to be carried out within or outside a catchment area which may affect that catchment area. The SCA can exercise these functions only to protect catchment areas or protect and enhance the water quality in catchment areas. The SCA cannot exercise these functions for premises or activities licensed under an environment protection licence (including non-scheduled activities) or for activities carried on by the SCA (Part 2 of the Sydney Water Catchment Management (Environment Protection) Regulation 2001). |

Note: Where there is no other ARA, the EPA is the default ARA.

Local councils, the Lord Howe Island Board and the Western Lands Commissioner are the 'local authorities' referred to in the POEO Act.

A local authority may only exercise its functions under the POEO Act as an ARA or otherwise in, or in relation to, its area. The local authority may only exercise its powers outside its area when the powers are exercised 'in relation to' the area. For example, a council may issue a notice to an interstate company that has disposed of waste in the council's area. Section 212C of the POEO Act deals with actions taken by an incorrect regulatory authority.

2 Notices under the POEO Act

The principal notices that are relevant to ARAs that may be issued under the POEO Act are:

- clean-up notices* (section 2.1 and Appendix 1)
- prevention notices* (section 2.2 and Appendix 2)
- prohibition notices* (section 2.3)
- compliance cost notices (section 2.4 and Appendices 3a and 3b)
- smoke abatement notices (section 2.5 and Appendix 4)
- noise control notices (section 2.6 and Appendix 5)
- notices to provide information and records (section 2.7 and Appendix 6).

*These notices are collectively called 'environment protection notices' in the POEO Act (s.90).

Note: Prohibition notices can only be issued by the Minister on the recommendation of the EPA so an example of these notices is not given in the Appendices. Smoke abatement notices can only be issued by an authorised officer of local authority ARAs.

There are a number of other notices that relate to licences and that may be issued by the EPA (for example, notices that vary licence conditions), but those are not covered in this guide.

All notices issued on behalf of an ARA must be issued by a person who has the delegated authority from the ARA to issue the notice. This person does not necessarily have to be an 'authorised officer' under the POEO Act, except in the case of issuing smoke abatement notices. Note that authorised officers may issue several other types of notice – see Chapter 3.

The POEO Act may give a person or authority the power to delegate their functions. ARAs that have this power should prepare written legal instruments delegating their powers to issue particular notices under the POEO Act to appropriate managers or senior officers. Instruments of delegation should be prepared in accordance with the legislation conferring the powers of delegation and in accordance with s.49 of the *Interpretation Act 1987*.

The following sections outline the notices that are most likely to be issued by ARAs.

2.1 Clean-up notices

See the Glossary for the meanings of 'clean-up action' and 'pollution incident'.

When may a clean-up notice be issued?

The ARA may issue a clean-up notice requiring a person to take specified clean-up action when they reasonably suspect that a pollution incident, as defined in the POEO Act, has occurred or is occurring – s.91(1). The EPA may issue a clean-up notice even if it is not the ARA in an emergency situation – s.91(2).

Clean-up notices may **not** be used for any incidents, or circumstances involving only noise (see definition of 'pollution incident' in the Glossary).

A clean-up notice may be issued when a leak, spill or other escape or deposit of a substance that results in pollution is likely to occur, has occurred or is occurring, not just once it has occurred, as clean-up action may include: 'action to prevent, minimise, remove, disperse, destroy or mitigate any pollution resulting or likely to result from the [pollution] incident' (see the Glossary for the full definition of 'clean-up action' and for the definition of 'pollution incident').

Who may a clean-up notice be issued to?

A clean-up notice may be issued to:

- an occupier of premises at or from which the ARA reasonably suspects that a pollution incident has occurred or is occurring
- a person who is reasonably suspected of causing or of having caused the pollution incident (the polluter) – s.91(1).

A public authority other than a state-owned corporation that is not the occupier or polluter may also be directed by the EPA to clean up a pollution incident. A public authority of this sort may also undertake a clean-up voluntarily. Such a notice may be issued by the EPA and voluntary action taken by a public authority regardless of whether the EPA is the ARA, and even if others have been directed to clean up (s.92).

What action may be required by a clean-up notice?

A clean-up notice must specify the clean-up action that is required. This may include, if it is reasonable to do so in the circumstances, a requirement for immediate action. A list of examples of measures that constitute clean-up action are set out in the definition of 'clean-up action' in the POEO Act (also see the Glossary). A clean-up notice may also require the recipient to provide reports to the ARA on the progress of the clean-up action – s.91(3).

Examples of directions that may be given by a clean-up notice are:

- a direction to put out booms and absorbent matting immediately to prevent or minimise oil spreading from a spill
- a direction to the occupier of a saleyard to remove manure from a sensitive location within 48 hours of the direction being given.

There are many other examples of situations where a clean-up notice may be issued. If you have any doubt as to whether issuing a clean-up notice is the appropriate action, seek legal advice from your organisation's legal staff.

A sample clean-up notice is provided in Appendix 1.

How is a clean-up notice given?

An ARA may issue a clean-up direction in writing, or may give the direction orally via a person with delegated or other authority from the ARA. An oral clean-up direction must be confirmed by a written clean-up notice from the ARA (or delegate) within 72 hours, or it ceases to have effect – s.93.

There is no right of appeal against a clean-up notice.

Procedural fairness

The Land and Environment Court has confirmed that ARAs have a duty to afford procedural fairness when issuing clean-up notices (*Liverpool City Council v L Cauchi & Ors* [2005] NSWLEC 676). ARAs should seek legal advice on the extent of their procedural fairness obligations when issuing clean-up notices.

The extent of the obligations imposed by that duty will vary depending on the particular circumstances of the case. The duty to afford procedural fairness may require an ARA to consult with the proposed recipient of a notice for example, by providing them with a copy of the draft notice to give that recipient the right to be heard before the decision to issue the notice is made. Note that the need for urgent action is likely to minimise rather than entirely exclude the need for procedural fairness. If the notice is directed to a person other than the polluter, consider whether consultation should take place with the polluter before the decision to issue the notice is made.

Enforcing clean-up notices

It is an offence to fail to comply with a clean-up notice, without a reasonable excuse – s.91(5).

A penalty notice may be issued for failure to comply with a clean-up notice. The penalty notice imposes a fine of \$750 for individuals and \$1500 for corporations. For more serious breaches that are dealt with by a court, the maximum penalty that may be imposed by the court is:

- \$1,000,000 for a corporation, with a further \$120,000 each day for a continuing offence
- \$250,000 for an individual, with a further \$60,000 each day for a continuing offence.

An ARA, or any other person, may also obtain an order from the Land and Environment Court directing the recipient of a clean-up notice to comply with the notice – see Part 8.4 of the POEO Act. Seek legal advice if a clean-up notice needs to be enforced.

Recovery of clean-up costs from polluter

If the person directed to clean up did not cause the pollution, the costs of complying with the clean-up notice may be recovered by that person from the polluter as a debt in a court of competent jurisdiction – s.91(4).

Administrative fee for clean-up notices

An ARA may recover the administrative costs of preparing and giving clean-up notices. The recipient of a clean-up notice must pay a fee of \$433 to the authority that issued the notice within 30 days of receiving it – s.94(2), cl.99 of the POEO (General) Regulation 2009. It is an offence not to pay the fee within the required time, and a fine of up to \$22,000 may be imposed – s.94(4). The ARA has the discretionary power to extend the time for payment, on the application of the recipient, or to waive all or part of the fee on the application of the recipient or on its own initiative – s.94. Examples of circumstances in which ARAs might consider waiving the fee are:

- demonstrated cases of hardship or bankruptcy
- where the notice has been issued to a charitable organisation.

Note: A fee is not payable to vary an environment protection notice – s.110(5).

2.2 Prevention notices

When may a prevention notice be issued?

The ARA may issue a prevention notice when it reasonably suspects that an activity has been or is being carried out in an 'environmentally unsatisfactory manner' as defined in s.96 of the POEO Act (see the Glossary).

A prevention notice would generally not be issued for an activity that is regulated by an environment protection licence if the problem can be resolved by placing appropriate conditions on the licence.

Who may a prevention notice be issued to?

Depending on the circumstances, a prevention notice may be issued to:

- the occupier of the premises concerned
- the person who is carrying on the activity in an environmentally unsatisfactory manner – s.96(2).

When the notice is served on the occupier, but the occupier is not the person carrying out the activity, the occupier must take all available steps to cause the action specified in the notice to be taken – s.96(4).

What action may be required by a prevention notice?

Prevention notices operate from the day they are given, unless another date is specified, so an ARA may require action within the appeal period. However, the recipient may apply to the Land and Environment Court for a stay of the notice at the time of appeal (s.99).

A prevention notice must specify the action that must be taken to ensure that the activity is carried out in an environmentally satisfactory manner, and the period within which the action must be taken – s.96(2). Examples of the types of preventive action that may be required to be taken are listed in s.96(3) of the POEO Act and are reproduced in the Glossary. A prevention notice may require the recipient to prepare reports on progress in carrying out the action required – s.96(5).

Examples of the directions that may be given by prevention notices are:

- a direction to install bunding within two months at a waste-oil collection area to prevent spills from the collection area
- a direction to the occupier of a garden nursery to develop and submit within six months a management plan to control waste and odours from compost storage.

There are many other examples of situations in which a prevention notice may be issued. If you have any doubt as to whether issuing a prevention notice is appropriate, seek legal advice from your organisation's legal staff.

When preparing the prevention notice, the ARA should consider whether the action specified in the notice will require the recipient to obtain development consent or any other approval. The ARA should draft the prevention notice to allow the recipient sufficient time to obtain the appropriate consent/approval, where this is the case.

A sample prevention notice is provided in Appendix 2.

Procedural fairness

The Land and Environment Court has confirmed that ARAs have a duty to afford procedural fairness when issuing environment protection notices including prevention notices (*Liverpool City Council v L Cauchi & Ors* [2005] NSWLEC 676). ARAs should seek legal advice on the extent of their procedural fairness obligations when issuing prevention notices.

