Section 91 Protection of the Environment Operations Act 1997, as applied by section 144AG

Clean-up Notice – Illegal Dumping

| | «AcctPartyName» |
|---------------|--|
| | «AcctPartyTradingName» |
| | «AcctPartyABN» |
| | «PostalAddressStreet» |
| | «PostalAddressSuburb» «PostalAddressState» «PostalAddressPostcode» |
| | |
| Attention: | <insert contact="" name=""></insert> |
| | |
| Notice Number | «NoticeNumber» |
| File Number | "FileNumber" |
| Date | «NoticeIssueDate» |

Clean-up Notice – Illegal Dumping (Depositing of Litter or Waste)

*Guidance to be deleted before issuing the notice. When to use this notice:

- Scale of litter or waste dumping: This notice can be used for the small-scale dumping of litter or waste, per the offences in Part 5.6AA and Part 5.6A of the *Protection of the Environment Operations Act 1997*, as it results in a smaller administrative fee and smaller maximum penalties for non-compliance. Where a large amount of waste has been illegally dumped, consider the standard clean-up notice template where you reasonably suspect that dumping is causing or has caused a pollution incident e.g. land pollution.
- Location of litter or waste dumping: This notice should be used where you are the appropriate
 regulatory authority (ARA) for the premises. Ordinarily, local councils will be the ARA for the
 dumping of waste or litter by individuals or companies on public places in their local area, such as
 footpaths and parks. Local councils will also typically be the ARA for the dumping of waste or litter
 on open private places, such as the yards of unlicensed premises in their local area (except where a
 public authority is suspected of depositing the litter or waste).*

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

The <insert regulatory authority name> reasonably suspects that litter or waste has been or is being deposited on «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 on > on > on <a href

*Notices should be drafted in the following manner:

- give general overview sentence about the regulatory authority's role
- introduce the Person/Owner/Occupier 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 (e.g. "on 14 October 2023 the regulatory authority attended the Premises and observed four tyres deposited in a public community garden")

- set out the relevant legislative provisions, deleting anything in this template that is not applicable to the particular circumstances
- apply the legislative provisions to the facts, i.e. set out the reasonable suspicion for the deposit of waste or litter, and why the recipient is the owner or occupier of the premises or is the person suspected of causing or contributing to the deposit. The notice can also be used when someone "permits" illegal dumping under section 144AG.
- give directions as to clean-up action, which must be proportionate to the suspected dumping.

Background

- 1. The <insert regulatory authority name> has responsibility for enforcement of the *Protection of the Environment Operations Act 1997* (POEO Act).
- Insert whichever applicable the occupier and owner options will not be relevant where the dumping is suspected to have occurred on a public place like on a footpath: <u>«AcctPartyName» «AcctPartyTradingName</u>» is the occupier of the Premises in that

«AcctPartyName» «AcctParty I radingName» 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, as applied by section 144AG.

OR

«AcctPartyName» «AcctPartyTradingName» is the owner of the Premises for the purposes of s 91(1)(a) of the POEO Act, as applied by section 144AG.

OR

«AcctPartyName» «AcctPartyTradingName» is reasonably suspected by the <insert regulatory authority name> of depositing litter or waste on the Premises for the purposes of s 91(1)(b) of the Act, as applied by section 144AG of the Act. <Set out the basis for the reasonable suspicion that the person is suspected of depositing or having deposited the litter or waste, which can be further expanded on in the next section below. *Note that this is unnecessary if the person is the occupier or the owner of the premises.>

OR

«AcctPartyName» «AcctPartyTradingName» is reasonably suspected by the <insert regulatory authority name> of contributing, to any extent, to the depositing of litter or waste, on the Premises for the purposes of s 91(1)(c) of the Act, as applied by section 144AG of the Act. <Set out the basis for the reasonable suspicion that the person is suspected of contributing, to any extent, to the depositing of litter or waste, and the extent of contribution if known. This can be further expanded on in the next section below. *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 (ARA) for <set out why the regulatory authority is the ARA for the premises. 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 depositing of litter or waste/reasonable suspicion of the depositing of litter or waste. It should be clear what item/substance the litter or waste is>

Environment Protection Law

- 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 (as defined in the Dictionary of the POEO Act).
- 6. Section 144AG of the Act provides that a clean-up notice under section 91 can also be issued in respect of the depositing of litter or waste, in alleged contravention of section 144AE or any of the offences under Part 5.6A of the Act, as if it were a pollution incident (see the Note in section 91).

