

# Supplementary Clean-up Notice

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

Attention: <insert contact name>

By <insert method of service e.g. Registered Post, Email>

Notice Number «NoticeNumber»

File Number "FileNumber"

Date «NoticeIssueDate»

## Supplementary Clean-up notice

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

The <insert regulatory authority name> issued Clean-up Notice No. <insert clean-up notice number> to <insert corporate recipient of the previous clean-up notice> based on a reasonable suspicion that a pollution incident has occurred or is occurring on land that forms part of «LocationAddress» (**Premises**), and that notice has not been complied with. The <insert regulatory authority name> has issued you with this Supplementary 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 a general overview sentence about the regulatory authority's role
- introduce the current/former director or related body corporate to whom the notice is issued, the Premises, and the relevant activities
- set out chronologically the regulatory authority's previous regulatory action (i.e. just stating the facts e.g. "on 10 June 2022 the regulatory authority issued Clean-up Notice No. XX under section 91 of the POEO Act to...in relation to 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 why the regulatory authority alleges that the corporation has not complied with the previous clean-up notice within the period specified in the notice, and why the recipient of the supplementary clean-up notice is a current/former director or manager of the corporation or related body corporate
- give directions as to clean-up action.

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## Background

- A. The <insert regulatory authority name> has responsibility for the enforcement of the *Protection of the Environment Operations Act 1997* (POEO Act).
- B. On <insert date> the <insert regulatory authority name> issued Clean-up Notice No. <insert notice number> (the **previous clean-up notice**) to <insert corporate recipient of the previous clean-up notice> (the **corporation**) under section 91 of the POEO Act in relation to <insert description of activity>.

C. **Insert whichever is applicable:**

Section 91(1)(a) of the Act enables the <insert regulatory authority name> to issue a clean-up notice to the <owner/occupier [delete as appropriate]> of premises at or from which it reasonably suspects that a pollution incident has occurred or is occurring.

The <insert regulatory authority name> reasonably suspects that a pollution incident has occurred or is occurring <at/from (if the pollution has moved from the Premises) [delete as appropriate]> the Premises <owned/occupied [delete as appropriate]> by the corporation, as detailed in the previous clean-up notice.

**OR**

Section 91(1)(b) of the Act enables the <insert regulatory authority name> to issue a clean-up notice to a person who is reasonably suspected by the authority of causing or having caused a pollution incident.

The <insert regulatory authority name> reasonably suspects the corporation of causing or having caused the pollution incident as detailed in the previous clean-up notice.

**OR**

Section 91(1)(c) of the Act enables the <insert regulatory authority name> to issue a clean-up notice to a person who is reasonably suspected by the authority of contributing, to any extent, to a pollution incident.

The <insert regulatory authority name> reasonably suspects the corporation of contributing to the pollution incident as detailed in the previous clean-up notice.

- D. <Set out what has been observed or understood in relation to compliance with the previous clean-up notice, i.e. the facts giving rise to the allegation that the corporation has not complied with the previous clean-up notice within the period specified in the notice>
- E. As the corporation has not complied with the previous clean-up notice within the period specified in the notice, the <insert regulatory authority name> can issue a supplementary clean-up notice in accordance with section 91A of the Act, directing 1 or more of the following to carry out, or ensure the carrying out of, the clean-up action specified in the notice:
- i. a current director of the corporation
  - ii. a former director of the corporation
  - iii. a related body corporate

F. **Insert if applicable:**

A director of a corporation extends to a person involved in the management of the affairs of the corporation.

G. **Insert whichever is applicable:**

<Insert notice recipient name> is a current director of the corporation for the purposes of s 91A(2)(a) of the Act.

**OR**

<Insert notice recipient name> is a former director of the corporation for the purposes of s 91A(2)(b) of the Act.

**OR**

<Insert notice recipient name> is a related body corporate of the corporation for the purposes of s 91A(2)(c) of the Act.

- H. <Set out why the regulatory authority alleges that the recipient of this supplementary clean-up notice is a current/former director of the corporation or a related body corporate>.
- I. Insert if applicable
- <If the supplementary clean-up notice proposes different directions to the previous clean-up notice, you must set out the rationale for requiring different directions. For example, new information may have become available about a better way to address the pollution incident.>
- J. The <insert regulatory authority name> is directing you to take action specified in this notice because you are a <current director of the corporation/former director of the corporation/related body corporate of the corporation [delete as appropriate]>.

## Direction to take clean-up action

The <insert regulatory authority name> directs <the recipient of the notice> to take the following clean-up action:

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

Ensure what you are asking meets the definition of clean-up action and does not go beyond power. Progress reports can also be required as per s 91A(3).

The definition of clean-up action is:

*clean-up action, 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.*

*It also includes (without limitation) action to remove or store waste that has been disposed of on land unlawfully, chemicals, and products or articles containing chemicals.*

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 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.

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«NoticeAuthorisingOfficer»

«NoticeAuthorisingOfficerTitle»

«NoticeAuthorisingOfficerSection»

(by Delegation)

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## Warnings and information about this clean-up notice

- This notice is issued under section 91A 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 \$2,000,000 and a further \$240,000 for each day the offence continues. The maximum penalty that a court may impose for an individual is \$500,000 and a further \$120,000 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 POEO 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(s) 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 pollution incident 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.

### 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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