The extent of the obligations imposed by that duty will vary from case to case. The duty to afford procedural fairness may require an ARA to consult with the proposed recipient of a notice, for example, by giving them a copy of the draft notice, to give that recipient a right to be heard before the decision to issue the notice is made. If the notice is directed to a person other than the person carrying out the activity, consider whether consultation should take place with the person carrying out the activity before the decision to issue the notice is made.

Preventative action for water pollution

Section 96(3A) of the POEO Act provides that:

The appropriate regulatory authority, when determining the action to be specified in a [prevention] notice relating to an activity that causes, is likely to cause or has caused water pollution, must consider:

- a) the environmental values of water affected by the activity, and
- b) the practical measures that could be taken to restore or maintain those environmental values, and
- c) if the appropriate regulatory authority is not the EPA – any guidelines issued by the EPA to the authority relating to the exercise of functions under this section.

DECC has issued the following guidelines for the purposes of s.96(3A)(c) – *Considering environmental values of water when issuing prevention notices* (DEC 2006). The guidelines are available at www.environment.nsw.gov.au/water/envwater.htm. Further guidelines may be issued for the purposes of this subsection from time to time.

'Environmental values of water' refer to values specified in *Australian and New Zealand guidelines for fresh and marine water quality 2000* (ANZECC/ARMCANZ 2000). Refer to the Glossary for a full definition and to Chapter 5: 'Further reading' for details of where to obtain a copy.

How is a prevention notice given?

An ARA must give a prevention notice in writing – s.96(2).

Operation of prevention notices and appeals

A prevention notice, or a variation of a prevention notice, operates from the day the notice is given unless a later date is specified, so an ARA may require action within the appeal period.

A person given a prevention notice may appeal against it to the Land and Environment Court within 21 days of being served with it, unless otherwise specified in the Regulations – s.289. If the recipient appeals against the notice or its variation, compliance with the notice is still required unless the Land and Environment Court directs that the notice is stayed. In this case the notice does not operate until the stay ceases, or the Land and Environment Court confirms the notice, or the appeal is withdrawn, whichever occurs first (s.99).

Enforcing prevention notices

It is an offence to fail to comply with a prevention notice – s.97. A penalty notice may be issued for failure to comply. The penalty notice imposes a fine of \$750 for individuals and \$1500 for corporations. For serious offences that are dealt with by a court, the maximum penalty that may be imposed by the court is:

- \$1,000,000 for a corporation, with a further \$120,000 each day for a continuing offence
- \$250,000 for an individual, with a further \$60,000 each day for a continuing offence.

An ARA or any other person may also obtain an order from the Land and Environment Court directing the recipient of a prevention notice to comply with the notice – see Part 8.4 of the POEO Act. Seek legal advice if a prevention notice needs to be enforced.

Action taken by the appropriate regulatory authority and recovery of costs

If a person does not comply with a prevention notice given to them, the ARA may take action, either itself or through its employees, agents or contractors, to have the notice complied with, separately from starting any criminal proceedings – s.98. The ARA may then require the person concerned to pay for all or any reasonable costs and expenses it incurred in doing so – s.104(4).

Administrative fee for prevention notices

An ARA may also recover the administrative costs of preparing and giving prevention notices. The recipient of a prevention notice must pay the authority that issued it a fee of \$433 within 30 days of receiving the notice (s.99 of the POEO (General) Regulation 2009). The fee is **not** payable during an appeal against the notice to the Land and Environment Court. If the court does not invalidate the prevention notice, the fee is then payable within 30 days of the court's decision. It is an offence not to pay the fee, and a fine of up to \$22,000 may be imposed – s.100(6). However, the ARA has the discretionary power to extend the time for payment, on application of the recipient, or to waive the fee – s.100(3). Examples of circumstances in which ARAs might consider waiving the fee are:

- demonstrated cases of hardship or bankruptcy
- where the notice has been issued to a charitable organisation.

Note: A fee is not payable to vary an environment protection notice – s.110(5).

2.3 Prohibition notices

Prohibition notices are not discussed in detail in this guide, as they are issued only by the Minister administering the POEO Act on the recommendation of the EPA. It is likely that they will be issued only on rare occasions.

A prohibition notice may be issued by the Minister in circumstances where the EPA believes that the emission or discharge of pollutants from, or within, any premises where any activity is carried on:

- is causing, or is likely to cause, harm to the environment
- is, or is likely to be, injurious to public health
- is causing, or is likely to cause, discomfort or inconvenience to anyone not associated with the management or operation of the activity

- is generating a reason for the notice to be issued – s.101(1).

Prohibition notices must be issued in writing, and may be issued to the occupier of the premises or the person carrying out the activity. A prohibition notice may direct them to cease carrying out the activity, or any specified aspect of it, for the period specified in the notice. If the notice is served on the occupier but the occupier is not the person carrying out the activity, the occupier must take all reasonable steps to cause the action to be taken (s.101).

The administrative costs of issuing or varying a prohibition notice are not recoverable, and there is no right of appeal against a prohibition notice. Non-compliance with a prohibition notice carries the same maximum penalties as non-compliance with clean-up and prevention notices.

2.4 Compliance cost notices

What does a compliance cost notice do?

A compliance cost notice requires the person or occupier of the premises to pay all or any reasonable costs and expenses incurred by the ARA in connection with certain action it has taken under Parts 4.2 or 4.3 or s.103 of the POEO Act (s.104). A compliance cost notice can also be issued for noise control notices, requiring the recipient to pay the ARA all the reasonable costs and expenses the ARA incurred in connection with an action it has taken under Part 8.6, Division 1 of the POEO Act (s.267B).

When may a compliance cost notice be issued?

An ARA may issue a compliance cost notice to recover costs it has incurred in connection with:

- monitoring action required by, or ensuring compliance with, a clean-up or prevention notice or any other associated matters – s.104(1) and s.104(3)
- taking action where a person failed to comply with a prevention or prohibition notice – s.104(4)
- monitoring action required by, or ensuring compliance with, a noise control notice or any other associated matters – s.267B.

A compliance cost notice may also be issued by a public authority if the public authority has taken clean-up action under s.92, whether or not at the direction of the EPA – s.104(2).

Note that the EPA cannot issue a compliance cost notice for prevention notices.

A sample compliance cost notice for s.104 is provided in Appendix 3a.

A sample compliance cost notice for s.267B is provided in Appendix 3b.

Who may a compliance cost notice be issued to?

A compliance cost notice may be issued to:

- the person who was originally issued with the clean-up, prevention, prohibition or noise

control notice – s.104(1), s.104(3), s.104(4) and s.267B

- where a public authority has taken clean-up action under s 92, the occupier of the premises concerned or the person reasonably suspected of causing the pollution incident – s.104(2).

How is a compliance cost notice given?

An ARA or public authority must give a compliance cost notice in writing – s.104, s.276B.

Maintaining records for cost recovery

All claims for cost recovery using compliance cost notices must be justifiable. Unreasonable expense claims and over-servicing may be challenged in court. Regulatory authorities should keep detailed records, including receipts, of all relevant expenses incurred, and should develop a standard form for recording staff time spent in relation to clean-up, prevention, prohibition and noise control notices for which follow-up compliance cost notices may be issued.

Enforcing compliance cost notices and recovery of compliance costs

If a person fails to comply with a compliance cost notice, the ARA or public authority may recover any unpaid amounts specified in the compliance cost notice as a debt in a court of competent jurisdiction. A person served with a compliance cost notice who was not the person who caused the pollution or noise must still pay the amount specified in the compliance cost notice, but may then recover that amount from the person who caused the pollution or noise – s.105, s.267B(2) and (3).

An ARA may also obtain orders in the Land and Environment Court or a local court to recover costs and expenses and obtain compensation for offences proven under the POEO Act – see Part 8.3. Seek legal advice if compliance cost notices need to be enforced.

The administrative costs of issuing a compliance cost notice (for example, for drafting the notice) are not recoverable, and there is no right of appeal against a compliance cost notice.

Seeking charges on land

Important note: the following applies to the recovery of costs for compliance cost notices issued under s.104 only (that is, it does not relate to notices issued under s.267B).

To increase its chances of recovering costs, an ARA or public authority may apply to the Registrar-General at the Land Titles Office to register its compliance cost notice for any land owned by the person the notice was given to. On registration of the notice, a charge on the land is created to secure payment of the amount specified in the notice to the authority concerned (ss.106–107). This charge will cease to have effect:

- on payment to the ARA or public authority of the amount concerned, or
- on the sale or other disposition of the property with the written consent of the authority, or
- on the sale of the land to a purchaser in good faith for value who, at the time of the sale, had no notice of the charge – s.107(3).

An ARA or public authority lodging or registering a compliance cost notice under s.106 may require the recipient of the notice to pay any of the reasonable costs and expenses the

authority incurred in lodging or registering the notice and in registering any resulting charge, including the costs of administering the charge. This must be done by notice in writing – s.107(8). Unpaid amounts can be recovered as a debt in a court of competent jurisdiction.

2.5 Smoke abatement notices

When may a smoke abatement notice be issued?

An authorised officer of an ARA which is a local authority may issue a smoke abatement notice if it appears to the authorised officer that excessive smoke is being, or has been, emitted from a chimney on or in residential premises. The notice must be issued within 7 days of the observation – s.135B(1). The terms ‘excessive smoke’, ‘chimney’ and ‘residential premises’ are defined in s.135A of the POEO Act and in the Glossary. ‘Local authority’ is also defined in the Glossary.

A smoke abatement notice cannot be issued for a chimney that is in or on an incinerator or is used only for smoke originating from outside a residence – s.135B(4) – as these matters are regulated under the POEO (Control of Burning) Regulation 2000.

Suggested methods for making and recording observations of excessive smoke can be found on DECC’s website: www.environment.nsw.gov.au/woodsmoke.

To whom may a smoke abatement notice be issued?

The smoke abatement notice may be issued to the person whom the authorised officer believes to be the occupier of the premises – s.135B(1). This can include the tenant of a rental property.

What does a smoke abatement notice do and how long is it in effect for?