- Section 91 of the Act, as applied by section 144AG of the Act, therefore enables the <insert regulatory authority name>to issue a clean-up notice in respect of:
 - a. illegal dumping under section 144AE, which sets out the offence of depositing more than 50 L or 50 kg of litter or waste without lawful excuse; or
 - b. the depositing of litter under Part 5.6A of the Act, which includes several littering offences.
- 8. Unless one of the exceptions in section 144AF applies, the offence of illegal dumping in section 144AE extends to: *You can delete this paragraph if the notice is being issued for a littering offence under Part 5.6A only*
 - a. a person who deposits more than 50 L or 50 kg of litter or waste in or on a public place or an open private place, and
 - b. a person who causes or permits that conduct.
- 9. A clean-up notice under section 91, as applied by section 144AG, can be issued to:
 - a. an owner or occupier of premises where the <insert regulatory authority name> reasonably suspects that the litter or waste has been deposited; and/or
 - a person who the <insert regulatory authority name> reasonably suspects caused, is causing, or is contributing, to any extent, to the deposit of litter and waste.
- 10. For the purposes of littering under Part 5.6A and illegal dumping in section 144AE:
 - "Depositing litter" in or on a place includes:
 - (a) dropping or throwing litter in, on, into or onto the place, or
 - (b) leaving litter in or on the place, or
 - (c) putting litter in such a location that it falls, descends, blows, is washed, percolates or otherwise escapes or is likely to fall, descend, blow, be washed, percolate or otherwise escape into or onto the place, or
 - (d) causing, permitting or allowing litter to fall, descend, blow, be washed, percolate or otherwise escape into or onto the place.
 - "Litter" includes:
 - (a) any solid or liquid domestic or commercial refuse, debris or rubbish and, without limiting the generality of the above, includes any glass, metal, cigarette butts, paper, fabric, wood, food, abandoned vehicles, abandoned vehicle parts, construction or demolition material, garden remnants and clippings, soil, sand or rocks, and
 - (b) any other material, substance or thing deposited in or on a place if its size, shape, nature or volume makes the place where it is deposited disorderly or detrimentally affects the proper use of that place,

deposited in or on a place, whether or not it has any value when or after being deposited in or on the place.

- "Open private place" means: *This definition can be removed if you are issuing the notice for litter or waste dumped on a public place only*
 - (a) a private place that is situated in or on land and that is not within a building on the land, or
 - (b) a private place that is situated in or on waters.
- 11. The Dictionary to the POEO Act also defines:
 - "Public place" includes <mark>*This definition can be removed if you are issuing the notice for litter or waste dumped on an open private place only*</mark>
 - (a) a public place within the meaning of the Local Government Act 1993, and
 - (b) a State forest or flora reserve within the meaning of the Forestry Act 2012, and
 - (c) a national park, state conservation area, historic site, nature reserve, karst conservation reserve, regional park or Aboriginal area within the meaning of the *National Parks and Wildlife Act 1974*, and

