

Regulatory Impact Statement

Protection of the Environment Operations (General) Regulation 2008

Department of **Environment & Climate Change** NSW



Submissions

The Department of Environment and Climate Change NSW (DECC) invites written submissions on this Regulatory Impact Statement and on the draft Protection of the Environment Operations (General) Regulation 2008.

Submissions on this Regulatory Impact Statement and the Regulation should be made in writing and sent to:

Director Reform and Compliance
Department of Environment and Climate Change
PO Box A290
Sydney South NSW 1232

or to info@environment.nsw.gov.au.

The closing date for comments is 17 October 2008.

This publication is available at:
www.environment.nsw.gov.au/licensing/poeogeneralreg.htm

© State of NSW and Department of Environment and Climate Change NSW

The Department of Environment and Climate Change NSW and State of NSW are pleased to allow this material to be reproduced in whole or in part, provided the meaning is unchanged and its source, publisher and authorship are acknowledged.

Published by:

Department of Environment and Climate Change (NSW)
59–61 Goulburn Street, Sydney
PO Box A290, Sydney South 1232

Phone: 131555 (NSW only – publications and information requests)
(02) 9995 5000 (switchboard)
Fax: (02) 9995 5999
TTY: (02) 9211 4723
Email: info@environment.nsw.gov.au
Website: www.environment.nsw.gov.au

DECC 2008/386
ISBN 978 1 74122 901 1
September 2008

Summary

Under the *Subordinate Legislation Act 1989*, the Protection of the Environment Operations (General) Regulation 1998 (the Regulation) is due for repeal on 1 September 2009. It is proposed that the Regulation be remade as the Protection of the Environment Operations (General) Regulation 2008 (the proposed Regulation).

The proposed Regulation should support the operation of the *Protection of the Environment Operations Act 1997* (POEO Act) at least cost to the community and assist the Department of Environment and Climate Change NSW (DECC) to achieve the objectives of the POEO Act and other legislation that it administers.

The proposed Regulation aims to achieve this by:

- ensuring that the provisions of the POEO Act can be implemented in an efficient and effective manner
- recovering the costs of administering the POEO Act and the Regulation, as part of applying the 'polluter pays' principle
- providing additional incentive for the reduction of emissions of pollutants from activities under Schedule 1 of the POEO Act – this includes encouraging licensees subject to load-based licensing (LBL) to improve their environmental performance beyond what is required by the complementary command and control approaches.

In 2004, DECC commenced a review of the Regulation to identify changes required to improve the operation of the Regulation. The review:

- considered submissions received from stakeholders
- incorporated recommendations from the review of the POEO Act
- included a review of the LBL scheme.

The review of the Regulation and the resulting proposed amendments aim to:

- improve the ability of DECC to achieve environmental objectives through the administration of licences and other regulatory instruments available through the POEO Act
- refine the LBL scheme based on experience and information to date – this will ensure that the scheme captures the most significant sources of pollution from the industrial sector and continues to provide an incentive for licensees to reduce their impact on the environment.

The key changes proposed include:

- changes to environment protection notice fees
- changes to environment protection licence fees
- changes to the assessable pollutants and fee rate threshold factors that apply under the LBL scheme
- changes to load reduction agreements
- removing the licensing requirements from certain low risk activities and regulating their operation by existing environmental legislation provisions
- removing reporting requirements for biomaterial burning by electricity generators, while keeping the offence to burn native forest biomaterial for electricity generation
- providing an exemption for cold water pollution offences for the Snowy Hydro Corporation.

