

Guideline

Environmental Protection Act 1994

Environmental Evaluation

This guideline provides information to customers of the Department of Environment and Heritage Protection who have been issued a notice to conduct or commission environmental evaluations under section 321 to 329 of the Environmental Protection Act 1994.

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What is an environmental evaluation?

An environmental evaluation is a compliance tool under the *Environmental Protection Act 1994* (the Act) that is designed to evaluate an activity or event that has caused, or is likely to cause, environmental harm, in order to facilitate a solution to manage the activity or event. An environmental evaluation can be either an environmental audit or an environmental investigation.¹

An environmental evaluation can be used when the cause, nature or extent of an activity or event, or the solution to an activity or event, is unknown. It requires the person responsible for the activity or event to investigate (or commission someone to investigate) the activity or event and submit a report to the Department of Environment and Heritage Protection (the department). The submission of the report to the department will assist the department in deciding what needs to be done to facilitate a solution to manage the activity or event.

Environmental evaluations do not in themselves fix the problem, but they give the department the information needed to decide what action needs to be taken in relation to the activity or event, by providing guidance in answering the questions 'what is happening?' and 'what is the solution?'.

The legislative provisions relating to environmental evaluations can be found in sections 321 to 329 of the Act.

What if the activity or event is associated with contaminated land or the contamination of land?

An environmental evaluation is still available as a compliance tool if the activity or event is associated with contaminated land or the contamination of land, and can be used to decide:

- the source, cause or extent of contamination of the land, being caused; and
- the need for:
 - a site management plan for the land; or
 - the land to be remediated; and
- the source, cause or extent of any contamination to the surrounding land, or to the environment, being caused, or likely to be caused, by the contamination of the land; and
- any environmental harm being caused, or likely to be caused, by the contamination of the land.²

What is the difference between an environmental audit and an environmental investigation?

An environmental audit can be commissioned by the department and require the receiver to submit an environmental report to the department.³ An environmental audit can also be conducted by the department.⁴ An environmental audit is site specific and addresses serious or potentially serious environmental harm problems that cannot be evaluated by normal inspections.

An environmental investigation can be either conducted or commissioned and the receiver is required to submit an environmental report to the department about the investigation.⁵ Environmental investigations are designed to examine serious or potentially serious environmental problems that are not necessarily site specific.

¹ As defined in the dictionary (Schedule 4) of the Act.

² Section 321(2) of the Act.

³ Sections 322 and 323 of the Act.

⁴ Section 326 of the Act.

⁵ Section 326B of the Act.

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Why have I been issued a notice to commission an environmental audit?

You have been issued a notice to commission an environmental audit because you are either the holder of an environmental authority (EA) or the person responsible for contravening one of the prescribed matters listed below.

Audits about environmental authorities

If the department is reasonably satisfied that an audit is necessary or desirable, you (the holder of an EA) may be required to commission an environmental audit about a relevant activity, which is the subject of the EA, and provide an environmental report to the department.⁶

For example, an environmental audit for an EA may be required to determine:

- whether the conditions of the EA have been complied with;
- the environmental harm the activity is causing, compared with the environmental harm authorised;
- whether a plan of operations for an EA complies with the conditions of the EA;
- the accuracy of a final rehabilitation report given to the department by the EA holder.

Audits about other prescribed matters

The department may also require an environmental audit about other prescribed matters.

If the department is satisfied that you are, or have been, contravening one of the following, a written notice (an audit notice) may be given to you to commission an audit about the matter, and give the department an environmental report about the matter:⁷

- a regulation;
- an environmental protection policy;
- a transitional environmental program (TEP);
- an enforceable undertaking;
- a direction notice;
- a noise standard;
- the provisions relating to depositing a prescribed water contaminant in waters, in a roadside gutter or stormwater drainage, or at another place where it might move into waters, a roadside gutter or stormwater drainage;
- the provisions relating to air contamination; or
- the provisions relating to fuel standards.

Who conducts an environmental audit?

Environmental audits must be carried out by an approved auditor, who is an individual approved by the Chief Executive as an auditor under Chapter 12 Part 3A Division 2 of the Act. The auditor must be a third-party auditor (i.e. they must not have a direct or indirect financial or other interest in a matter or thing relevant to the exercise of the function). This is to ensure that there is no conflict of interest for the auditor in performing their approved function.