- (d) a place that is open to the public, or is used by the public, whether or not on payment of money or other consideration, whether or not the place is ordinarily so open or used, and whether or not the public to whom the place is so open, or by whom the place is so used, consists only of a limited class of persons.
- "Waste" includes *This definition can be removed if you are solely relying on the material being litter and not waste but it should remain if you want to rely on both limbs (i.e. litter or waste) or it just being waste*
 - (a) any substance (whether solid, liquid or gaseous) that is discharged, emitted or deposited in the environment in such volume, constituency or manner as to cause an alteration in the environment, or
 - (b) any discarded, rejected, unwanted, surplus or abandoned substance, or
 - (c) any otherwise discarded, rejected, unwanted, surplus or abandoned substance intended for sale or for recycling, processing, recovery or purification by a separate operation from that which produced the substance, or
 - (d) any processed, recycled, re-used or recovered substance produced wholly or partly from waste that is applied to land, or used as fuel, but only in the circumstances prescribed by the regulations, or
 - (e) any substance prescribed by the regulations to be waste.

A substance is not precluded from being waste for the purposes of this Act merely because it is or may be processed, recycled, re-used or recovered.

- 12. The <insert regulatory authority name> reasonably suspects that litter or waste has been or is being deposited on the Premises:
 - a. <apply the facts to the law, for example: "the <insert regulatory authority name> reasonably suspects that more than 50 L or 50 kg of waste has been deposited on the Premises as an <insert regulatory authority name> officer found four tyres discarded on the Premises..."
 Ensure it is clear in the notice whether the regulatory authority is issuing the notice because of littering under Part 5.6A or illegal dumping of waste or litter of more than 50 L or 50 kg under section 144AE, as the provisions apply differently. Include as much information as possible which shows the regulatory authority's suspicion that it is litter or waste, that it has been deposited in a public place or an open private place, and if applicable that the waste or litter is over 50 L or 50 kg and that the notice recipient deposited it>; and
 - b. <set out as many that apply>.
- 13. 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 depositing or having deposited the litter or waste on the Premises> OR the <insert regulatory authority name> reasonably suspects you of contributing to the depositing of litter or waste on the Premises>

Direction to take clean-up action

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

*Ensure what you are directing the recipient to do meets the definition of clean-up action, does not go beyond power and is proportionate and reasonable to the suspected littering or illegal dumping of litter or waste (for example, a direction to remove the litter deposited in a public place and deposit it at a lawful waste receptacle or facility). The definition of clean-up action is:

- "Clean-up action" means:

(a) in relation to a pollution incident includes -

(i) action to prevent, minimise, remove, disperse, destroy or mitigate pollution resulting or

likely to result from the pollution incident, and

- (ii) ascertaining the nature and extent of the pollution incident and the actual or likely resulting pollution, and
- (iii) preparing and carrying out a remedial plan of action to deal with the pollution incident, and
- (iv) actions required to restore the environment to a state that is as close as possible to the state the environment was in immediately before the pollution incident, and
- (v) carrying out—
 - (A) specified tests or environmental monitoring, and
 - (B) action to facilitate testing by the appropriate regulatory authority, and
- (vi) giving the appropriate regulatory authority a specified test, monitoring or a report, and
- (b) also includes action to remove or store the following-
 - (i) waste disposed of on land unlawfully,
 - (ii) chemicals,
 - (iii) products or articles containing chemicals.*

Fee to be paid

You are required by law to pay a fee 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, as applied by section 144AG of the 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.
- If this notice is issued to a corporation and the notice is not complied with by the date specified, the
 appropriate regulatory authority may, under s 91A(2) of the Act, as applied by section 144AG of the
 Act, issue a supplementary clean-up notice to a current or former director or manager, or a related
 body corporate, directing them to carry out, or ensure the carrying out of, clean-up action specified in
 the supplementary notice, within the period specified in the notice.

Penalty for not complying with this notice

 The maximum penalty that a court may impose for a corporation is \$50,000 and a further \$6,000 for each day the offence continues. The maximum penalty that a court may impose for an individual is \$25,000 and a further \$6,000 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 or contributed to the incident

If you comply with this clean-up notice but you are not the person who caused, or solely caused, the littering or illegal dumping to which the notice relates, you have a right to go to court to recover your costs, or part of your costs, of complying with the notice from any person who caused or contributed to 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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