A smoke abatement notice directs a person to ensure that excessive smoke is not emitted from the chimney at any time after 21 days following the giving of the notice – s.135B(1). This ensures that the householder has a reasonable period of time in which to have the necessary improvements, maintenance or repairs carried out. A smoke abatement notice only prevents excessive smoke emitting from the chimney, not all smoke – s.135C(2).

A smoke abatement notice ceases to have effect 6 months after the day on which it is given or when it is revoked, whichever occurs first – s.135B(3). This ensures that the smoke abatement notice applies only in one winter period.

A sample smoke abatement notice is provided in Appendix 4.

How is a smoke abatement notice given?

An authorised officer of an ARA which is a local authority must give a smoke abatement notice in writing – s.135B(2).

Enforcing a smoke abatement notice

It is an offence to fail, without reasonable excuse, to comply with a smoke abatement notice – s.135C(1).

A penalty notice may be issued for failure to comply with a smoke abatement notice. The penalty notice imposes a fine of \$200 for individuals and \$400 for corporations – POEO (General) Regulation 2009, chapter 6 and Schedule 6. For more serious breaches that are dealt with by a court, the maximum penalty that may be imposed is \$3,300.

Revocation of a smoke abatement notice

Smoke abatement notices can be revoked by the ARA for which the person who gave the notice is an authorised officer – s.135D.

2.6 Noise control notices

When may a noise control notice be issued?

The ARA may issue a noise control notice to prohibit carrying out any activity, including keeping an animal, or using any article that emits noise above a level specified in the notice – s.264. There is no requirement that the noise must be offensive before a noise control notice may be issued.

Who may a noise control notice be issued to?

A noise control notice may be issued to:

- the occupier of the premises, or
- the person who is carrying out, or proposing to carry out, the activity or who is using or operating, or proposing to use or operate, the article on the premises – s.264(1).

What does a noise control notice do?

A noise control notice prohibits a person from causing, permitting or allowing the carrying out of a specified activity or the use of a specified article at a particular premises, so noise emissions exceed a specified level. The notice may restrict the emission of noise for a particular length of time, for example at all times or on specified days or between specified times. If the noise control notice does not specify the hours during which the restriction applies, the notice operates at all times – s.264(2) and (3).

Noise control notices operate from the day the notice is given unless a later date is specified, so an ARA may require action within the appeal period. However, the recipient may apply to the Land and Environment Court for a stay of the notice at the time of appeal – s.267.

A sample noise control notice is provided in Appendix 5.

How is a noise control notice given?

An ARA must give a noise control notice in writing – s.264.

Procedural fairness

The Land and Environment Court has confirmed that ARAs have a duty to afford procedural fairness when issuing environment protection notices such as noise control notices (*Liverpool City Council v L Cauchi & Ors* [2005] NSWLEC 676). ARAs should seek legal advice on the extent of their procedural fairness obligations when issuing noise control notices.

The extent of the obligations imposed by that duty will vary from case to case. The duty to afford procedural fairness may require an ARA to consult with the proposed recipient of a notice, for example by providing them with a copy of the draft notice, to give that recipient a right to be heard before the decision to issue the notice is made. If the notice is directed to a person other than the person carrying out the activity, consider whether consultation should take place with the person carrying out the activity before the decision to issue the notice is made.

Operation of noise control notices and appeals

A noise control notice operates from the day it is given unless another date is specified, so an ARA may require action within an appeal period.

A person given a noise control notice may appeal to the Land and Environment Court against it within 21 days of being served with it unless otherwise specified in the Regulations – s.289. If the recipient appeals against the notice, compliance is still required unless the Land and Environment Court directs that the notice is stayed. In this case the notice does not operate until the stay ceases, or the Land and Environment Court confirms the notice, or the appeal is withdrawn, whichever occurs first – s.267(2).

Enforcing noise control notices

It is an offence to contravene a noise control notice only if it is established that the noise can be heard outside the premises without the aid of an instrument, machine, or device (s.265).

The maximum penalty that may be imposed by a court for the offence is:

- \$60,000 for a corporation, with a further \$6000 each day for a continuing offence
- \$30,000 for an individual, with a further \$600 each day for a continuing offence.

Administrative fee for noise control notices

An ARA may also recover the administrative costs of preparing and giving noise control notices, except for a variation or revocation of a noise control notice. The recipient of a noise control notice must pay to the authority that issued it a fee of \$433 within 30 days of receiving the notice – s.267A(2) of the POEO Act and cl.99 of the POEO (General) Regulation 2009. The fee is **not** payable during an appeal against the notice to the Land and Environment Court. If the court does not invalidate the prevention notice, the fee is then payable within 30 days of the court's decision. It is an offence not to pay the administrative fee within the required time – s.267A(7).

A penalty notice may be issued for failure to pay the administrative fee within the required time. The penalty notice imposes a fine of \$500 for individuals and \$1000 for corporations (POEO (General) Regulation 2009, chapter 6 and Schedule 6). The maximum penalty that may be imposed by a court is \$22,000.

However, the ARA has the discretionary power to extend the time for payment, on application of the recipient, or waive the fee – s.267A(3). Examples of circumstances in which ARAs might consider waiving the fee are:

- demonstrated cases of hardship or bankruptcy
- where the notice has been issued to a charitable organisation.

Note: A fee is not payable on the variation or revocation of a noise control notice – s.267A(5).

Noise abatement orders

Regulatory authorities should also be aware that when offensive noise is being emitted, the POEO Act gives individuals the power to seek noise abatement orders through the local court (s.268). If a complaint about the noise is made to a justice of the peace at a local court in the district concerned, the justice may then summon the person allegedly making the offensive noise, or the occupier of the premises where the noise is coming from, to the local court.

If the local court is satisfied that offensive noise exists, or can recur, at the same premises, it may make a noise abatement order. The noise abatement order may direct the person against whom the complaint has been made to:

- abate (or lessen) the offensive noise within the time specified in the order, or
- prevent the offensive noise from recurring.

A noise abatement order operates from the day the notice is given unless a later date is specified in the order – s.271(1).

A person given a noise abatement order may appeal to the Land and Environment Court against the order within 21 days of being served with it, unless a different period is specified in the Regulations – s.290. If the recipient appeals against the order, compliance is still required unless the Land and Environment Court directs that the order is stayed. In this case the order does not operate until the stay ceases or the Land and Environment Court confirms the order or the appeal is withdrawn, whichever occurs first – s.271(2).

Note that a noise abatement order has no force if it is directed to:

- the state or a person acting on behalf of the state
- a public authority or person in their capacity as a member, officer, or employee of a public authority
- a person or body prescribed in the Regulations – s.270(1).

A noise abatement order also has no force if it can affect:

- any activity carried out by the state or a public authority
- any scheduled activity, or activity or work that is subject to an environment protection licence
- any activity prescribed in the Regulations – s.270(2).

It is an offence to contravene a noise abatement order (s.269).

2.7 Notices to provide information and records

When may a notice requiring information and records be issued?

A regulatory authority may issue a notice requiring information and records to be provided for any matter relating to its responsibilities or functions under s.184 of the POEO Act,

including determining whether the Act has been contravened – ss.191, 192. Authorised officers may also issue these notices (s.193).

To whom may a notice requiring information and records be issued?

A notice to provide information and records may be issued to anyone.

What information and records may the notice require?

A notice from a regulatory authority other than the EPA, or from an authorised officer appointed by someone other than the EPA, may require only information and records for matters relating to the authority's responsibilities or functions under the POEO Act, **for which it is the ARA** (s.192).

A notice from the EPA, or from an authorised officer appointed by the EPA, may require information and records for matters relating to the EPA's responsibilities or functions under the POEO Act, **even if the EPA is not the ARA for these matters** – s.191).

What must the notice specify?

The notice must specify the information or records that must be provided, the manner in which they must be provided, and a reasonable time by which they must be provided (s.194). Unless otherwise specified in the notice, any record in electronic, mechanical or other form must be provided in written form – s.195(3). The person or regulatory authority to which any record is provided may take copies of it – s.195(2). A notice to provide records may require a person to provide only existing records that are within their possession or power to obtain lawfully – s.195(1).

See Appendix 6 for a sample notice requiring information and records to be provided.

How is a notice to provide information and records given?

A notice to provide information and records must be in writing (ss.191–193).

Notices to provide information are subject to the privilege against self-incrimination

An individual, that is, a person rather than a corporate entity, may object to providing information, but **not** records, under a notice on the grounds that the information might incriminate them or make them liable for a penalty. Section 212 of the POEO Act says that if the person does object, the information they provide in response to the notice may not be used in legal proceedings against them, except in proceedings for an offence against Chapter 7 of the Act, for example, knowingly providing false or misleading information. This is also the case if the individual was not warned before providing the information that they could object on the grounds of self-incrimination.

Note that even when an individual does object, they are still required to provide the information and any records that have been requested. While the information provided may not be used against them, it may be used in proceedings against others, including corporations.

The privilege against self-incrimination in s.212 of the POEO Act is not available to a corporation (s.212).

Records are not subject to the privilege against self-incrimination

It is important to note that records provided by a person in response to a notice may be used against them in criminal proceedings, whether they are an individual or a corporate entity. Under the POEO Act, the privilege against self-incrimination applies only to answering questions or providing information. For further information about powers to ask questions, see *Powers of authorised officers* (DECC 2009).

Enforcing notices requiring information and records

It is an offence to, without a lawful excuse, not comply with a notice to provide information and records – s.211(1), or provide any information required by a notice knowing that it is materially false or misleading – s.211(2). However, a person cannot be guilty of the offence of failing to comply with the notice if they were not warned beforehand that this failure was an offence – s.212(1).

The maximum penalty for these offences is:

- \$1,000,000 for a corporation, with a further \$120,000 each day for a continuing offence
- \$250,000 for an individual, with a further \$60,000 each day for a continuing offence.

Alternatively a penalty notice may be issued for not complying with a notice to provide information and records. This imposes a fine of \$500 for individuals and \$1000 for corporations.