Contents

1	Introduction	1
1.1	Purpose and content of this document	1
1.2	Consultation	1
2	Legislative and regulatory framework	2
2.1	The Protection of the Environment Operations Act 1997	2
2.2	Protection of the Environment Operations (General) Regulation 1998	2
2.3	Protection of the Environment Operations (Clean Air) Regulation 2005	4
2.4	National Pollutant Inventory	5
3	The proposed Regulation	6
3.1	Objectives of the proposed Regulation	6
3.2	No Regulation	7
3.3	Regulatory approaches	8
3.4	Provisions of the proposed Regulation	9
3.5	Analysis of options	9
4	Clean-up, prevention and noise control notice fees	10
4.1	Options considered	11
4.2	Costs and benefits of the proposed Regulation	12
4.3	Summary	13
5	Environment protection licence fees	14
5.1	Administrative fees	15
5.2	Pollutant fee unit	17
6	Changes to the load-based licensing scheme	21
6.1	Adding additional assessable pollutants to LBL activities	22
6.2	Removing assessable pollutants listed under cement or lime handling	31
6.3	Adding new activities to LBL	34
6.4	Adding a threshold to 'Petroleum and fuel production' below which assessable pollutants do not apply	41
6.5	Amending current or adding new fee rate threshold factors	44
6.6	Reporting actual quantity of activity for summer assessable pollutants	50
7	Load reduction agreements	53
7.1	Fee repayment methodology	53
7.2	Load reduction agreement reporting requirements	56
8	Licensing reform	59
8.1	Options considered	59
8.2	Costs and benefits of the proposed amendment	60
8.3	Summary	62
9	Burning of biomaterial: requirements for electricity generation	63
9.1	Background	64
9.2	Options considered	65
9.3	Costs and benefits of the proposed amendment	66
9.4	Summary	67
10	Licensing of Forests NSW activities	68
10.1	Options considered	68
10.2	Costs and benefits of the proposed amendment	69
10.3	Summary	69
11	Exemption for cold water pollution offences for the Snowy Hydro Corporation ..	70

Appendix 1 Calculating load fees.....	71
Appendix 2 Environmental impacts of pollutants	72
Appendix 3 Revenue projections for all proposed amendments.....	76

Draft Protection of the Environment Operations (General) Regulation 2008

Tables

Table 1	Comparison of the Clean Air Regulation and LBL.....	5
Table 2	Proposed fees for clean-up, prevention and noise control notices.....	13
Table 3	Projected increase in annual revenue from notice fees.....	13
Table 4	Proposed amendments to the administrative fee unit	17
Table 5	Pollutant fee unit amount.....	18
Table 6	Comparison of LBL pollutant fee with external cost for selected air pollutants	19
Table 7	Proposed amendment to the pollutant fee unit.....	20
Table 8	LBL activities that report significant arsenic air emissions to the NPI but do not pay load fees	24
Table 9	LBL activities that report high lead air emissions to the NPI but do not pay load fees.....	25
Table 10	LBL activities that report high mercury emissions to the air to the NPI but do not pay load fees	26
Table 11	Average emission ratio of BaP compared with PAHs.....	27
Table 12	Activities with high PAHs emissions that do not pay LBL fees on BaP emissions	28
Table 13	Proposed assessable pollutants to be added to existing fee-based activities under the LBL scheme	29
Table 14	Projected LBL coverage of arsenic, lead, mercury and BaP point source emissions in NSW.....	29
Table 15	Impact of adding the air assessable pollutants lead, arsenic, mercury and BaP to LBL fee-based activities in 2009–10.....	31
Table 16	Comparison of median loads for carbon black producers with other LBL activities	36
Table 17	‘Carbon black production’	37
Table 18	Projected load fee implications for ‘Carbon black production’	38
Table 19	Key pollutants and loads from ‘Electricity generation from diesel’	40
Table 20	Proposed air assessable pollutants and fee rate threshold factors	41
Table 21	Comparison of selected assessable pollutant loads from petroleum producers with all LBL premises	43
Table 22	Current and proposed impact of FRT factors for ceramics production....	47
Table 23	Proposed changes to existing and new FRT factors	48
Table 24	Projected load fee increase for loads emitted from each fee-based activity due to proposed FRT factor changes.....	51
Table 25	Summary of the activities affected by the proposed amendment.....	62

Figures

Figure 1	Fees payable under the LBL scheme.....	15
Figure 2	Fee savings achieved by an LRA.....	54
Figure 3	Repayments due when an LRA is not met	56

Abbreviations

AFU	administrative fee unit
AL	assessable load
ARA	appropriate regulatory authority
BaP	benzo[a]pyrene
BOD	biological oxygen demand
CPI	Consumer Price Index
CZ	pollutant critical zone weighting
DECC	Department of Environment and Climate Change NSW
EPA	Environment Protection Authority
FRT	fee rate threshold
IFOA	Integrated Forestry Operations Approval
LBL	load-based licensing
LRA	load reduction agreement
NO _x	oxides of nitrogen
NPI	National Pollutant Inventory
PAH	polycyclic aromatic hydrocarbon
PFU	pollutant fee unit
PM _{2.5}	particulate matter, up to 2.5 micrometres in diameter
PM ₁₀	particulate matter, up to 10 micrometres in diameter
POEO Act	<i>Protection of the Environment Operations Act 1997</i>
PW	pollutant weighting
RIS	regulatory impact statement
SO _x	oxides of sulfur
VOCs	volatile organic compounds