⁶ Section 322(1) of the Act.

⁷ Section 323(1) of the Act.

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Please note: The department has not approved any environmental auditors under chapter 12, part 3A, Division 2 of the *Environmental Protection Act 1994* at this time. A project is currently underway to scope the potential use of environmental auditors across the department's business.

Audits by the department

The department may also decide to conduct or commission an environmental audit about a stated matter concerning an EA for a resource activity. A resource activity is one that involves:

- a geothermal activity;
- a greenhouse gas storage activity;
- a mining activity; or
- a petroleum activity.

The department may decide to do the audit, or prepare the report, or both. If the department decides to conduct the audit, you, as the holder of the EA, will be given an information notice about the decision to conduct the audit. Once the department has prepared the environmental report about the audit, you will be given a copy of the report within 10 business days.

In the event that the department carries out the audit, the department may recover the costs it incurred in carrying out the audit from the holder of the EA.⁸

What information is in an audit notice?

When the department requires you to commission an environmental audit, the following information will be provided to you in the audit notice⁹:

- the matter for which the environmental audit is required;
- that you must commission the environmental audit and submit the environmental report about the audit to the department within a stated reasonable period; and
- an information notice will be included with or accompany an audit notice, providing you with information about the decision to give the notice and to fix the stated period.

Why have I been issued a notice to conduct or commission an environmental investigation?

You have been issued a notice to conduct or commission an environmental investigation because you are the person who has carried out, is carrying out, or is proposing to carry out, the activity that has caused, or is likely to cause, environmental harm.¹⁰

If the environmental investigation relates to the contamination of land, you have received a notice to conduct an environmental investigation because you are a prescribed person responsible for the land.¹¹ Each of the following persons are prescribed responsible persons for land:¹²

- a person who released a hazardous contaminant contaminating the land, who can be located;

⁸ Section 326A of the Act.

⁹ Section 324 of the Act.

¹⁰ Section 326B of the Act.

¹¹ Section 326BA of the Act.

¹² As defined in the dictionary (Schedule 4) of the Act.

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- a relevant local government if the department reasonably believes:
 - the land became contaminated because the local government gave approval for the use of, or an activity to be carried out on, the land; and
 - in giving the approval, the local government did not comply with the requirements under any Act in relation to the approval; and
 - the local government ought reasonably to have known that giving the approval would result in the land becoming contaminated; or
 - the local government gave approval for the use of, or an activity on, the land, inconsistent with the particulars recorded for the land in the environmental management register or the contaminated land register, and the use or activity has caused environmental harm;
- if neither of the above apply, the owner of the land (excluding mortgagees), if:
 - when the owner acquired the land, particulars of the land were recorded in the environmental management register or the contaminated land register; or
 - the land became contaminated after the owner acquired the land.

Environmental investigations about environmental harm

If the department is satisfied on reasonable grounds that:¹³

- an event causing environmental harm has occurred while an activity was being carried out; or
- an activity, or proposed activity, is causing, or is likely to cause, environmental harm;

you may receive a written notice (an investigation notice). The investigation notice will require you to conduct or commission an investigation about the event or activity, and give the department an environmental report about the investigation. The investigation notice may allow for the environmental investigation to be conducted and the environmental investigation report to be submitted by a suitably qualified person.

The department may conduct initial monitoring to assist in determining whether it is more likely than not that environmental harm occurred or is likely to occur.

Example:

It has been alleged in a telephone call from a member of the public that ABC Pty Ltd, in the course of its business activities, has released a large amount of contaminated waste into Murphy Creek, thereby causing environmental harm. A senior officer of the department has attended the site at Murphy Creek where it is alleged the contaminated waste was released, and noted brown sludge oozing from the western boundary of the ABC Pty Ltd site into Murphy Creek. Water samples were taken from Murphy Creek and samples of the sludge were also taken from the area near the creek and from the western boundary of the ABC Pty Ltd site. Testing of the samples indicates that both the water and area surrounding Murphy Creek are contaminated with toxic chemicals. The same chemicals have been found in the sludge sample taken from near the ABC Pty Ltd site.