The administrative costs of issuing a notice requiring information and records (for example, for the drafting of the notice) are not recoverable.

3 Other types of notices and directions

The POEO Act allows designated officers of the EPA and other ARAs to issue other types of notices and directions. These are:

- noise abatement directions (section 3.1)
- penalty notices (section 3.2).

A brief summary of these directions and notices is provided below.

3.1 Noise abatement directions

Authorised officers and police officers may issue noise abatement directions in situations where they believe that offensive noise is being, or has at any time within the past 7 days been, emitted from a premises. An authorised officer of the marine authority may also issue a noise abatement direction if the offensive noise is being emitted from a vessel in navigable waters (see Glossary).

Noise abatement directions remain in force for up to 28 days, unless a shorter period is specified in the notice. A person who, without reasonable excuse, does not promptly stop emitting offensive noise, or who emits offensive noise during the period specified in the notice, is guilty of an offence. Note that a noise abatement direction does not mean that all noise from the premises must stop, only offensive noise.

Noise abatement directions, other than a direction given by an authorised officer of the EPA, may not be given to the state or a person acting on its behalf, a public authority, people acting as employees or members of the authority, or a person prescribed by the Regulations. They also have no force if they affect any activity carried out by the state or a public authority, or involve a scheduled activity, an activity that is subject to an environment protection licence, or an activity prescribed by the Regulations, unless the direction is given by an authorised officer of the EPA – ss.275–279.

3.2 Penalty notices

Penalty notices may be issued by designated enforcement officers when they believe that a person has committed a penalty notice offence, which is an offence committed under certain legislation including the POEO Act. Penalty notices are issued for minor breaches, and they allow the person served with the notice to pay a fine rather than have the alleged offence dealt with in court. Schedule 6 of the Protection of the Environment Operations (General) Regulation 2009 sets out all the offences for which a penalty notice may be issued under the POEO Act and Regulations made under that Act; the penalty amounts; and which class of officer may issue a penalty notice for which type of offence.

Further detailed information on penalty notices and notices issued by enforcement and authorised officers is provided in the *Powers of authorised officers* (DECC 2009), which DECC has prepared for the information of regulatory authorities.

4 Issuing notices: some general points

4.1 Drafting tips

Regulatory authorities should ensure that all notices they issue:

- are clear and certain as to what needs to be done and by when it needs to be done
- require only what is reasonable, proper and within the power of the notice to require
- use plain English and consistent terminology, and explain any technical terms
- advise the recipient that non-compliance with the notice may lead to enforcement action being taken against them – specifically, in the case of a notice requiring information or records, that failure to comply is an offence
- warn the recipient that they can object to providing information on the ground that it might incriminate them (if the notice relates to providing information and is issued to an individual)
- are signed by a person with delegated legal authority to issue the notice
- are issued to the correct legal entity.

4.2 The correct legal entity

Notices may be enforced only if they are issued to a legal entity. The law recognises two legal entities: an individual and an incorporated body such as a company, statutory authority, incorporated association, cooperative or other body corporate, collectively termed 'corporation' in this guide. A corporation is usually identified by the abbreviation Inc, Ltd or Pty Ltd and always has an Australian Company Number (ACN). Corporations may operate under a business name or trading name that is different from the name of this corporation. Similarly, a business may be operated by something other than a corporation, that is, a partnership or sole trader, with a business name or trading name. Business or trading names are not legal entities – they are just names under which legal entities do business. If a notice is issued to a registered business name or trading name, for example, to 'XYZ Australia' or 'XYZ Traders' rather than the corporation or individual that runs them, the notice will have no legal effect.

If the owner of a business or trading name is an individual, the legal entity to which the notice is issued should be written as 'Mr Z. Smith trading as XYZ Australia'. If the owner of the business or trading name is a corporation, the legal entity should be written as 'XYZ Pty Ltd trading as XYZ Australia'.

Basic details about business and company names and ACNs can be obtained free from the National Names Index maintained on the internet by the Australian Securities and Investments Commission (www.search.asic.gov.au).

In summary, notices may be issued to any of the following:

- an individual
- a company (for example, 'XYZ Pty Ltd' or 'XYZ Ltd')
- another type of incorporated body
- a public authority, for example, a government trading enterprise constituted by an Act as a corporate entity.

If you have any doubt about the legal status of the person to whom the notice will be issued, seek advice from your organisation's legal staff.

4.3 Varying and revoking notices and multiple notices

Notices may be varied or revoked by subsequent notice(s) from the same regulatory authority – ss.110, 266. More than one notice may be issued to the same person – s.108.

4.4 Issuing notices outside NSW

An environment protection notice may be issued to people, or for matters, outside NSW if the matter affects the environment of NSW (s.109). Notices to require information or records may also be issued to people outside NSW.

4.5 Serving notices

Under s.321 of the POEO Act, a notice or any other document may be served on a person by:

- delivering it personally
- leaving it with another person at the place of residence or business of the person receiving the notice
- sending it by post, fax or electronic transmission (including over the internet)
- leaving it addressed to the person at a document exchange or other place indicated by the person through which correspondence may be forwarded to them.

Important notices, especially when issued to corporations, should be sent by registered post so the officer has documentary evidence that they were received. Other appropriate documentary records such as file or diary notes, postal or fax receipts, should also be kept; if required, they can be used as evidence that the notice was served in accordance with the POEO Act, and the recipient received it.

4.6 Enforcing notices

After a notice is issued, it is important to keep track of the dates when compliance must be reviewed. If the notice requirements have not been fully met, take prompt follow-up action to ensure that they are complied with. In some cases, a penalty notice or prosecution for failing to comply with a notice may be warranted. Where necessary, seek further legal or technical advice. The maximum penalties for failing to comply with specific notices are listed in previous sections.

It is an offence to provide any information required by a notice issued under Chapter 7 of the POEO Act ('Notice to provide information and records') knowing that it is false or misleading – s.211(2). The maximum penalty that may be imposed by a court for the offence is:

- \$1,000,000 for a corporation, with a further \$120,000 each day for a continuing offence
- \$250,000 for an individual, with a further \$60,000 each day for a continuing offence.

It is also an offence to knowingly make a false or misleading statement in a report required by an environment protection notice under Chapter 4 of the POEO Act (s.113). The maximum penalty that may be imposed by a court for the offence is:

- \$1,000,000 for a corporation
- \$250,000 for an individual.

It is also an offence to wilfully delay or obstruct a person carrying out any action in compliance with an environment protection notice (s.112). The maximum penalty that may be imposed by a court for the offence is:

- \$1,000,000 for a corporation, with a further \$120,000 each day for a continuing offence
- \$250,000 for an individual, with a further \$60,000 each day for a continuing offence.

5 Further reading

ANZECC/ARMCANZ 2000, *Australian and New Zealand guidelines for fresh and marine water quality*, Australian and New Zealand Environment and Conservation Council and the Agriculture and Resource Management Council of Australia and New Zealand, available at www.deh.gov.au/water/quality/nwqms/index.html#quality

DEC 2006, *Considering environmental values of water when issuing prevention notices*, Department of Environment and Conservation NSW, Sydney, available at www.environment.nsw.gov.au/water/envwater.htm

DECC 2009, *Powers of authorised officers*, Department of Environment and Climate Change NSW, Sydney, available at www.environment.nsw.gov.au/licensing/powersao.htm

Appendices

Appendix 1: Clean-up notice (example only)

The following is an example of a clean-up-notice template that could be used by a regulatory authority. The sample is designed for information only, and does not constitute legal advice.

The actual text of a clean-up notice needs to be individually worded to meet each regulatory authority's own requirements and circumstances. Regulatory authorities should seek their own legal advice on the appropriate wording.

[Insert regulatory authority's name or letterhead]

Direction to take clean-up action

Section 91 *Protection of the Environment Operations Act 1997*

[Insert method of service]¹

To: *[Insert: – name of person or company to whom notice is being addressed²*
– ACN number if notice being addressed to a company³
– ARBN number if relevant⁴
– if trading under a registered business name, 'trading as
<businessname>'
– full address for service of addressee of notice⁵]

Date: *[Insert date notice issued]*

Background

[Here, set out relevant background information that demonstrates that the preconditions for issuing the notice have been met and why the notice needs to be issued⁶]

Direction to take clean-up action

[Insert regulatory authority's name] directs [Name of person or company to whom notice is being addressed] to take the following clean-up action:

[Here, set out details of the clean-up action required and the period within which it must be taken]⁷

Fee to be paid

You are required by law to pay a fee of \$433⁸ for the administrative costs of issuing this notice.

It is an offence not to pay this fee. However, you may apply for an extension of time to pay the fee or for the fee to be waived. At the end of this notice there is information about how and when to pay the fee and how to apply for an extension or a waiver of the fee.

Signed: *[Insert name of signatory⁹ and position title and name of regulatory authority]*

Information about this notice

This notice is issued under s.91 of the *Protection of the Environment Operations Act 1997*. It is an offence against that Act not to comply with this notice, unless you have a reasonable excuse for not complying.

Penalty for not complying with this clean-up direction

The maximum penalty that a court may impose on a corporation for not complying is \$1,000,000, with a further \$120,000 for each day the offence continues. The maximum penalty that a court may impose on an individual for not complying is \$250,000, with a further \$60,000 for each day the offence continues.

What you may do if you are not the polluter

If you comply with this clean-up notice but you are not the person who caused the pollution incident to which the notice relates, you have a right to go to court to recover your costs of complying with the notice from the person who caused the incident.

Deadline for paying fee

The fee must be paid by **no later than 30 days after the date of this notice, unless you are given an extension of time to pay the fee or the fee is waived (see below)**.

How to pay fee

[Insert possible methods of payment¹⁰]

How to apply for extension of time to pay or waiver of fee

Any application should be made in writing to *[Insert regulatory authority's name]* and sent to *[Insert regulatory authority's postal address]*. The application should set out clearly why you think your application should be granted.