1 Introduction

1.1 Purpose and content of this document

As required by the *Subordinate Legislation Act 1989*, this regulatory impact statement (RIS) has been prepared to assess the economic and social costs and benefits of the proposed Protection of the Environment Operations (General) Regulation 2008 (the proposed Regulation) and its alternatives. It includes the following to ensure that the proposed Regulation provides the greatest net benefit and/or the least net cost to the community compared with its alternatives:

- an evaluation of the impacts of letting the Protection of the Environment Operations (General) Regulation 1998 (the current Regulation) lapse (that is, not proceeding with any Regulation)
- an evaluation of the social, environmental and economic costs and benefits, both direct and indirect, for the proposed amendments to the Regulation and their alternatives, including the impacts on resource allocation, administration, and compliance with statutory requirements.

This RIS has been structured as follows:

- Section 1 introduces the purpose and content.
- Section 2 sets out the legislative framework in which the proposed Regulation operates and outlines its main features.
- Section 3 outlines the objectives of the proposed Regulation and assesses alternative regulatory approaches.
- Sections 4–11 detail proposed amendments to the current Regulation and assess the costs and benefits of each amendment.

This RIS is accompanied by the proposed Regulation.

1.2 Consultation

In accordance with the *Subordinate Legislation Act 1989*, DECC has consulted the public, relevant interest groups and other groups likely to be affected by the proposed Regulation and its alternatives during the development of the proposed Regulation.

DECC conducted a mail-out to all licensees, industry associations, non-government organisations and other state agencies to advise them of the review and invite submissions for the update of the Regulation, which resulted in 40 submissions from stakeholders. The proposed Regulation also includes amendments that address issues raised during the review of the *Protection of the Operations Act 1997* (POEO Act).

DECC intends to provide additional opportunities for all stakeholders to comment on the proposed Regulation. This RIS and the proposed Regulation are available for public comment until 29 August 2008.

2 Legislative and regulatory framework

DECC has responsibilities and regulatory powers under NSW environmental legislation.¹ Some of these responsibilities and powers are exercised in the name of the Environment Protection Authority (EPA), the National Parks and Wildlife Service, and the Botanic Gardens Trust.

This section outlines the legislative framework within which the current Regulation operates, including:

- the POEO Act
- other regulations and programs under the POEO Act that complement the Regulation.

Several of the amendments proposed aim to complement and/or give effect to amendments recently made to the POEO Act.

2.1 The Protection of the Environment Operations Act

The POEO Act, which commenced on 1 July 1999, is the key environment protection legislation administered by DECC. It:

- provides a broad allocation of responsibilities between DECC, local councils and other public authorities
- establishes the heads of power for DECC, and in some cases other appropriate regulatory authorities (ARAs), to protect the NSW environment through a range of tools, including licensing.

DECC undertook an extensive review of the POEO Act in accordance with section 327 of the POEO Act. The review recommended some changes to refine and improve the day-to-day operation of the POEO Act.²

2.2 Protection of the Environment Operations (General) Regulation 1998

The Regulation gives effect to many of the powers provided by the POEO Act. It does this by setting out requirements including:

- environment protection notice fees
- environment protection licence fees
- the LBL framework
- National Pollutant Inventory (NPI) reporting obligations.

¹ www.environment.nsw.gov.au/legislation/

² www.environment.nsw.gov.au/legal/aboutpoeo.htm, and www.environment.nsw.gov.au/legal/poeoreview.htm#POEO%20Amendment%20Act.

2.2.1 Contents of the Regulation

The Regulation is made up of the following chapters:

- Chapter 1 sets out the preliminaries of the Regulation.
- Chapter 2 includes provisions relating to licensing.
- Chapter 3 includes provisions relating to water pollution.
- Chapter 3A includes provisions under the NPI.
- Chapter 3B includes provisions relating to the burning of biomaterial in electricity generating works.
- Chapter 4 includes a range of general provisions.

