

Guideline

Environmental Protection Act 1994

The duty to notify of environmental harm

This guideline provides information regarding the duty to notify the Department of Environment and Heritage Protection of certain events, including those that may cause serious and material environmental harm, under ss. 320 to 320G of the Environmental Protection Act 1994.

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Introduction

Sections 320 to 320G of the *Environmental Protection Act 1994* (the Act) outline the requirements for the duty to notify of **environmental harm**. Pollution incidents and activities that cause or threaten to cause **serious environmental harm** or **material environmental harm** must be reported quickly to the Department of Environment and Heritage Protection (the **department**), as well as to local governments in some situations, so appropriate action can be taken to prevent or limit possible environmental harm. In some cases, the owner or occupier of the land must also be notified.

The duty to notify requires a person or a company to give notice where serious or material environmental harm (that is not authorised under the Act) is caused or threatened. The duty to notify also requires an auditor, the owner or occupier of **contaminated land**, or a local government, to give notice to the department if they become aware of an event or change in the condition of contaminated land that is causing, or is reasonably likely to cause, serious or material environmental harm.

The duty to notify under the Act does not negate any notification requirements in other Queensland legislation or the common law. Similarly, because a person has met the notification requirements under other Queensland legislation does not mean the notification requirements under this Act have been met.

When does the duty to notify arise?

The duty to notify arises in the following circumstances:

Who	When does the duty to notify arise?
Person ¹	<p>While carrying out an activity (the primary activity), becomes aware that an event has happened that causes or threatens serious or material environmental harm, because of an act or omission in carrying out the primary activity, or another activity carried out in association with the primary activity</p> <p>While carrying out a resource activity other than a mining activity, becomes aware of the happening of one or both of the following events:</p> <ul style="list-style-type: none"> • The activity has negatively affected, or is reasonably likely to negatively affect, the water quality of an aquifer; or • The activity has caused the connection of two or more aquifers.* <p>*Note: this requirement does not negate the need for a person to notify in relation to a resource activity that is not related to an aquifer event.</p>
Owner or occupier of contaminated land ²	<p>Becomes aware of:</p> <ul style="list-style-type: none"> • The happening of an event involving a hazardous contaminant on the contaminated land; or • A change in the condition of the contaminated land; or • A notifiable activity having been carried out, or being carried out, on the contaminated land.
An auditor performing an auditor's function	<p>Becomes aware of:</p> <ul style="list-style-type: none"> • The happening of an event involving a hazardous contaminant on the

¹ Section 320A(1) of the *Environmental Protection Act 1994*.

² Section 320A(1A) of the *Environmental Protection Act 1994*.

under section 568(b) of the Act ³	contaminated land; or <ul style="list-style-type: none"> • A change in the condition of the contaminated land; or • A notifiable activity having been carried out, or being carried out, on the contaminated land.
Local government ⁴	Becomes aware: <ul style="list-style-type: none"> • That a notifiable activity has been, or is being carried out on land in the local government area; or • Of: <ul style="list-style-type: none"> ○ The happening of an event involving a hazardous contaminant in the local government area; or ○ A change in the condition of contaminated land in the local government area; that is causing, or is reasonably likely to cause, serious or material environmental harm.

What is environmental harm?

Whether an act or omission leading to an incident or event is likely to cause or threaten serious or material environmental harm will depend on the scale and nature of the impacts on the receiving environment and a range of variable factors, including:

- chemical characteristics;
- toxicity and reactivity;
- amount or volume of release;
- extent of area impacted;
- pathways for contaminant release and spread;
- weather conditions at the time of the event or incident including exacerbating or mitigating factors like rain or temperature;
- proximity of urban areas; and
- proximity, size, value and sensitivity of adjacent environmental areas.

Short and long term impacts need to be considered, including contamination of land and waters, toxic effects on biota, such as plants and animals, and public health risks from exposure to chemicals.

Where a person is in doubt as to whether their activities or the activities of another person is likely to have caused or threatened serious or material environmental harm, it is better to be cautious and provide notice in accordance with this guideline, and satisfy the duty to notify requirements.