Other costs

The *Protection of the Environment Operations Act 1997* allows *[Insert regulatory authority's name]* to recover from you any reasonable costs and expenses it incurs in monitoring action taken under this notice, ensuring the notice is complied with, and associated matters. If you are going to be required to pay these costs and expenses you will later be sent a separate notice about this.

Continuing obligation

Under s.319A of the Act, your obligation to comply with the requirements of this notice continues until the notice is complied with, even if the due date for compliance has passed.

Variation of this notice

This notice may only be varied by subsequent notices issued by *[Insert regulatory authority's name]*.

End notes for use in completing this notice template

1. For example, 'personal delivery' or 'by fax'. See s.321 of the POEO Act for methods of service of notices and note 5 below.
2. (a) The addressee must be either 'the occupier of premises at or from which the regulatory authority reasonably suspects that a pollution incident has occurred or is occurring' or 'a person who is reasonably suspected by the authority of having caused a pollution incident'.
(b) Notices may be given and addressed only to an individual or an incorporated entity (for example, a company).
3. The ACN (Australian Company Number) is the unique nine-digit number assigned to a corporation when it is formed.
4. The ARBN (Australian Registered Body Number) is the unique number identifying a registered foreign company operating in Australia.
5. For example, if the addressee is a company, the address is its registered office, or if it is a business trading under a registered business name, the address is its principal place of business. See ss.109X and 363 of the Corporations Law for requirements about serving documents on a corporation.
6. The notice should state:
 - that the authority issuing it is the appropriate regulatory authority in relation to the pollution incident concerned
 - whether the notice is being issued to the addressee because they are 'the occupier of premises at or from which the regulatory authority reasonably suspects that [the] pollution incident has occurred or is occurring', or because they are 'a person who is reasonably suspected by the authority of having caused [the] pollution incident'
 - the premises where the pollution incident is occurring or has occurred; insert the street address, if any, and if possible, the Lot and Deposited Plan Number/s or other folio identifier, so the land to which the notice relates is clearly identified
 - the nature of the pollution incident.

The notice should also state:

- the reasonable grounds on which it is suspected that the pollution incident has occurred or is occurring, or on which you suspect that the addressee of the notice has caused or is causing the pollution incident, as applicable
 - if it is one of a series of notices that has been given in relation to the pollution incident, details of those other relevant notices if appropriate
 - if the notice has been preceded by an oral direction under s.93 of the POEO Act, relevant details of that direction. Written notices should accurately reflect the oral direction, and must be given within 72 hours of the direction.
7. See the definition of 'clean-up action' in the Glossary and the POEO Act dictionary for examples of the sort of action that may be required. Be as specific as possible in describing what the addressee of the notice must do, and provide a clear and reasonable timeframe within which it is to be done.

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8. This amount is prescribed by clause 99 of the Protection of the Environment Operations (General) Regulation 2009.
9. The signatory must have written delegated authority from the regulatory authority to issue a notice of this type.
10. For example, personal payment to the regulatory authority at its offices, or cheque payment by mail to the regulatory authority's postal address.

Appendix 2: Prevention notice (example only)

The following is an example of a prevention notice template that could be used by a regulatory authority. The sample is designed for information only, and does not constitute legal advice.

The actual text of a prevention notice needs to be individually worded to meet each regulatory authority's own requirements and circumstances. Regulatory authorities should seek their own legal advice on the appropriate wording.

[Insert regulatory authority's name or letterhead]

Direction to take preventive action

Section 96 Protection of the Environment Operations Act 1997

[Insert method of service]¹

To: *[Insert: – name of person or company to whom notice is being addressed²*
– ACN number if notice being addressed to a company³
– ARBN number if relevant⁴
– if trading under a registered business name, 'trading as <business name>'
– full address for service of addressee of notice⁵]

Date: *[Insert date notice issued]*

Background

[Here, set out relevant background information that demonstrates that the preconditions for issuing the notice have been met and why the notice needs to be issued⁶]

Direction to take preventive action

[Insert regulatory authority's name] directs [Name of person or company to whom notice is being addressed] to take the following action:

[Here, set out details of the action required⁷ and the period,⁸ if any, within which it must be taken]

Fee to be paid

You are required by law to pay a fee of \$433⁹ for the administrative costs of issuing this notice.

It is an offence not to pay this fee. However, you may apply for an extension of time to pay the fee, or for the fee to be waived. At the end of this notice there is information about how and when to pay the fee and how to apply for an extension or a waiver of the fee.

Signed *[Insert name of signatory¹⁰ and position title and name of regulatory authority]*

Information about this prevention notice

This notice is issued under s.96 of the *Protection of the Environment Operations Act 1997*. It is an offence against that Act not to comply with this notice.

See below for information about the penalty for not complying with this notice, how you can appeal against it and when the notice begins to operate. There is also information about paying fees and other costs.

Penalty for not complying with this direction to take preventive action

The maximum penalty that a court may impose on a corporation for not complying is \$1,000,000, with a further \$120,000 for each day the offence continues. The maximum penalty that a court may impose on an individual for not complying is \$250,000, with a further \$60,000 for each day the offence continues.

Appeals against this notice

You may appeal to the Land and Environment Court against this notice. The deadline for lodging your appeal is 21 days after you were served with the notice.

When this notice begins to operate

This notice operates from the date it is given unless another date is specified in the notice.

If you lodge an appeal against this notice, compliance is still required unless the Land and Environment Court directs that the notice is stayed. In this case, the notice does not operate until the stay ceases to have effect or the Land and Environment Court confirms the notice, or the appeal is withdrawn, whichever occurs first.

Deadline for paying fee

The fee must be paid by **no later than 30 days after the date of this notice, unless you are given an extension of time to pay the fee or the fee is waived (see below)**. Also, if you appeal to a court against the notice, the fee does not have to be paid unless and until the court confirms the notice.

How to pay fee

*[Insert possible methods of payment]*¹¹

How to apply for extension of time to pay or for waiver of fee

Any application should be made in writing to *[Insert regulatory authority's name]* and sent to *[Insert regulatory authority's postal address]*. The application should set out clearly why you think the application should be granted.

Other costs

The *Protection of the Environment Operations Act 1997* allows *[Insert regulatory authority's name]* to recover from you any reasonable costs and expenses it incurs in monitoring action taken under this notice, ensuring the notice is complied with, and associated matters. (If you are going to be required to pay these costs and expenses you will later be sent a separate notice about this.)

Continuing obligation

Under s.319A of the Act, your obligation to comply with the requirements of this notice continues until the notice is complied with, even if the due date for compliance has passed.

Variation of this notice

This notice may only be varied by subsequent written notices issued by *[insert regulatory authority's name]*.

End notes for use in completing this notice template

1. For example, 'personal delivery' or 'by fax'. See s.321 of the POEO Act for methods of service of notices and note 5 below.
2. (a) The addressee must be either the occupier of premises at which the activity is being carried out, or the person carrying out the activity. If a notice is issued to the occupier and the occupier is not the person carrying out the activity, the occupier has a duty to take all available steps to cause the action specified in the notice to be taken.
(b) Notices may be given and addressed only to an individual or an incorporated entity, for example, a company.
3. The ACN (Australian Company Number) is the unique nine-digit number assigned to a corporation when it is formed.
4. The ARBN (Australian Registered Body Number) is the unique number identifying a registered foreign company operating in Australia.
5. For example, if the addressee is a company, the address is its registered office, or if it is a business trading under a registered business name, the address is its principal place of business. See ss.109X and 363 of the Corporations Law for requirements about serving documents on a corporation.
6. The notice should state:
 - that the authority issuing it is the appropriate regulatory authority for the activity
 - whether the notice is being issued to the addressee because they are the occupier of premises at which the activity is being carried out or the person carrying out the activity
 - the premises where the activity is being carried out; include the street address, if any, and, if possible, insert the Lot and Deposited Plan Number/s or other folio identifier so the land to which the notice relates is clearly identified
 - how the activity concerned is being or has been carried on in an environmentally unsatisfactory manner – see s.96(1) of the POEO Act, which explains when an activity is regarded as being carried out in such a manner).The notice should also state:
 - the reasonable grounds on which it is suspected that the activity is being, or has been, carried out in an environmentally unsatisfactory manner
 - if it is one of a series of notices that has been given for the activity, details of the other relevant notices if appropriate.
7. See Glossary and s.96(3) and (4) of the POEO Act for examples of the sort of preventive action that may be required. Be as specific as possible in describing what the addressee of the notice must do, and provide a clear and reasonable timeframe within which it is to be done.
8. Note that a person has 21 days after being served with a prevention notice to appeal against it. If an appeal is lodged, compliance with the notice is still required unless the Land and Environment Court directs that the notice is stayed. In this case, the notice does not operate until the stay ceases, or the Land and Environment Court confirms the notice, or the appeal is withdrawn, whichever occurs first.

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9. This amount is prescribed by clause 99 of the Protection of the Environment Operations (General) Regulation 2009.
10. The signatory must have written delegated authority from the regulatory authority to issue a notice of this type.
11. For example, personal payment to the regulatory authority at its offices, or cheque payment by mail to the regulatory authority's postal address.

Appendix 3a: Compliance cost notice – section 104 (example only)

The following is an example of a compliance cost notice template that could be used by a regulatory authority. The sample is designed for information purposes only and does not constitute legal advice.

The actual text of a compliance cost notice needs to be individually worded to meet each regulatory authority's own requirements and circumstances. Regulatory authorities should seek their own legal advice on the appropriate wording.

[Insert regulatory authority's name or letterhead.]

Notice requiring payment of reasonable costs and expenses

Section [insert relevant subsection from section 104]¹ ***Protection of the Environment Operations Act 1997***

[Insert method of service]²

To: *[Insert: – name of person or company to whom notice is being addressed³
– ACN number if notice being addressed to a company⁴
– ARBN number if relevant⁵
– if trading under a registered business name, 'trading as <business name>'
– full address for service of addressee of notice⁶]*

Date: *[Insert date notice issued]*

Background

[Here, set out relevant background information that demonstrates that the preconditions for issuing the notice have been met and why the notice needs to be issued⁷]

Requirement to pay reasonable costs and expenses

[Insert regulatory authority's name] requires [Name of person or company to whom notice is being addressed] to pay the following reasonable costs and expenses: [Here set out details of the costs and expenses incurred by the authority⁸].