In the circumstances, the department is satisfied on reasonable grounds that an event has happened causing environmental harm, while ABC Pty Ltd was carrying out an activity. Accordingly it would be appropriate to

¹³ Section 326B(1) of the Act.

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require ABC Pty Ltd to carry out an environmental investigation.

A number of factors might need to be investigated in this instance, including obtaining information on how the release of toxic waste came about, what could have been done to prevent it, what could be done to prevent it happening again and the extent of the harm caused to the environment by the event.

Environmental investigations about contamination of land

An environmental investigation may be required where the matter relates to contaminated land.¹⁴ If the department is satisfied that all of the following apply:

- the particulars of the land are recorded in the environmental management register or contaminated land register;
- the hazardous contaminant contaminating the land is in a concentration that has the potential to cause serious environmental harm;
- a person, animal or another part of the environment may be exposed to the hazardous contaminant, whether on the land or not;

you may receive an investigation notice. The investigation notice will require you to conduct or commission an investigation about the contamination or potential contamination of the land, and give the department a site investigation report for the land in accordance with sections 389 and 390 of the Act.

You will not be required to undertake an environmental investigation into a contaminated land site if the land is already subject to a site management plan for the contamination and the conditions of the plan are being complied with.

Example:

The department received a complaint from a member of the public that they had found petrol in an existing, but disused, water-bore located on their property. The property is adjacent to Ma & Pa's Petrol Station Pty Ltd, of which they have permission to store hydrocarbon products in underground tanks. An initial investigation by the operator of the petrol station identified that there was a contaminant released to the environment and groundwater was affected. Investigations by the department have identified that this site is listed on the EMR, but a site management plan does not exist.

Following this, the department is satisfied on reasonable grounds that a hazardous contaminant is contaminating land listed on the EMR, and this has potential to cause serious environmental harm. It has already been established that at least one person has been exposed to the hazardous contaminant, and at this point in time it is unclear if other people, animals or the environment have been exposed. Accordingly, it would be appropriate to require Ma & Pa's Petrol Station Pty Ltd to conduct an environmental investigation into the contaminated land.

A number of factors would need to be considered in the investigation, including the cause of the release of the contaminants, the extent of environmental harm, the risk to public health and safety, and what could be done to prevent release of contaminants again.

¹⁴ Section 326BA of the Act.

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What information is in an investigation notice?

When the department issues you an investigation notice, requiring you to conduct or commission an environmental investigation, the following information will be provided to you:

- the matter for which the environmental investigation is required;
- that you must conduct or commission the environmental investigation and submit the environmental report about the investigation to the department; or submit a site investigation report for the land (if the environmental investigation relates to contaminated land) within a stated reasonable period; and
- an information notice will be included with or accompany an audit notice, providing you with information about the decision to give the investigation notice and fix the stated period.

What happens if I am not the owner of the land to which the environmental evaluation relates?

In relation to environmental investigations, if you are not the owner of the land, you may enter the land to conduct the investigation only with the consent of the owner and occupier of the land, or, if at least 5 business days written notice has been given to the owner or occupier.¹⁵ The notice must inform the owner and occupier of your intention to enter the land, the purpose of the entry, and the days and times when the land is to be entered.¹⁶

What are my responsibilities upon receiving a notice to conduct or commission an environmental evaluation?

Upon receiving a notice to conduct or commission an environmental evaluation, you are required to:

- carry out the evaluation by the date specified in the notice;¹⁷ and
- upon completion of the evaluation, provide an environmental report to the department, accompanied by a statutory declaration confirming:
 - that the information in the report is not false or misleading; and
 - that all the relevant information was given to the person who carried out the environmental evaluation.¹⁸

Where the report is for an environmental audit that are required to be carried out by an auditor¹⁹ or an environmental investigation which was required to be carried out by a suitably qualified person, the auditor or suitably qualified person must also make a declaration to accompany the report, in addition to the recipient of the notice.