The contents of chapters 2–4 are discussed further below.

Chapter 2:

- sets out how to calculate fees in relation to environment protection licences, and makes provision for adjustment or refunds of those fees
- sets out fees for environment protection notices
- makes provisions for LRAs, which allow fee rebates in return for measures taken to reduce pollution in the future
- establishes a review panel to advise the EPA on licensing matters, including load calculation protocols
- sets out the matters to be included by the EPA in its statement of reasons for granting or refusal of a licence application
- makes it an offence to provide information that is false or misleading in relation to a licence application
- requires licensees to retain records of methods used to calculate licence fees.

Chapter 3:

- prescribes certain matter, when placed into water, to be water pollution, and the methodology for testing prescribed matter in water
- exempts certain water pollution from the water pollution offence under the POEO Act
- allows the EPA to prohibit or regulate certain activities which threaten the safety of drinking water that is part of a public water supply.

Chapter 3A gives effect to the National Environment Protection (National Pollutant Inventory) Measure by requiring occupiers of certain facilities to submit data to the EPA relating to the emission of certain substances. Section 2.4 provides more information on the NPI.

Chapter 3B prohibits the burning of certain biomaterial from Australian native forests in certain electricity generating works, and requires records and reports to be made in accordance with EPA guidelines.

Chapter 4:

- prescribes certain forms to be used with respect to warrants relating to noise abatement directions
- sets out additional matters to be included in the public register maintained under section 308 of the POEO Act

- declares certain bodies to be the ARA in relation to certain activities for the purposes of the POEO Act
- provides exceptions to the prohibition on placing advertising material on vehicles
- outlines additional matters (other than those covered in the POEO Act) to be considered by the EPA before requiring financial assurances from licensees.

2.3 Protection of the Environment Operations (Clean Air) Regulation 2005

DECC administers the Protection of the Environment Operations (Clean Air) Regulation 2005 (the Clean Air Regulation).³ It is a legislative tool used to implement objectives of the POEO Act and is a key piece of legislation for the management of industrial air emissions in NSW.

The Clean Air Regulation specifies air pollutant emission standards for industrial sources. The focus of the Clean Air Regulation is the protection of local air quality through control of emissions at the point of discharge. Emission standards are set for a range of pollutants, including solid particles (all particulate matter), nitrogen oxides (NO_x), halogens, smoke, heavy metals and dioxins. The standards are set at a level that is achievable with emissions performance technology that is reasonably available and provide a minimum performance standard for industry operation in NSW. These standards apply to all licensed activities listed in Schedule 1 of the POEO Act.

In relation to plant, equipment and activities, the Clean Air Regulation:

- sets maximum limits on emissions from activities and plant for a number of substances including chlorine, dioxins, furans, smoke, solid particles and sulfur
- deals with the transport and storage of volatile organic liquids
- restricts the use of high sulfur liquid fuel
- imposes operational requirements for certain afterburners, flares, vapour recovery units and other treatment plant.

Whereas LBL focuses on the annual mass of pollutants emitted, the Clean Air Regulation targets localised and acute elevations in emissions. It applies short-term concentration standards to individual stacks at the point of discharge to the atmosphere. The standards set a minimum standard of performance that protects against localised and acute pollution episodes.

The Clean Air Regulation and the LBL scheme complement each other and work in tandem to minimise emissions from industry, to meet ambient air quality standards and to protect the health of the NSW community. The relationship is summarised in Table 1.⁴

³ The Clean Air (Plant and Equipment) Regulation 1997 was incorporated into the Clean Air Regulation in July 2005, which replaced the Protection of the Environment Clean Air (Domestic Solid Fuel Heaters) Regulation 1997, and the Protection of the Environment Clean Air (Motor Vehicles and Motor Vehicle Fuels) Regulation 1997.

⁴ DEC (2005) Regulatory Impact Statement for the Protection of the Environment (Clean Air) Regulation 2002, Department of Environment and Conservation (NSW), p.11.