Payment should be made to *[Inset regulatory authority's name]* no later than *[Insert deadline for payment⁹]*. At the end of this notice there is information about how to make the payment.

Signed *[Insert name of signatory¹⁰ and position title and name of regulatory authority]*

Information about this notice

This notice is issued under s. *[Insert relevant subsection from section 104]*¹¹ of the *Protection of the Environment Operations Act 1997*.

How to make the payment required by this notice

*[Insert possible methods of payment]*¹²

What you can do if you are not the polluter

If you comply with this compliance cost notice but you are not the person who caused the pollution or pollution incident to which the notice relates, you have a right to go to court to recover your costs of complying with the notice from the person who caused the pollution or incident.

Non-compliance with this notice

If the unpaid costs and expenses that this notice requires you to pay have not been paid by the due date(s) specified in the notice, the *[Insert regulatory authority's name]* will consider taking legal action to recover the amount owing.¹³

Costs and expenses

The *Protection of the Environment Operations Act 1997* allows *[Insert regulatory authority's name]* to apply to the Registrar General to register this notice in relation to any land owned by you. The Act also allows *[Insert regulatory authority's name]* to recover from you any reasonable costs and expenses it incurs for lodging or registering this compliance cost notice and registering any resulting charge (including the costs of administering the charge). If you are going to be required to pay these costs and expenses you will later be sent a separate notice about this.¹⁴

End notes for use in completing this notice template

1. There are separate and different powers for issuing compliance cost notices in s.104(1), (2), (3) and (4) of the POEO Act. It is very important to make sure that the notice is being issued under the correct subsection. See also note 7 below.
2. For example, 'personal delivery' or 'by fax'. See s.321 of the POEO Act for methods of service of notices and note 6 below.
3. (a) For a notice issued under s.104(1), (3) or (4) of the POEO Act, the addressee must be the person to whom the related clean-up, prevention or prohibition notice was issued.
(b) For a notice issued under s.104(2) of the POEO Act, the addressee must be either the occupier of the premises at or from which the authority reasonably suspects that the pollution incident which required clean-up action occurred, or the person who is reasonably suspected by the authority of having caused the pollution incident.
(c) Notices may be given and addressed only to an individual or an incorporated entity, for example, a company.
4. The ACN (Australian Company Number) is the unique nine-digit number assigned to a corporation when it is formed.

5. The ARBN (Australian Registered Body Number) is the unique number identifying a registered foreign company operating in Australia. A company will have either an ACN or an ARBN – it will not have both.
6. For example, if the addressee is a company, the address is its registered office, or if it is a business trading under a registered business name, the address is its principal place of business. See ss.109X and 363 of the Corporations Law for requirements about serving documents on a corporation.
7. A notice issued under s.104(1) or (3) of the POEO Act should state:
 - that the regulatory authority has issued to the addressee (in the case of a s.104(1) notice) a clean-up notice or (in the case of a s.104(3) notice) a prevention notice
 - the details of that clean-up or prevention notice, for example, the date issued, and, if appropriate, details of other earlier relevant notices
 - that the regulatory authority has incurred costs and expenses for monitoring action under the notice, ensuring that it was complied with and associated matters, as the case may be.

A notice issued under s.104(2) of the POEO Act should state:

- that the regulatory authority is a public authority that has taken clean-up action under s.92 of the POEO Act in relation to a pollution incident. Note that a state-owned corporation is not a public authority under s.92 of the POEO Act.
- the details of the clean-up action, including the street address, if any, where the clean-up action occurred – if possible, insert the Lot and Deposited Plan Number/s or other folio identifier so the land where the clean-up action was taken is clearly identified
- that the regulatory authority incurred costs and expenses in connection with that clean-up action
- whether the notice is being issued to the addressee because they are the occupier of premises at or from which the regulatory authority reasonably suspects that the pollution incident occurred or because they are the person who is reasonably suspected by the authority of having caused the pollution incident.

A s.104(2) notice should also state the reasonable grounds on which it is suspected that the pollution incident has occurred or is occurring, or on which it is suspected that the addressee of the notice has caused or is causing the pollution incident, as applicable.

A notice issued under s.104(4) of the POEO Act should state:

- that the addressee has been issued with a prevention notice or a prohibition notice, as applicable
- the details of that previous notice (for example, the date issued) and, if appropriate, the details of other earlier relevant notices
- for notices issued in relation to non-compliance with a prevention notice, the details of the previous non-compliance and the action taken under s.98 of the POEO Act
- for notices issued in relation to non-compliance with a prohibition notice, the details of the action taken under s.103 of the POEO Act.

8. The notice should specify the amount of each cost or expense, the date on which the cost or expense was incurred, and the reason or purpose for which the cost or expense was incurred. Keep all quotes, receipts and related documentation to enable you to

prove that the amount incurred was fair and reasonable if this is disputed. For notices issued under s.104(1) and (3) of the POEO Act, the notice must show how the costs and expenses relate to monitoring action under the notice, ensuring that the notice is complied with, or other associated matters. Be as specific as possible in describing the costs and expenses incurred.

9. The Act does not specify any deadline for the payment, so general principles of reasonableness would apply when setting this deadline.
10. The signatory must have written delegated authority from the regulatory authority to issue a notice of this type.
11. Specify whether the notice is issued under s.104(1), (2), (3) or (4) of the POEO Act, as appropriate. Note that the EPA cannot issue a notice under s.104(3).
12. For example, personal payment to the regulatory authority at its offices, or cheque payment by mail to the regulatory authority's postal address.
13. Section 105(1) of the POEO Act enables a regulatory or public authority to recover any unpaid amounts. These debts would usually be recovered through a local court; seek legal advice about this.
14. See ss.105, 106 and 107 of the POEO Act.

Appendix 3b: Compliance cost notice – section 267B (example only)

The following is an example of a compliance cost notice template that could be used by a regulatory authority. The sample is designed for information purposes only and does not constitute legal advice.

The actual text of a compliance cost notice needs to be individually worded to meet each regulatory authority's own requirements and circumstances. Regulatory authorities should seek their own legal advice on the appropriate wording.

[Insert regulatory authority's name or letterhead.]

Notice requiring payment of reasonable costs and expenses

Section 267B Protection of the Environment Operations Act 1997

[Insert method of service]¹

To: *[Insert: – name of person or company to whom notice is being addressed²
– ACN number if notice being addressed to a company³
– ARBN number if relevant⁴
– if trading under a registered business name, 'trading as<business name>'
– full address for service of addressee of notice⁵]*

Date: *[Insert date notice issued]*

Background

[Here, set out relevant background information that demonstrates that the preconditions for issuing the notice have been met, and why the notice needs to be issued]⁶

Requirement to pay reasonable costs and expenses

[Insert regulatory authority's name] requires [Name of person or company to whom notice is being addressed] to pay the following reasonable costs and expenses:

[Here, set out details of the costs and expenses incurred by the authority]⁷

Payment should be made to *[Insert regulatory authority's name]* no later than *[Insert deadline for payment⁸]*. At the end of this notice there is information about how to make the payment.

Signed *[Insert name of signatory⁹ and position title and name of regulatory authority.]*

Information about this notice

This notice is issued under s.267B of the *Protection of the Environment Operations Act 1997*.

How to make the payment required by this notice

[Insert possible methods of payment¹⁰]

What you can do if you did not cause the noise

If you comply with this compliance cost notice but you are not the person who caused the noise to which the notice relates, you have a right to go to court to recover your costs of complying with the notice from the person who caused the noise.

Non-compliance with this notice

If the unpaid costs and expenses that this notice requires you to pay have not been paid by the due date(s) specified, the *[Insert regulatory authority's name]* will consider taking legal action to recover the amount owing.¹¹

End notes for use in completing this notice template

1. For example, 'personal delivery' or 'by fax'. See s.321 of the POEO Act for methods of service of notices and note 6 below.
2. (a) The addressee must be the person to whom the noise control notice was issued.
(b) Notices may be given and addressed only to an individual, or an incorporated entity, for example, a company.
3. The ACN (Australian Company Number) is the unique nine-digit number assigned to a corporation when it is formed.
4. The ARBN (Australian Registered Body Number) is the unique number identifying a registered foreign company operating in Australia. A company will have either an ACN or an ARBN – it will not have both.
5. For example, if the addressee is a company, the address is its registered office, or if it is a business trading under a registered business name, the address is its principal place of business. See ss.109X and 363 of the Corporations Law for requirements about serving documents on a corporation.
6. The notice should state:
 - that the regulatory authority has issued the addressee with a noise control notice
 - the details of that noise control notice (for example, the date issued) and, if appropriate, details of other earlier relevant notices
 - that the regulatory authority has incurred costs and expenses in connection with monitoring action under the notice, ensuring that it was complied with and associated matters, as the case may be.
7. The notice should specify the amount of each cost or expense, the date on which the cost or expense was incurred, and the reason or purpose for which the cost or expense was incurred. Keep all quotes, receipts and related documentation to enable you to

prove that the amount incurred was fair and reasonable if this is disputed. The notice must show how the costs and expenses relate to monitoring action under the notice, ensuring that the notice is complied with, or other associated matters. Be as specific as possible in describing the costs and expenses incurred.

8. The Act does not specify any deadline for the payment, so general principles of reasonableness would apply when setting this deadline.
9. The signatory must have written delegated authority from the regulatory authority to issue a notice of this type.
10. For example, personal payment to the regulatory authority at its offices, or cheque payment by mail to the regulatory authority's postal address.
11. Section 267B(2) of the POEO Act enables a regulatory authority or public authority to recover any unpaid amounts. These debts would usually be recovered through a local court; seek legal advice about this.

Appendix 4: Smoke abatement notice (example only)

The following is an example of a smoke abatement notice template that could be used by a regulatory authority. The sample is designed for information only and does not constitute legal advice.