Sometimes the full impact of an event is not known until sometime after the event has occurred. In these circumstances, the duty to notify will trigger as soon as the person becomes aware that the event is now threatening serious or material environmental harm.

³ Section 320A(1A) of the *Environmental Protection Act 1994*.

⁴ Section 320A(1B) of the *Environmental Protection Act 1994*.

Emergency incidents, such as those involving the release of hazardous materials from fires, vehicle accidents, and spillage of explosive, flammable or toxic chemicals, often involve public safety matters and require an immediate response from emergency services. These types of incidents may also threaten or cause serious or material environmental harm.

In some circumstances these events may not represent a widespread threat to life and property, and are therefore categorised at a lower level than more serious incidents that require an immediate response. Incidents that are categorized at a lower level may still cause or threaten serious or material environmental harm and should therefore not be discounted from the duty to notify requirements.

Action not limited to when environmental harm is caused or threatened

Where a person undertakes an activity or becomes aware of the actions of another person that have caused environmental harm which falls short of serious or material environmental harm, they may still be required to take action to prevent the continuance of environmental harm or mitigate the environmental harm.

The requirement to take such further action may arise because of a condition of an environmental authority, development approval, code of environmental compliance or other type of environmental approval, or may arise under the general environmental duty⁵. General environmental duty applies to all persons, and imposes an obligation not to carry out any activity that causes or is likely to cause environmental harm unless we take all reasonable and practicable measures to prevent or minimise the harm.

Actions taken at an early stage in response to an incident may result in the environmental harm falling short of the threshold at which it would be considered to have caused or threatened serious or material environmental harm.

When is notification not required?

The duty to notify does not apply to an event that is authorised under the Act. An event is authorised under the Act if it is authorised to be caused under:

- an environmental protection policy; or
- a transitional environmental program; or
- an environmental protection order; or
- an environmental authority; or
- a development condition of a development approval; or
- a prescribed condition for carrying out a small scale mining activity; or
- an emergency direction; or
- an accredited environmental risk management plan.⁶

Who has a duty to notify?

The Act sets out obligations on the following persons to give notification of an event **within 24 hours** after becoming aware of the event:

- particular employees;
- employers;
- other persons;

⁵ Section 319 of the *Environmental Protection Act 1994*.

⁶ Section 320A(4) of the *Environmental Protection Act 1994*.

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- owners, occupiers or auditors (for the purposes of a contaminated land event); or
- local governments.

In some situations, the duty to notify extends beyond notifying the department, to notifying owners and occupiers of the affected land as well. This is to ensure that any potentially affected persons are aware of the occurrence of an event which exposes them, or their land, to potentially adverse impacts, and gives them an opportunity to take the appropriate action to respond to the situation.

Note: the duty to notify of an environmental harm event still applies to persons who are:

- holders of environmental authorities;
- operating under a registration certificate, development approval or environmental code of compliance;
- carrying out an activity for which an environmental approval is not required.

A condition of an environmental authority, development approval, code of environmental compliance or other type of environmental approval may include a separate requirement to notify the department in certain circumstances. This is separate, and in addition to, the duty to notify. An approval condition that requires the operator to notify the department will generally be more prescriptive and may require different information to be provided to that required under the duty to notify.

Particular employees⁷

Who	When does the duty to notify arise?
Particular employees	<p>If a person is carrying out a primary activity during the person's employment, the person must, no later than 24 hours after becoming aware of the event:</p> <ul style="list-style-type: none"> • notify their employer of the event, its nature, and the circumstances in which it happened; or • if the employer cannot be contacted, give the department written notice of the event, its nature and the circumstances in which it happened.

Example:

A truck carrying a container of regulated waste has arrived at its destination and the truck driver has become aware that a substantial volume of waste has leaked from the transport container along the route from the point of origin. The nature of the material and volume lost is such that it is likely to cause or threaten serious or material environmental harm.

At the point at which the driver becomes aware of the event (i.e. the leakage of the material), the driver has a duty to notify their employer no later than 24 hours after becoming aware of the event.

The notice given to the employer does not have to be in writing but must contain sufficient detail. An employee should always keep a record of when and to whom they gave notice of an environmental harm event.

