

Section 96 Protection of the Environment Operations Act 1997

Prevention notice

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

Attention: <insert contact name>

Notice Number «NoticeNumber»

File Number "FileNumber"

Date «NoticeIssueDate»

Prevention notice

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

The <insert regulatory authority name> reasonably suspects that an activity has been or is being carried on in an environmentally unsatisfactory manner at <insert address of premises/land> (Premises) <or by «AcctPartyName» if otherwise than at Premises>. The <insert regulatory authority name> has issued you with this prevention 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 prevention action specified in this notice by the date required. If you have any queries about this matter, please contact <insert 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 <insert 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 preventative 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 at which <description of activities> is occurring in that «AcctPartyName» «AcctPartyTradingName» has management and control of the Premises for the purposes of s 96(2)(a) of the POEO Act.

OR

«AcctPartyName» «AcctPartyTradingName» is carrying on [description of activities] for the purposes of s 96(2)(b) of the POEO Act.

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> observed...<set out what the regulatory authority has observed or understands, i.e. the facts giving rise to the allegation that the activity is being carried out in an environmentally unsatisfactory manner. It should be clear what the pollution incident is>.
5. Section 96 of the Act enables the <insert regulatory authority name> to issue a Prevention Notice where it reasonably suspects an activity has been or is being carried on in an environmentally unsatisfactory manner. Pursuant to s 95 of the Act and for the purposes of Part 4.3, 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, this Act, the regulations or a condition attached to an environment protection licence (including a condition of a surrender of a licence) or an exemption given under this Act or the regulations, or
 - b. it causes, or is likely to cause, a pollution incident, or
 - c. it is not carried on 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.
6. The Dictionary to the 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. If you are relying on paragraph 95(1)(a) of the Act then set out the relevant sections of the Act or clauses of a regulation that are said to have been contravened>.
7. The <insert regulatory authority name> reasonably suspects that an activity has been or is being carried on in an environmentally unsatisfactory manner <[at the Premises] or by [name of person]> in that:
 - a. <apply the facts to the law, for example, sediment-laden water observed running off the Premises and into ABC creek constitutes water pollution, which is in contravention of s 120 of the Act.>
 - b. <another example applying the facts to the law: the absence of diversionary structures for controlling sediment-laden water in circumstances where sediment-laden water is being generated is not in accordance with good environmental practice>.
8. The <insert regulatory authority name> is directing you to take action specified in this notice because <you are the occupier of the Premises> or <you are the person carrying on description of activities>.

Direction to take preventive action

9. The <insert regulatory authority name> directs «AcctPartyName» «AcctPartyTradingName» to take the following prevention action:

10. By <time> on <date>, <direction>.

<Ensure what you are asking meets the definition of preventive action and does not go beyond power. Section 96(3) of the Act gives examples of preventive action:

(3) Examples. The action to be taken may (without limitation) include any of the following:

(a) installing, repairing, altering, replacing, maintaining or operating control equipment or 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 commencing 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 and carrying out a plan of action to control, prevent or minimise pollution or waste

(j) reviewing the carrying out of an activity.>

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 notice

- This notice is issued under section 96 of the POEO Act.
- It is an offence against the Act not to comply with this notice.
- Details provided in this notice will be available on the Public Register in accordance with section 308 of the Act.

Penalty for not complying with this notice

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

Appeals against this notice

You can 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 day the notice is given, unless a later date is specified in the notice.
- If an appeal is made against the notice, and the Land and Environment Court directs that the notice is stayed, the notice does not operate until the stay ceases to have effect, or the Land and Environment confirms the notice, or the appeal is withdrawn (whichever occurs first).

Continuing obligation

Under section 319A of the Act, your obligation to provide the information and/or records specified in this notice continues until the notice is complied with in full, even if the due date has passed.

Occupier's duty

If you are given this notice as the occupier of the Premises but you are not the person carrying on the activity giving rise to this notice, this notice is taken to require you to take all available steps to cause the action to be taken.

Deadline for paying fee

The fee must be paid by no later than 30 days after the date of this notice unless you appeal to a court against the notice, or unless the <insert regulatory authority name> extends the time for payment of the fee or waives the fee. If you do appeal this notice the fee does not have to be paid unless and until the court confirms the notice.

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 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 be sent a separate notice called a "Notice Requiring Payment of Reasonable Costs and Expenses".

Variation or revocation of this notice

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

specific needs. This document may be subject to revision without notice and readers should ensure they are using the latest version.

DRAFT