The actual text of a smoke abatement notice needs to be individually worded to meet each regulatory authority's own requirements and circumstances. Regulatory authorities should seek their own legal advice on the appropriate wording.

| |
|--|
| <p style="text-align: center;"><i>[Insert regulatory authority's name or letterhead]</i></p> <p style="text-align: center;">Smoke abatement notice</p> <p>Section 135B Protection of the Environment Operations Act 1997</p> <p><i>[Insert method of service.]</i>¹</p> <p>To: <i>[Insert: – name of person or company to whom notice is being addressed</i>² – ACN number if notice being addressed to a company³ – ARBN number if relevant⁴ – if trading under a registered business name, 'trading as <business name>' – full address for service of addressee of notice⁵]</p> <p>Date: <i>[Insert date notice issued]</i></p> <p>Background <i>[Here, set out relevant background information that demonstrates that the preconditions for issuing the notice have been met, and why the notice needs to be issued]</i>⁶</p> <p>Direction to cease the emission of excessive smoke <i>I [Insert authorised officer's name] an authorised officer of [Insert regulatory authority's name] direct [Name of person or company to whom notice is being addressed] to ensure that excessive smoke is not emitted from a chimney of the residential premises at [Insert address of premises] any time after 21 days following the giving of this notice.</i></p> <p>Signed <i>[Insert name of authorised officer⁷ and position title and name of regulatory authority]</i></p> |
|--|

Information about this smoke abatement notice

This notice does not prevent the emission of smoke that is not excessive smoke.

This notice is issued under s.135B of the *Protection of the Environment Operations Act 1997*. It is an offence against that Act not to comply with this notice unless you have a reasonable excuse for not complying.

Definition of 'excessive smoke'

'Excessive smoke' means emitting a visible plume of smoke from a chimney for a continuous period of not less than 10 minutes, including a period of not less than 30 seconds when the plume extends at least 10 metres from the point at which the smoke is emitted from the chimney (defined under s.135A of the *Protection of the Environment Operations Act 1997*).

Penalty for not complying with this smoke abatement notice

A penalty infringement notice may be issued for failure without reasonable excuse to comply with this notice (\$200 for individuals and \$400 for corporations).

The maximum penalty that a court may impose for not complying is \$3,300.

When this notice begins to operate

You must ensure that excessive smoke is not emitted from the chimney at any time after 21 days following the giving of this notice.

This notice ceases to have effect 6 months after the day on which it is given.

Revocation

This notice may only be revoked by the appropriate regulatory authority for which the person who gave the notice is an authorised officer.

End notes for use in completing this notice template

1. For example, 'personal delivery' or 'by fax'. See s.321 of the POEO Act for methods of service of notices and note 5 below.
2. (a) The addressee must be the occupier of the residential premises at which excessive smoke is being emitted from the chimney.
(b) Notices may be given and addressed only to an individual, or an incorporated entity, for example, a company.
3. The ACN (Australian Company Number) is the unique nine-digit number assigned to a corporation when it is formed.
4. The ARBN (Australian Registered Body Number) is the unique number identifying a registered foreign company operating in Australia.
5. For example, if the addressee is a company, the address is its registered office, or if it is a business trading under a registered business name, the address is its principal place

of business. See ss.109X and 363 of the Corporations Law for requirements about serving documents on a corporation.

6. The notice should state:
- that the authorised officer is an authorised officer of the appropriate regulatory authority in relation to the premises concerned
 - that the notice is being issued to the addressee because they are the occupier of premises from which excessive smoke is being or has been emitted from the chimney
 - the premises where the excessive smoke is being emitted from; include the street address, if any, and, if possible, insert the Lot and Deposited Plan Number/s or other folio identifier so that the land to which the notice relates is clearly identified.

The notice should also state the grounds on which the authorised officer believes that excessive smoke is being or has been, at any time within the last 7 days, emitted from the chimney on the residential premises, specifying the dates and times of the observations of excessive smoke made over the last 7 days.

7. A notice under s.193 of the POEO Act is issued by the individual authorised officer, not the regulatory authority. The signatory must have written delegated authority from the regulatory authority to issue a notice of this type.

Appendix 5: Noise control notice (example only)

The following is an example of a noise control notice template that could be used by a regulatory authority. The sample is designed for information only and does not constitute legal advice.

The actual text of a noise control notice needs to be individually worded to meet each regulatory authority's own requirements and circumstances. Regulatory authorities should seek their own legal advice on the appropriate wording.

[Insert regulatory authority's name or letterhead.]

Noise control notice

Section 264 Protection of the Environment Operations Act 1997

[Insert method of service]¹

To: *[Insert: – name of person or company to whom notice is being addressed²*
– ACN number if notice being addressed to a company³
– ARBN number if relevant⁴
– if trading under a registered business name, 'trading as <business name>'
– full address for service of addressee of notice⁵]

Date: *[Insert date notice issued]*

Background

[Here, set out relevant background information that demonstrates why the notice needs to be issued]⁶

Noise prohibition

[Insert regulatory authority's name] prohibits [Name of person or company to whom notice is being addressed] from causing, permitting or allowing:

[Specify here the particular activity and/or the particular article the notice will prohibit the carrying out, use or operation of]⁷ at [Insert here the address of the premises concerned]⁸ in such a manner as to cause the emission from the premises:

- during the times and/or days specified below
- of noise above the level specified below when measured at the point specified below.

Times and/or days of prohibition

[Specify here the times and/or days during which the prohibition applies]⁹

Maximum noise level

[Specify here the noise level that is not to be exceeded for each activity/article]¹⁰

Noise-measuring point

[Specify here the point at which the noise will be measured for each activity/article]

Signed *[Insert name of signatory¹¹ and position title and name of regulatory authority]*

Information about this notice

This notice is issued under s.264 of the *Protection of the Environment Operations Act 1997*.

Contraventions of this notice

It is an offence to contravene a noise control notice. However, s.265(2) of the *Protection of the Environment Operations Act 1997* says that a person is not guilty of the offence unless it can be established that the emission of the noise from the premises could have been heard outside the premises without the aid of an instrument, machine or device.

Penalty for contravening this notice

The maximum penalty that a court may impose on a corporation for contravening this notice is \$60,000, with a further \$6,000 for each day the offence continues. The maximum penalty that a court may impose on an individual for contravening this notice is \$30,000, with a further \$600 for each day the offence continues.

Appeals against this notice

You may appeal to the Land and Environment Court against this noise control notice. The deadline for lodging appeals is 21 days (or 7 days if the notice relates to animal noise) after you were served with this notice.

When this notice begins to operate

This notice operates from the date this notice is given unless another date is specified.

If you lodge an appeal against this notice, compliance is still required unless the Land and Environment Court directs that the notice is stayed. In this case, the notice does not operate until the stay ceases to have effect, or the Land and Environment Court confirms the notice, or the appeal is withdrawn, whichever occurs first.

Duration of noise prohibition

If this notice does not specify times or days during which the prohibition in the notice operates, the prohibition operates at all times.

Costs and expenses

The Protection of the Environment Operations Act allows [*Insert regulatory authority's name*] to recover from you any reasonable costs and expenses it incurs in monitoring action taken under this notice, ensuring the notice is complied with, and associated matters. (If you are going to be required to pay these costs and expenses you will later be sent a separate notice about this.)

End notes for use in completing this notice template

1. For example, 'personal delivery' or 'by fax'. See s.321 of the POEO Act for methods of service of notices and note 5 below.
2. (a) The addressee must be either the person who is the occupier of the premises concerned, or the person who carries out an activity or who uses or operates an article at those premises.
(b) Notices may be given and addressed only to an individual, or to an incorporated entity, for example, a company.
3. The ACN (Australian Company Number) is the unique nine-digit number assigned to a corporation when it is formed.
4. The ARBN (Australian Registered Body Number) is the unique number identifying a registered foreign company operating in Australia.
5. For example, if the addressee is a company, the address is its registered office, or if it is a business trading under a registered business name, the address is its principal place of business. See ss.109X and 363 of the Corporations Law for requirements about serving documents on a corporation.
6. The notice should state:
 - that the authority issuing it is the appropriate regulatory authority in relation to the premises or the activity concerned
 - the premises where the activity is being carried on; list the street address, if any, and, if possible, insert the Lot and Deposited Plan Number/s or other folio identifier so that the land to which the notice relates is clearly identified
 - the activity or article to which the notice relates
 - whether the notice is being issued to the addressee because they are the occupier of the premises, or because they are carrying out the activity or using the article on the premises
 - if appropriate, details of other earlier relevant notices or directions, for example, any past noise control notices or abatement directions.
7. A noise control notice may prohibit the carrying out of specified activities or the use or operation of specified articles, or both.
8. See note 6 above about specifying premises.
9. If the notice does not specify times and/or days during which the prohibition in the notice operates, the prohibition operates at all times. See s.264(3) of the POEO Act.
10. Describe noise levels specifically. The choice of an appropriate descriptor is determined by the type of impact to be controlled. This choice can be guided by current EPA policies on noise impacts. It is important for compliance purposes to ensure that the noise being measured is the noise source that is the subject of the notice, and that readings are not contaminated by other extraneous noise.
11. The signatory must have written delegated authority from the regulatory authority to issue a notice of this type.

Appendix 6: Notice to provide information and records (example only)

The following is an example of a template for a notice that could be used by a regulatory authority to require the provision of information or records. The sample is designed for information purposes only and does not constitute legal advice.

The actual text of a notice requiring information and/or records needs to be individually worded to meet each regulatory authority's own requirements and circumstances. Regulatory authorities should seek their own legal advice on the appropriate wording.