Copies of the template statutory declarations should be given to you with the notice; however they can also be accessed from the department's website (<http://www.ehp.qld.gov.au>):

- Statutory declaration environmental evaluation for recipient ([ESR/2016/1997](#))
- Statutory declaration environmental evaluation for auditor ([ESR/2016/2265](#))
- Statutory declaration for suitably qualified person ([ESR/2016/2266](#))

¹⁵ Section 326DA of the Act.

¹⁶ Section 326DA(3) of the Act.

¹⁷ Section 325 (audit) and 326D (investigation) of the Act.

¹⁸ Section 326E of the Act.

¹⁹ Section 574C of the Act.

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Who can I contact?

The notice to conduct or commission an environmental evaluation includes the name and telephone number of a departmental officer that you can contact for assistance in relation to the notice, or the matters surrounding the issuing of the notice.

Can a notice to conduct or commission an environmental evaluation be amended?

A notice to conduct or commission an environmental evaluation may be amended by the department to correct clerical mistakes and errors. If the notice is amended, you will receive a copy of the amended notice.

Major or serious errors that include errors of calculation, typing errors, or errors of punctuation or formatting which may give rise to unintended changes of meaning may also be corrected by the department. If such errors are corrected, the department will advise you by way of written correspondence.

Significant amendments which affect your rights or liabilities will be detailed to you by way of a new notice. The new notice will be accompanied by a cover letter, which clearly states the changes that have been made in the new notice. Significant amendments include, for example, imposing stricter requirements or an extension of time for requirement due dates.

What happens if I do not action a notice to conduct or commission an environmental evaluation?

Failure to comply with a notice to conduct or commission an environmental evaluation is an offence under the Act, unless you have a reasonable excuse.²⁰ What is reasonable will be determined by the department, in light of all the circumstances. For example, it would not be a reasonable excuse to claim lack of funds to perform the environmental evaluation, unless every avenue to obtain the funds has been exhausted.

Several compliance options and penalties are available to the department if a person fails to comply with a notice to conduct or commission an environmental evaluation:

- the department may action an environmental audit for resource EAs and recover the associated costs (see above at [‘Audits by the department’](#));
- the department may decide to commence legal proceedings; and/or
- the department may impose a penalty.

Penalties

The following penalties apply for failing to comply with a notice to conduct or commission an environmental evaluation:²¹

- The maximum penalty for an individual is 300 penalty units.
- The maximum penalty for a corporation is 1500 penalty units.

As an alternative to prosecution, and in accordance with the department's [enforcement guidelines](#), the department may issue a penalty infringement notice (PIN) for the offence of contravening a notice to conduct or commission an environmental evaluation.

The State Penalties Enforcement Regulation 2014 prescribes the number of penalty units for an offence. Section 3 of the Penalties and Sentences Regulation 2015 prescribes the monetary value of a penalty unit.

²⁰ Section 326D of the Act.

²¹ Sections 325 and 326D of the Act.

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What happens once I have submitted the environmental report to the department?

If the environmental report is in relation to an environmental audit, the department must accept the report.²²

If the environmental report is in relation to an environmental investigation, the department has the following options²³:

- accept the report;
- refuse to accept the report;
- refuse to accept the report and require another environmental investigation and a further report; or
- require further information to be provided in order to decide whether to approve the environmental report.

The department is required to make a decision about whether to accept or refuse an environmental investigation report within 20 business days.²⁴ The department may also extend the time it requires to decide whether or not to accept an environmental report if there are special circumstances for extending the time.²⁵

You will receive written notice of any decision reached by the department.

Accept the report

Once an environmental report is accepted, the information in the report will be used to decide what action (if any) needs to be taken to remedy the activity or event that is causing, or is likely to cause, environmental harm. The information in an environmental report can be used to decide.²⁶

- whether a TEP is required to be prepared and submitted;
- if an environmental protection order (EPO) is to be served;
- if an amendment to an EA is necessary; or
- if other compliance action is needed to address the problem.

If the department fails to decide whether or not to accept an environmental report within 20 business days, it is taken to be a decision by the department that it has refused to accept the report.²⁷

For more information on TEPs, see the TEP guideline on the department's website by searching [ESR/2016/2277](#).

Refuse to accept the report²⁸

The department may only make a decision to refuse to accept the report if the department is satisfied the report does not adequately address the relevant matters for the environmental investigation to which the report relates.