Table 1 Comparison of the Clean Air Regulation and LBL

Clean Air Regulation	LBL
Applies to all licensed activities	Applies to a subset of licensed activities
Sets emission concentration standards as minimum performance standards	Relates to emission loads and creates incentive to reduce annual loads emitted
Applies to individual emission points	Applies to entire premises or sites
Protects against localised and acute elevations in emissions; protects local air quality	Provides an incentive to reduce emissions and helps to protect ambient air quality against cumulative increases in emissions

Note that the Clean Air Regulation, POEO Act and the Regulation do not set load limits. Load limits are set by specific licence conditions on environment protection licences. By contrast, the Clean Air Regulation prescribes emission concentration limits for all licensees.

2.4 National Pollutant Inventory

NPI was the first National Environment Protection Measure agreed by the Commonwealth, states and territories. It is a public database⁵ containing information on releases to air, land and water of 93 substances. These substances are emitted from point sources, such as industrial facilities, and as aggregated emissions from diffuse sources, such as vehicles and domestic activities. Its purpose is to support the community's right to know, improve knowledge for better decision making and promote cleaner production.

The Regulation places NPI reporting obligations on industrial facilities in NSW and also prescribes the offences for which penalty notices may be issued, which include failure to lodge a report when due and failure to keep and produce records.

Each year, about 760 industrial facilities in NSW submit NPI reports. Of these facilities, approximately 480 have environment protection licences, of which 160 are LBL premises. These programs have 18 pollutants in common that represent the major pollutants emitted by industry. Facilities report emissions of 93 pollutants to air, land and water in the NPI compared with 29 assessable pollutants in LBL. The majority of NPI reporting is focused on air emissions.

The methodology for estimating emissions for NPI purposes is similar to calculating pollutant loads for LBL. However, once a substance threshold is triggered for NPI reporting, emissions of the substance from *all* sources on site are required whereas this may not be the case in LBL. For premises captured by LBL, the *Load Calculation Protocol* prescribes the components of each activity for which assessable pollutant loads must be determined. Therefore, it would be expected that NPI emissions of a substance would generally be equal to or greater than the analogous LBL load.

As a result of this relationship between the NPI and LBL, this RIS uses available NPI data to evaluate the current coverage of key pollutants under the LBL scheme and compare alternative options for the proposed Regulation.

⁵ www.npi.gov.au

3 The proposed Regulation

3.1 Objectives

Section 323 of the POEO Act provides for Regulations to be made that are not inconsistent with the Act, for any matter required for carrying out or giving effect to the Act. The proposed Regulation should give effect to the objectives of the POEO Act.

In accordance with the *Subordinate Legislation Act 1989*, the proposed Regulation has been assessed against the following two broad criteria:

- whether the proposed Regulation succeeds in implementing and facilitating the aims of the POEO Act, which sets the framework for environment protection in NSW
- whether the proposed Regulation embodies the best options and strategies for implementing and facilitating these aims.

The general objective of the proposed Regulation is to protect the environment and human health by reducing emissions of pollutants for activities under Schedule 1 of the POEO Act. The proposed Regulation aims to achieve this by:

- 1 Ensuring the provisions of the POEO Act can be implemented in an efficient and effective manner.

The POEO Act leaves a number of matters to be prescribed by regulation, such as exemptions for licences, licence and notice fees, definitions and pollution standards. The proposed Regulation should support the efficient and effective administration of the Act by specifying these matters.

- 2 Recovering the costs of administering the POEO Act and the Regulation by applying the 'polluter pays' principle.

Administering the POEO Act and the Regulation involves issuing and enforcing environment protection notices and over 3000 licences. The Regulation seeks to recover these costs from polluters and regulated activities — consistent with NSW Government policy and as recommended by the National Competition Policy review.⁶

- 3 Supporting and encouraging the use of cost effective and timely strategies to achieve pollutant discharge reductions.

The current Regulation provides the framework of the LBL scheme. The proposed Regulation aims to ensure that the LBL scheme continues to provide appropriate incentives to industry to reduce emissions and adopt cleaner technologies.

⁶ NSW Treasury (2001), *Guidelines for Pricing of User Charges*, Office of Financial Management, Policy and Guidelines Paper, NSW Treasury. These guidelines state that government agencies should set prices that at least cover their avoidable costs — that is, costs that would have been avoided by not providing the service.

3.2 No Regulation

The 'no Regulation' option would occur if the Regulation was automatically repealed on 1 September 2008.

This is not considered a feasible option for the following reasons.