If the person is carrying out the primary activity as an auditor, performing auditor's functions mentioned in section 568, these requirements do not apply.

Employers⁸

Who	When does the duty to notify arise?
Employer	After an employer has been informed of a notifiable event, the employer must,

⁷ Section 320B of the *Environmental Protection Act 1994*.

⁸ Section 320D of the *Environmental Protection Act 1994*.

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	no later than 24 hours after becoming aware of the event, give the department written notice of the event, its nature and the circumstances in which it happened.
	An employer must, as soon as reasonably practicable after becoming aware of the notifiable event, give written notice of the event, its nature, and the circumstances in which it happened to: <ul style="list-style-type: none"> • an occupier of the affected land; or • any registered owner of the affect land.
	A person must give public notice of the event, its nature, and the circumstances in which it happened to person son the affected land.

Example:

A company transports regulated waste around the state. A person, employed as a truck driver for the company, has reported to the company that 12 hours earlier a substantial volume of waste leaked from the transport container along the route from the point of origin.

As the employer is now aware of the event (i.e. the leakage of the material), the employer has a duty to notify the department in writing within 24 hours, and also has a duty to notify owners or occupiers as soon as possible.

The employer will need to determine the best way to notify the owners or occupiers who may be affected by the event. The employer would need to consider many factors, including the scope of the spill, the area of the spill and the owners and occupiers who are likely to be affected, and the nature of the material that was lost.

Other persons⁹

“Other” persons are deemed to be a person not carrying out the primary activity during the course of employment or engagement by, or as the agent of, someone else.

Who	When does the duty to notify arise?
Other persons	The person must, no later than 24 hours after becoming aware of the event, give the department written notice of the event, its nature, and the circumstances in which it happened.
	The person must also, as soon as reasonably practicable after becoming aware of the event, give written notice of the event, its nature, and the circumstances in which it happened to: <ul style="list-style-type: none"> • any occupier of the affected land; or • any registered owner of the affected land.
	A person must give public notice of the event, its nature, and the circumstances in which it happened to persons on the affected land ¹⁰ if written notice is unable to be given.

⁹ Section 320C of the *Environmental Protection Act 1994*.

¹⁰ Section 320C(3)(b) of the *Environmental Protection Act 1994*.

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Owner, occupier or auditor¹¹

Who	When does the duty to notify arise?
Owner, occupier or auditor	An owner, occupier or auditor must, within 24 hours after becoming aware of the happening of an event, or a change in the condition of contaminated land, that is causing, or is reasonably likely to cause, serious or material environmental harm, give the department written notice.
	Within 20 business days after becoming aware that a notifiable activity has been, or is being carried out on the contaminated land, that is causing, or is likely to cause, serious or material environmental harm, give the department written notice of the activity, unless the person has a reasonable excuse.

The written notice must state the nature of the event or change in condition, and the circumstances in which the event or change happened.

Local government¹²

Who	When does the duty to notify arise?
Local government	A local government must, within 20 business days, after becoming aware that a notifiable activity has been, or is being, carried out on land in the local government area, that is causing, or is reasonably likely to cause, serious or material environmental harm, give the department written notice of the activity.
	<p>Within 24 hours after becoming aware of a notifiable event, or the change in condition of contaminated land in the local government area, that is causing, or is likely to cause, serious or material environmental harm, give the department written notice of:</p> <ul style="list-style-type: none"> • the nature of the event or change in the condition; and • the circumstances in which the event or change happened or is happening.

Example:

A local government becomes aware of a property that appears to have an historical unlicensed landfill in an urban suburb. Upon inspection of the site, the local government officers identified buried waste of multiple types approximately 5m from a nearby creek. The officers also noticed the colour of the water at a point in the creek nearest to the buried waste was yellow in colour indicating likely discharge of leachate from the landfill site.

As the local government is now aware of this event, the local government has a duty to notify the department in writing within 20 business days.

Notice to occupiers of affected land¹³

Where the notifiable event occurs on the person's own land and does not spread beyond that land, there will be no owners or occupiers to notify. Where the notifiable event occurs on land which is not owned by the person, or spreads beyond the boundary of that land, there will be owners or occupiers to notify. The intention of notice is

¹¹ Section 320DA of the *Environmental Protection Act 1994*.