Refuse to accept the report and require another environmental investigation

If the environmental report does not address the relevant matters for the environmental investigation, as set out in the original notice to conduct or commission an environmental investigation, the department may require you to complete another environmental investigation and a further report.²⁹

²² Section 326G(2) of the Act.

²³ Section 326G(4), (5) and (6) of the Act.

²⁴ Section 326G of the Act.

²⁵ Section 326G(7) of the Act.

²⁶ Section 326H of the Act.

²⁷ Section 329 of the Act.

²⁸ Section 326G(5) of the Act.

²⁹ Section 326I of the Act.

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The new environmental investigation and subsequent report are subject to all the same requirements as the original. In addition, they are also able to be amended (see above at '[Can a notice to conduct or commission an environmental evaluation be amended?](#)').

What happens if I do not undertake another environmental investigation?

A failure to comply with a notice to conduct or commission another environmental investigation is an offence under the Act.

- The maximum penalty for an individual is 300 penalty units.
- The maximum penalty for a corporation is 1500 penalty units.

As an alternative to prosecution, and in accordance with the department's [enforcement guidelines](#), the department may issue a penalty infringement notice (PIN) for the offence of contravening a notice to conduct or commission another environmental investigation.

The State Penalties Enforcement Regulation 2014 prescribes the number of penalty units for an offence. Section 3 of the Penalties and Sentences Regulation 2015 prescribes the monetary value of a penalty unit.

Request further information to decide whether to approve report

The department is able to request further information to decide whether to approve an environmental report about an environmental investigation.³⁰ For example, further information may be requested where the environmental report does not adequately address the matters in the investigation notice, but another environmental evaluation and report is not necessary. You may receive a written request for further information within 10 business days after you submit the environmental report to the department.

You should respond to the request for further information within the timeframe specified in the written request.

Within 20 business days after the timeframe specified in the written request, the department will make the decision whether to approve the environmental report.

How does the department know if the environmental report is satisfactory?

When deciding if the environmental report is satisfactory, the department will refer to the requirements listed in the original notice to conduct and commission an environmental investigation. If the environmental report adequately addresses each requirement, then the report will be deemed satisfactory. The decision will be made taking into account the following factors:

- the original activity or event that has caused, or is likely to cause, environmental harm;
- the sufficiency of information contained in the report, including enough detail to inform future actions; and
- the comprehensiveness of the report.

Can I review or appeal a decision that the department has made?

If you are dissatisfied with a decision made by the department, you may be able to apply to have the department review that original decision. The provisions regarding the review of decisions and appeals can be found in sections 519 to 539 of the Act.

³⁰ Section 326F of the Act.

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Generally, a request to have a decision reviewed must be:

- made within 10 business days of the decision being notified to the person;
- supported by enough information to enable the department to decide the application for review; and
- made using the application for review of original decision form ([ESR/2015/1573](#)).

If you have made an application for a decision to be reviewed, you may also apply to the relevant court for a stay of the decision to secure the effectiveness of the review.

Once the original decision has been reviewed, if you are dissatisfied with the review decision you may be able to appeal against that decision to the relevant court within 22 business days after receiving notice of the review decision.

A person whose interests are or would be adversely affected by a decision of the department may also be able to request a statement of reasons for a decision or a statutory order review under the *Judicial Review Act 1991*.

For further information about reviews and appeals see the following information sheets:

- Internal review and appeal to the Planning and Environment Court ([ESR/2015/1572](#))
- Internal review and appeal to the Land Court ([ESR/2015/1742](#)).

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Version history

Version	Effective date	Description of changes
1.00	9 January 2015	Initial upload.
2.00	5 July 2016	The document template, header and footer have been updated to reflect current Queensland Government corporate identity requirements and comply with the Policy Register.

Disclaimer

While this document has been prepared with care it contains general information and does not profess to offer legal, professional or commercial advice. The Queensland Government accepts no liability for any external decisions or actions taken on the basis of this document. Persons external to the Department of Environment and Heritage Protection should satisfy themselves independently and by consulting their own professional advisors before embarking on any proposed course of action. This document will be reviewed on an ongoing basis and is subject to change without notice.