- DECC charges fees to recover the costs of the administration and implementation of the environment protection licensing system. A no Regulation option would essentially be a no fee option since the POEO Act requires licences to be issued, but does not specify fees.
- Local councils and DECC would not be able to recover the costs associated with issuing clean-up, prevention and noise abatement notices.
- There would be no system for administering a load-based fee under this option. As a result, DECC would need to implement other complementary approaches (such as additional 'command and control approaches') to control point source and fugitive emissions from an industry that conducts activities considered to be of high risk to the environment. By themselves, these approaches are considered much less cost-effective in reducing emissions since they do not provide incentives for the regulated community to improve beyond compliance. This option is also inconsistent with the polluter pays principle and government policy.
- DECC would no longer have powers to enforce compliance with NPI reporting provisions on facilities that exceed the reporting thresholds.
- DECC would lose vehicle testing and inspections provisions which set out the approval process for inspection stations and the maximum fees for inspection for notices issued under section 207(2)(c) of the POEO Act.

There are other consequences if the Regulation were allowed to lapse.

- DECC would no longer have a legislative basis for negotiating flexible pollution management agreements such as bubble licensing, and would have to develop alternative approaches to regulating environmental quality in a catchment area or airshed, or use individual discharge point limits. Bubble licensing agreements allow licensees to adjust their discharges at individual sources provided the aggregate limit (for all licensees included within the bubble scheme) is not exceeded. This allows environmental improvement (that is, nutrient reduction in the creeks and mainstream of a river) to be achieved at lower cost. Benefits achieved through current bubble licences include a reduced potential for excessive growth of algae and aquatic vegetation, and improved protection of aquatic ecosystems.
- The definition of 'prescribed matter' for the purpose of section 120 of the POEO Act (which defines water pollution and makes water pollution an offence) would lapse. There would be no clear regulatory basis for taking action against water polluters, as the definition of water pollution would be open to dispute. This would significantly undermine the ability of the NSW Government to regulate water pollution in the public interest, and could lead to adverse economic and environmental impacts such as fish kills, loss of water amenity (such as swimming and sailing) and/or increased loads (and treatment requirements) on sewage treatment plants.
- DECC would lose the power to prohibit or regulate aquatic activities (such as swimming, boating, fishing) that threaten the safety of drinking water. This could

impose significant economic and environmental costs where drinking water quality is affected by these activities, leading to a lack of available drinking water.

- DECC would no longer be listed as the ARA for certain activities and it would be unclear who should be the ARA for outdoor entertainment activities listed in section 67 of the Regulation. If the definition was interpreted so that these activities were not carried out by the state or a public authority, local council would become the ARA. This would be inconsistent with section 6(2)(c) of the POEO Act which provides that local councils should not be the ARA for activities carried out by the state or a public authority. In addition, specific environmental issues could not be managed by the appropriate agencies if the declarations of specific ARAs contained in the Regulation did not exist. For example, the Marine Park Authority utilises POEO Act powers to manage environmental problems specific to marine parks. Without these powers it could not provide an integrated response to specific environmental problems in conjunction with its powers under the *Marine Park Act 1997*.

It is impossible to accurately quantify the likely decline in environment protection that would eventuate as a result of allowing the current Regulation to lapse. If the Regulation lapses it would pose a significant risk to the ability of DECC to regulate scheduled activities under the POEO Act as DECC would not be able to recover costs. This, in turn, may lead to a decrease in the environmental performance of businesses operating, and actions undertaken, under the scope of the Regulation. Any reduction in environment performance may result in higher risk of health effects (mortality and morbidity) and degraded environmental amenities (visibility, crop productivity). That is, a lapse in the Regulation would reduce social welfare. These effects would outweigh industry savings incurred through lower licensing fees. Therefore, relative to the current operation of the Regulation, the option of allowing the existing Regulation to lapse would impose a significant cost on NSW.

3.3 Regulatory approaches

The previous RIS for the Pollution Control Regulation 1998 considered the advantages and disadvantages of four regulatory options to achieve the objectives of the Regulation.⁷ These options included:

- legislating targets – DECC would stipulate uniform discharge limits for each class of licensed industry type or emitting equipment
- negotiated case-by-case limits – DECC would set site-specific limits and targets
- pollution charges – control over discharges would be achieved by assigning a fee to each discharge
- tradeable permits – DECC would establish quotas or release permits for polluting substances. The total number of permits would be set to achieve desired environmental goals, either immediately or over time. Licence holders would need to obtain sufficient permits to match their quantity of discharge. If they do not release emissions equivalent to the number of permits that they possess, they may sell their excess permits to other licensees. Licensees with a deficit of permits could either reduce their discharges or purchase additional permits.