¹² Section 320DB of the *Environmental Protection Act 1994*.

¹³ Section 320E of the *Environmental Protection Act 1994*.

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to ensure persons likely to be exposed to any adverse impacts of a notifiable event have adequate time to respond to the event. The ways in which a person or employer may give written notice to an occupier of affected land is not limited. However, a person or employer is taken to have given written notice to an occupier of affected land if the notice is:

- left with someone who is apparently an adult living or working on the affected land; or
- if there is no-one on the affected land or the person has been denied access to the affected land, left on the affected land in a position where it is reasonably likely to come to the occupier's attention; or
- posted to the affected land.

Written notice that is posted to, or left at, affected land may be addressed to 'The Occupier'.

In circumstances where it is reasonable to believe that there are large numbers of registered owners or occupiers of the affected land, or there is uncertainty as to whom the registered owners or occupiers of affected land may be, it is appropriate to give public notice.

Public notice has not been defined in the Act; however a common-sense approach should be adopted when deciding to give public notice. A public notice may include the following methods as a guide:

- radio or television broadcast to ensure there is rapid communication of the information;
- publishing of a written notice of the event in a newspaper;
- the erection of appropriately sized signs in the vicinity of the affected area.

Example:

An explosion and subsequent fire occurs at a chemical factory resulting in the output of a large volume of noxious odours, fumes and gases causing or threatening serious or material environmental harm. Consequently, the duty to notify the department and the owners or occupiers is required.

The contaminants would be initially airborne and likely to disperse over a wide area, resulting in a large number of potential owners or occupiers to whom notice would be required to be given. The employer must, as soon as reasonably practicable after becoming aware of the event, give public notice of the event, including details of its nature and the circumstances in which it happened, to owners or occupiers in the area. Under such circumstances it would be appropriate to give public notice by press notices and radio or television broadcasts, to provide notice to the widest possible audience in the shortest possible timeframe.

Notice to the department

The standard form - [Duty to Notify of Environmental Harm](#) may be used for providing written notice to the department. The form may also be used where a person is required to give written notice to owners or occupiers.

Use of the department's standard form is not required by law, however providing the information specified in the template will assist person's giving notice, to meet the requirements of the Act.

Where a decision is made to give public notice, the notice should, as a minimum, contain the same information as required in a written notice.

Penalties for failing to notify

Penalties exist for failing to notify as follows:

Offence	Max Penalty
An employee failing to notify their employer or the department	100 penalty units
An employer or other person failing to notify the department – primary activity	500 penalty units
An employer or other person failing to notify the department – resource activity	100 penalty units
An employer or other person failing to notify particular owners or occupiers of the affected land – primary activity	500 penalty units
An employer or other person failing to notify particular owners or occupiers of the affected land – resource activity	100 penalty units
An owner, occupier or auditor failing to notify the department of an event or change in the condition of the land	500 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 clean-up notice.

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.

Reasonable excuse

A person will not be guilty of an offence for failing to comply with the duty to notify, where they have a reasonable excuse. Whether an excuse is a reasonable excuse is a legal point to be decided by a Judge or Magistrate. It will depend on the circumstances and facts of each case and will be considered on a case by case basis. A concern that notification might tend to incriminate the person is not a reasonable excuse for not complying with the duty to notify.

Example:

Where an incident occurred in an isolated area of the state and it was not physically possible to provide written notice to the department within 24 hours, this will amount to a reasonable excuse.

Where harm was threatened, however the person was able to quickly take action to remove the threat of the harm before any harm was actually caused. This too may amount to a reasonable excuse.

Defence for failing to notify owners or occupiers¹⁴

Where a failure to give notice to owners or occupiers occurs, it is a defence for a person or employer to prove that, despite failing to give notice, the person or employer made reasonable efforts to identify the affected land and give written notice to each registered owner or occupier of the affected land. It is not a defence for a person or employer to fail to comply with a duty to give notice on the ground that the written notice, or the giving of the written notice, might tend to incriminate the person or employer.