[Insert regulatory authority's name or letterhead]

Notice requiring information and/or records to be provided

Section [insert relevant section]¹ *Protection of the Environment Operations Act 1997*

[Insert method of service]²

To: *[Insert: – name of person or company to whom notice is being addressed³
– ACN number if notice being addressed to a company⁴
– ARBN number if relevant⁵
– if trading under a registered business name, 'trading as <business name>'
– full address for service of addressee of notice⁶]*

Date: *[Insert date notice is issued.]*

Background

[Here, set out the grounds for issuing the notice]⁷

Requirement to provide information and/or records

[Insert regulatory authority's or authorised officer's name]⁸ requires [Name of person or company to whom notice is being addressed] to provide [Insert regulatory authority's or authorised officer's name] with the following information and/or records: [Here, set out details of the information and/or records required]⁹

You do not have to provide any record specified above unless that record is in your possession or you can lawfully obtain possession of it.

The information and/or records must be provided to *[Insert regulatory authority's or authorised officer's name]* by no later than *[Insert deadline].¹⁰*

The information and/or records must be provided in the following manner: *[Insert manner in which information and/or records must be provided]¹¹*

Warning¹²

It is an offence against the *Protection of the Environment Operations Act 1997* not to comply with this notice unless you have a lawful excuse for not doing so. It is also an offence to provide information under this notice knowing that the information is materially false or misleading.

However, if you are a person (that is, an individual rather than, for example, a company or other incorporated body) you may object to providing **information** that this notice requires you to provide on the ground that the information might incriminate you.

This warning is given for the purposes of s.212 of the *Protection of the Environment Operations Act 1997*.

There is important information at the end of this notice that you should read about self-incriminating information and/or records that you provide in compliance with this notice.

Signed *[Insert: name of signatory¹³ and position, title and name of regulatory authority]*

Information about this notice

This notice is issued under s. *[Insert relevant section]*¹⁴ of the *Protection of the Environment Operations Act 1997*.

Penalty for not complying with this notice

The maximum penalty that a court may impose on a corporation for not complying is \$250,000, with a further \$120,000 for each day the offence continues. The maximum penalty that a court may impose on an individual for not complying is \$120,000, with a further \$60,000 for each day the offence continues.

Self-incriminating information and/or records

The fact that the **information and records** that this notice requires you to provide might incriminate you or make you liable to a penalty **does not excuse you from having to comply with the notice**.

The fact that a **record** provided by you in compliance with this notice might incriminate you does not make that record inadmissible against you in criminal proceedings.

End notes for use in completing this notice template

1. The EPA has the power to issue a notice such as this under s.191 of the POEO Act; other regulatory authorities' power is under s.192, and an authorised officer's power is under s.193.
2. For example, 'personal delivery' or 'by fax'. See s.321 of the POEO Act for methods of service of notices.
3. Notices may be given and addressed only to an individual or an incorporated entity (for example, a company).
4. The ACN (Australian Company Number) is the unique nine-digit number assigned to a corporation when it is formed.
5. The ARBN (Australian Registered Body Number) is the unique number identifying a registered foreign company operating in Australia.
6. For example, if the addressee is a company, the address is its registered office; if it is a business trading under a registered business name, the address is its principal place of business. See ss.109X and 363 of the Corporations Law for requirements about serving documents on a corporation.
7. Notices may be issued only under ss.191–193 of the POEO Act for the purposes set out in s.184 of that Act, for example, to determine whether a provision of the Act or a Regulation has been complied with.
8. A notice under s.193 of the POEO Act is issued by the individual authorised officer, not the regulatory authority.

9. (a) The 'records' may be plans, specifications, maps, reports, books and other documents, whether in writing, in electronic form or otherwise; see POEO Act dictionary.
(b) A regulatory authority other than the EPA may require the provision of only information and records for a matter related to the responsibilities or functions of the authority under the POEO Act for which it is the ARA. An authorised officer, other than one appointed by the EPA, may require the provision of only information and records that are connected with a matter related to the responsibilities or functions under the POEO Act of the authority that appointed the officer, for which that authority is the ARA.
10. The notice must specify a reasonable time by which the information and/or records are to be provided; see s.194 of the POEO Act.
11. The notice must specify the manner in which the information and/or records are to be provided; see s.194 of the POEO Act. If the notice does not specify otherwise, any record required will have to be provided in written form even if the record is in electronic, mechanical or other form; see s.195(3) of the POEO Act.
12. This warning is very important. If it is not included in the notice:
 - the person to whom the notice is issued cannot be found guilty of the offence for not complying with the notice – see s.212(2) of the POEO Act
 - if the person is an individual rather than a corporation, any **information** provided under the notice will not be admissible in criminal proceedings against the person, other than proceedings for an offence against Chapter 7, s.212(3) of the POEO Act.
13. If the notice is issued under ss.191 or 192 of the POEO Act, the signatory must have written delegated authority from the regulatory authority to issue a notice of this type. If it is issued under s.193, the signatory must be the authorised officer who is requiring the provision of the information and/or records.
14. See note 1 above.

Glossary

Most of the following definitions are from the dictionary of the *Protection of the Environment Operations Act 1997* (POEO Act).

activity means an industrial, agricultural or commercial activity or an activity of any other nature whatever, including keeping a substance or an animal.

appropriate regulatory authority – see section 1.1: ‘The appropriate regulatory authority concept’.

chimney means a chimney, flue, pipe or other similar means of conveying smoke emitted from inside residential premises to the outside.

clean-up action, in relation to a pollution incident, includes:

- (a) action to prevent, minimise, remove, disperse, destroy or mitigate any pollution resulting or likely to result from the incident
- (b) ascertaining the nature and extent of the pollution incident and of the actual or likely resulting pollution
- (c) preparing and carrying out a remedial plan of action.

It also includes (without limitation) action to remove or store waste that has been unlawfully disposed of on land.

enforcement officer is an officer who can issue a penalty notice. The POEO (General) Regulation 2009 sets out the classes of officers or employees who can issue penalty notices for particular offences under the POEO Act or Regulations. Such an officer or employee is only an enforcement officer if s/he has been duly authorised as an enforcement officer by his or her employer to exercise the functions of an enforcement officer.

environment protection notice means a clean-up notice, prevention notice or prohibition notice issued under Chapter 4 of the POEO Act.

environmentally unsatisfactory manner – for the purposes of Part 4.3 of the POEO Act, an activity is carried on in an ‘environmentally unsatisfactory manner’ if:

- (a) it is carried on in contravention of, or in a manner that is likely to lead to a contravention of, the POEO Act, the Regulations made under it or a condition attached to an environment protection licence, including a condition of a surrender of a licence, or
- (b) it causes, or is likely to cause, a pollution incident, or
- (c) it is not carried out by such practicable means as may be necessary to prevent, control or minimise pollution, the emission of any noise or the generation of waste, or
- (d) it is not carried on in accordance with good environmental practice.

environmental values of water means the environmental values of water specified in the *Australian and New Zealand guidelines for fresh and marine water quality 2000*, published by the Australian and New Zealand Environment and Conservation Council and the Agriculture and Resource Management Council of Australia and New Zealand, as in force from time to time.

excessive smoke means the emission of a visible plume of smoke from a chimney for a continuous period of not less than 10 minutes, including a period of not less than 30 seconds when the plume extends at least 10 metres from the point at which the smoke is emitted from the chimney.

local authority means:

- (a) a local council (being the council of an area under the *Local Government Act 1993*), or
- (b) the Lord Howe Island Board in relation to Lord Howe Island, or
- (c) the Western Lands Commissioner in relation to the Western Division (except any part that is within a local council area), or
- (d) an authority prescribed by the Regulations for any place not covered above, or
- (e) an authority prescribed instead by the Regulations for any place wholly or partly covered above.

marine authority means the Minister administering the *Ports Corporatisation and Waterways Management Act 1995* or the Waterways Authority.

marine park has the same meaning as in the *Marine Parks Act 1997*.

navigable waters means all waters that are from time to time capable of navigation and are open to or used by the public for navigation, whether on payment of a fee or otherwise, but does not include floodwaters that have temporarily flowed over the established bank of a watercourse.

offensive noise means noise:

- (a) that, by reason of its level, nature, character or quality, or the time at which it is made, or any other circumstances:
 - (i) is harmful to (or is likely to be harmful to) a person who is outside the premises from which it is emitted, or
 - (ii) interferes unreasonably with (or is likely to interfere unreasonably with) the comfort or repose of a person who is outside the premises from which it is emitted, or
- (b) that is of a level, nature, character or quality prescribed by the Regulations, or that is made at a time, or in other circumstances, prescribed by the Regulations.

pollution incident means an incident or set of circumstances during or as a consequence of which there is, has been or is likely to be a leak, spill or other escape or deposit of a substance, as a result of which pollution has occurred, is occurring, or is likely to occur. It includes an incident or set of circumstances in which a substance has been placed or disposed of on premises, but it does not include an incident or set of circumstances involving only the emission of any noise.

premises includes:

- (a) a building or structure, or
- (b) land or a place (whether enclosed or built on or not), or
- (c) a mobile plant, vehicle, vessel or aircraft.

preventive action means action that a prevention notice may require to be taken, and includes without limitation:

- (a) installing, repairing, altering, replacing, maintaining or operating control equipment or

any other plant

- (b) modifying, or carrying out any work on, plant
- (c) ceasing to use plant or altering the way plant is used
- (d) ceasing to carry on, or not starting to carry on, an activity
- (e) carrying on an activity in a particular manner
- (f) carrying on an activity only during particular times
- (g) monitoring, sampling or analysing any pollution, or otherwise ascertaining the nature and extent of pollution or the risk of pollution
- (h) action with respect to the transportation, collection, reception, re-use, recovery, recycling, processing, storage or disposal of any waste or other substance
- (i) preparing a plan of action to control, prevent or minimise pollution or waste
- (j) reviewing the carrying out of an activity.

public authority means a public or local authority constituted by or under an Act, and includes:

- (a) a government department, or
- (b) a statutory body representing the Crown, a state-owned corporation or a local council, or
- (c) a member of staff or other person who exercises functions on behalf of a public authority.

regulatory authority means the EPA, a local authority or a public authority prescribed for the purposes of s.6(3) of the POEO Act.

residential premises means premises used wholly or partly as a residence.

scheduled activity means an activity listed in Schedule 1 of the POEO Act.