The preferred approach was to use a combination of strategies. No one strategy was seen as superior to the others as a primary approach to all of the following

⁷ NSW EPA (1998) Regulatory Impact Statement for the Proposed Pollution Control Regulation 1998, pp. 22–27.

performance measures: efficiency, effectiveness, transparency, flexibility, competition, reducing environmental costs, and information requirements.

After over five years of operation, there was found to be a high level of satisfaction with the framework and philosophy of the POEO Act. Similarly, the review of the Regulation suggests the current approach (that combines the range of regulatory approaches outlined above) continues to be supported.

The proposed Regulation contains a number of refinements to the LBL scheme based on implementation experience and available information. Fundamental changes to the LBL scheme are not proposed at this time.

3.4 Provisions of the proposed Regulation

The proposed amendments to the existing Regulation, reflected in the proposed Regulation, are:

- changes to environment protection notice fees
- changes to environment protection licence fees
- changes to the assessable pollutants and fee rate threshold (FRT) factors that are applied to specific fee-based activities under the LBL scheme
- changes to LRAs
- removing the licensing requirements from certain low risk activities and regulating their operation by existing environmental legislation provisions
- removing biomaterial burning reporting requirements for electricity works from the Regulation, while keeping the offence to burn native forest biomaterial for electricity generation
- providing an exemption for cold water pollution offences for the Snowy Hydro Corporation.

These are discussed in the following sections.

3.5 Analysis of options

The RIS aims to assess the costs and benefits of the proposed Regulation and its alternatives. The sections that follow evaluate, where possible, the social, environmental and economic costs and benefits (both direct and indirect) of the proposed amendments and their alternatives. This includes an evaluation of the impacts on resource allocation, administration and compliance with existing statutory requirements.

The assessment is based on a mix of qualitative and quantitative analyses. Where impacts can be quantified, estimated costs and benefits are assessed over a five-year period to reflect the life of the proposed Regulation.

4 Clean-up, prevention and noise control notice fees

The Regulation provides fees relating to clean-up, prevention and noise control notices outlined in the POEO Act. Authorised officers of DECC and of local councils can issue these notices for the purposes described below.⁸

Clean-up notices require a person to take specified clean-up action when they reasonably suspect that a pollution incident has occurred or is occurring. A clean-up notice may be issued when a leak, spill or other escape or deposit of a substance that results in pollution is likely to occur, has occurred or is occurring. Notices are not restricted to being issued once an event has occurred, as clean-up action may include 'action to prevent, minimise, remove, disperse, destroy or mitigate any pollution resulting or likely to result from the incident.'

Prevention notices are issued where it is reasonably suspected that an activity has been, or is being, carried out in an 'environmentally unsatisfactory manner'. A prevention notice would generally not be issued for an activity that is regulated under an environment protection licence if the problem can be resolved by placing appropriate conditions on the licence.

Noise control notices are issued to prohibit carrying out any activity, including keeping an animal or using any article, that emits noise above a specified level.

The recipient of clean-up, prevention and noise control notices must pay a prescribed fee, representing the administrative costs of issuing the notice, to the authority that issued the notice.

While notices may be issued in relation to activities undertaken by the holders of environment protection licences, DECC can use the conditions of a licence to ensure that the licensee undertakes preventative, ongoing operational and/or remediation actions, aimed at achieving the same outcomes as environment protection notices and noise control notices.

There has been a positive response to the opportunities provided by clean-up, prevention and noise control notices for local council officers and DECC officers in responding to urgent, critical and/or dangerous pollution incidents in NSW. For non-scheduled activities, notices are generally the only tool by which environment protection actions can be directed and enforced.

The administrative fee for clean-up, prevention and noise control notices is an important mechanism for recovering the costs associated with the regulation of non-scheduled activities, and ensures that the cost of regulation is passed to the appropriate party (the person responsible for the incident, generally the subject of the notice).

Initially noise control notices did not comprise an administrative fee and this resulted in their under-utilisation as revealed in the review of the POEO Act. Before the fee was introduced, some local councils were using prevention notices rather than noise control notices as the former allowed cost recovery.