¹⁴ Section 320F of the *Environmental Protection Act 1994*.

A written notice cannot be used as evidence in court proceedings

A written notice given by a person or employer is not admissible as evidence against the person or employer in a prosecution for an offence against the Act, in relation to the event about which the notice is given. However, other evidence obtained because of the written notice, or the giving or the written notice, can be admitted as evidence against the person or employer in any legal proceeding.

Providing joint notice

In some circumstances the duty to notify may arise for a number of different people concerning the same event. In such circumstances a number of persons may comply with their individual duty to notify by jointly issuing one notice advising of the event, where this can be achieved within the timeframes. To comply with the duty to notify, the notice should clearly state on whose behalf the notice is given.

If the notice does not clearly state by whom the notice is given, then it may not be sufficient to verify at a later date that a person has complied with their statutory requirement to give notice.

Phoning the pollution hotline

In addition to providing the written notice, if a person becomes aware of an event which has caused, or threatens, serious or material environmental harm, the person should immediately call the pollution hotline on **1300 130 372** and report the event. Reporting the event through the pollution hotline allows the department to take necessary measures to prevent further harm and to mitigate the effects of an incident or event.

In addition to notifying the department, it is good practice to notify the relevant local government for the area where the event has occurred.

Notification by emergency services

For major incidents that require response from emergency services, procedures are in place for Queensland Fire and Rescue Services (QFRS) to notify the department through the pollution hotline. Where notification is given by QFRS, the department will provide advice on appropriate actions and determine whether it is necessary to attend the site.

How to notify

Written notification to the department must be given by one of the following methods:

1. To notify the department of the happening of an event or a change in the condition of the land (including contaminated land), submit written notification to the department by:
 - Email: <pollutionhotline@ehp.qld.gov.au> Include **“Duty to notify of environmental harm”** in the subject line and include details of the event, its nature and the circumstances in which the event happened or attach a completed copy of the *Duty to Notify of Environmental Harm notice (EM468)*
 - Fax: (07) 3330 5875
2. By way of registered post, provide written notice including details of the event, its nature and the circumstances in which the event happened or a completed copy of the form - [Duty to Notify of Environmental Harm](#) to:
 - Permit and Licence Management
 - Department of Environment and Heritage Protection
 - GPO Box 2454
 - Brisbane QLD 4001

Definitions

Contaminated land means land contaminated by a hazardous contaminant.

Environmental harm is any adverse effect, or potential adverse effect (whether temporary or permanent and of whatever magnitude, duration or frequency) on an environmental value, and includes environmental nuisance.

Material environmental harm is environmental harm (other than environmental nuisance):

- that is not trivial or negligible in nature, extent or context;
- that causes actual or potential loss or damage to property of an amount of, or amounts totalling, more than the threshold amount (\$5000), but less than the maximum amount (\$50,000); or
- that results in costs of more than the threshold amount (\$5000) but less than the maximum amount (\$50,000) being incurred in taking appropriate action to:
 - prevent or minimise the harm; and
 - rehabilitate or restore environment to its condition before the harm.

Serious environmental harm is environmental harm (other than environmental nuisance):

- that is irreversible, of a high impact or widespread;
- caused to an area of high conservation value or special significance, such as the Great Barrier Reef World Heritage Area;
- that causes actual or potential loss or damage to property of an amount of, or amounts totalling, more than the threshold amount (\$50,000); or
- that results in costs of more than the threshold amount (\$50,000) being incurred in taking appropriate action to:
 - prevent or minimise harm; and
 - rehabilitate or restore the environment to its condition before harm.

Resource activity means an activity that involves a geothermal activity, a greenhouse gas (GHG) storage activity, a mining activity or a petroleum activity as set out at section 107 of the Act.

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.

Approved by:

Kathrin Sherman
Director, Strategic Compliance
Department of Environment and Heritage Protection
Date: 4 December 2015

Enquiries:

Permit and Licence Management
Ph: 13 QGOV (13 74 68)
Fax: (07) 3330 5875
Email: palm@ehp.qld.gov.au

Version history

Version	Effective date	Description of changes
1.00	4 December 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.