

Section 91 Protection of the Environment Operations Act 1997

Clean-up notice

«AcctPartyName»
«AcctPartyTradingName»
«AcctPartyABN»
«PostalAddressStreet»
«PostalAddressSuburb» «PostalAddressState» «PostalAddressPostcode»

Attention: <insert contact name>

Notice Number «NoticeNumber»

File Number "FileNumber"

Date «NoticeIssueDate»

Clean-up notice

Why is the <insert regulatory authority name> writing to you?

The <insert regulatory authority name> reasonably suspects that a pollution incident has occurred or is occurring on land that forms part of «LocationAddress» (Premises). The <insert regulatory authority name> has issued you with this clean-up notice. Further information is set out in the notice below.

What are you required to do?

Please read this notice carefully and carry out the clean-up action specified in this notice by the date required. If you have any queries about this matter, please contact <name of officer> on <phone number>.

Notices should be drafted in the following manner:

- give general overview sentence about the regulatory authority's role
- introduce the Occupier/Person to whom the notice is issued, the Premises, and the relevant activities
- set out chronologically the regulatory authority's relevant involvement, including any inspections and what was observed (i.e. just stating the facts – "on 10 October 2017 the regulatory authority attended the Premises and observed turbid water being discharged from a pipe and into a creek")
- set out the relevant legislative provisions
- apply the legislative provisions to the facts, i.e. set out the reasonable suspicion for why a pollution incident is occurring, why the recipient is the person suspected of causing the pollution incident (if not the owner/occupier of Premises)
- give directions as to clean-up action.

Background

1. The <insert regulatory authority name> has responsibility for enforcement of the *Protection of the Environment Operations Act 1997* (POEO Act).
2. Insert whichever applicable:

«AcctPartyName» «AcctPartyTradingName» is the occupier of the Premises in that «AcctPartyName» has management and/or control of the Premises for the purposes of s 91(1)(a) of the POEO Act.

OR

«AcctPartyName» «AcctPartyTradingName» is the owner of the Premises for the purposes of s 91(1)(a) of the POEO Act.

OR

«AcctPartyName» «AcctPartyTradingName» is reasonably suspected by the <insert regulatory authority name> of causing or having caused a pollution incident at the Premises for the purposes of s 91(1)(b) of the POEO Act. <Set out the basis for the reasonable suspicion that the person is suspected of having caused the pollution incident. *Note that this is unnecessary if the person is the occupier or the owner of the premises.>

3. The <insert regulatory authority name> is the appropriate regulatory authority for <set out why the regulatory authority is the ARA. This may require an explanation stepping through the relevant legislation.>
4. On <date> the <insert regulatory authority name> saw...<set out what the regulatory authority has seen or understands, i.e. the facts giving rise to the pollution incident/reasonable suspicion of a pollution incident. It should be clear what the pollution incident is.>
5. Section 91 of the POEO Act enables the <insert regulatory authority name> to issue a clean-up notice in respect of a pollution incident.
6. The Dictionary to the POEO Act defines:
 - a. "pollution incident" as an incident or set of circumstances during or as a consequence of which there is 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
 - b. "pollution" as including <land/water/air/noise> pollution
 - i. <land/water/air/noise> pollution as <insert relevant definition from the Dictionary to the Act>.
 - ii. <any other relevant definitions that are applicable, for example, the definition of waste.>
7. The <insert regulatory authority name> reasonably suspects that a pollution incident is occurring or is likely to occur at the Premises, namely:
 - a. <apply the facts to the law, for example: 20 tonnes of waste that the <insert regulatory authority name> believes has been deposited on the Premises, has caused degradation of the land and potential harm to human health (i.e. definition of land pollution)>
 - b. <set out as many that apply>
8. The <insert regulatory authority name> is directing you to take clean-up action because <you are the owner/occupier of the Premises or the <insert regulatory authority name> reasonably suspects you of causing or having caused the pollution incident>.

Direction to take clean-up action

9. The <insert regulatory authority name> directs «AcctPartyName» to take the following clean-up action:
10. By <time> on <date>, <direction>.

Ensure what you are asking meets the definition of clean up action and does not go beyond power. The definition of clean-up action is:

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, and

(b) ascertaining the nature and extent of the pollution incident and of the actual or likely resulting pollution, and

(c) preparing and carrying out a remedial plan of action.

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

If you require something else to be done that does not meet the definition of clean-up action, then consideration should be given to using another regulatory tool such as a Prevention Notice or Licence Variation.

Fee to be paid

You are required by law to pay a fee of \$550 for the administrative costs of issuing this notice. An invoice for the fee has been attached to this notice.

It is an offence not to pay this fee. However, you can 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.

.....
<NoticeAuthorisingOfficer>
<NoticeAuthorisingOfficerTitle>
<NoticeAuthorisingOfficerSection>
(by Delegation)

Warnings and information about this clean-up notice

- This notice is issued under section 91 of the POEO Act.
- It is an offence against the POEO Act not to comply with a clean-up notice unless you have a reasonable excuse.
- Details provided in this notice will be available on the Public Register in accordance with section 308 of the POEO Act.

Penalty for not complying with this notice

The maximum penalty that a court may impose for a corporation is \$1,000,000 and a further \$120,000 for each day the offence continues. The maximum penalty that a court may impose for an individual is \$250,000 and a further \$60,000 for each day the offence continues.

When this notice begins to operate

This notice operates from the day the notice is given, unless a later date is specified in the notice.

Continuing obligation

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

Cost recovery from the person who caused the incident

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 the fee

The fee must be paid by **no later than 30 days after the date of this notice**, unless the <insert regulatory authority name> extends the time to pay the fee, or waives the fee.

How to pay the fee

- Possible methods of payment are listed on the last page of the attached invoice/statement.
- Please include the payment slip from the attached invoice/statement with your payment.

How to apply for an extension of time to pay/have fee waived

Any application for an extension of time to pay the fee or for the fee to be waived must be made in writing to the <insert regulatory authority name>. The application should set out clearly why you think your application should be granted.

Other costs

The Act allows the <insert regulatory authority name> to recover from you 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 required to pay these other costs and expenses you will later be sent a separate notice called a “Notice Requiring Payment of Reasonable Costs and Expenses”.

Variation of this notice

The requirements of this notice may only be varied or revoked by written notice issued by the <insert regulatory authority name>.

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