⁸ NSW EPA (2005) Guide to Notices under the *Protection of the Environment Operations Act 1997*: environment protection manual for authorised officers, at www.environment.nsw.gov.au/licensing/guidetonotices.htm.

The RIS for the Pollution Control Regulation 1998 outlined the reasons for the use of this fee structure. Although the level of resources needed to issue a notice varies, it was estimated that the range was relatively narrow and as such a flat fee was considered reasonably equitable and provides reasonable certainty that costs will be recovered.

There have been no increases to the \$320 administrative fee for clean-up or prevention notices since they were first introduced in 1999. The administrative fee for noise control notices was first introduced in 2006 and was set at \$320 to align with the administrative fees for clean-up and prevention notices.

The review of the POEO Act found that the current fee level fails to recover the costs of issuing clean-up, prevention and noise control notices, and as a result notices may not be issued in response to pollution incidents.⁹ A number of local councils have informed DECC that they are reluctant to issue these notices because they believe that the cost of doing so is no longer fully recovered.

The objective of this amendment is to increase fees for clean-up, prevention and noise control notices so that they maintain cost recovery as determined in the initial RIS and meet NSW Government policy on cost recovery.

4.1 Options considered

Two options were considered for amending the administrative notice fee:

Option 1 – no change (base case)

Option 2 – increase clean-up and prevention notice fees to cover Consumer Price Index (CPI) increases since 1999, align noise control notice fees to this level, and then index to CPI thereafter.

Under option 1, the notice fees would not be changed. Information indicates that the current notice fee does not represent the cost to EPA or local councils of administering notices.

Under option 2, notice fees would be increased from \$320 to \$433, to take into account changes in the CPI since 1999. Notice fees would then increase by the projected CPI level over the course of the Regulation, as shown in Table 2, to ensure that the fee is not eroded by inflation.

Option 2 is the preferred option since it ensures that the provisions of the POEO Act can be implemented in an efficient and effective manner over the life of the Regulation, by linking the administrative fee to estimated CPI. This is aimed at meeting the NSW Government's policy of full cost recovery.

⁹ Taverner Research Company (2003), Review of the *Protection of the Environment Operations Act 1997*: a report on 93 questionnaires completed by Environmental Officers of the Councils of NSW, prepared for the NSW EPA, March 2003

Table 2 Proposed fees for clean-up, prevention and noise control notices

Commence	Estimated CPI ^a	Fee
Current		\$320
2009–10	2.5	\$433
2010–11	2.5	\$444
2011–12	2.5	\$455
2012–13	2.5	\$466

^a Australian Bureau of Statistics – CPI Longer Term Series; NSW Treasury (2006) 2006–07 Budget Paper – Budget Statement (Chapter 6)

4.2 Costs and benefits of the proposed Regulation

Under the proposed Regulation, persons receiving a clean-up, prevention or noise control notice would have to pay a higher fee than is currently applicable. The proposed Regulation would primarily affect individuals or non-scheduled premises who receive a notice from DECC or a local council. Licensed activities are unlikely to be affected because DECC tends to rely on the conditions of environment protection licences to regulate activities under the POEO Act.

Based on the number of clean-up and prevention notices issued over the past five years, approximately 60 notices are issued by DECC each year. It is difficult to accurately estimate the number of notices that local councils issue each year. For the purpose of predicting costs, it is assumed that local councils would issue 1700 notices per annum (10 notices per local council per annum).¹⁰ This results in total current revenue from notice fees of approximately \$563,200; however, it must be noted that DECC or local councils may waive payment of the administrative fee.

Table 3 shows that when compared with the current estimated revenue, the proposed Regulation will increase revenue collected in relation to clean-up, prevention and noise control notices by \$198,880 in the first year with an additional \$19,360 collected in each following year. The estimated notice fee increases represent a total revenue increase of \$911,680 over the four years.

Table 3 Projected increase in annual revenue from notice fees

Period	Proposed fee per notice	Projected increase in annual revenue *
2008–09	\$320	\$0
2009–10	\$433	\$198,880
2010–11	\$444	\$19,360
2011–12	\$455	\$19,360
2012–13	\$466	\$19,360

* The revenue increase is split between DECC and local councils.

¹⁰ This assumption is based on a survey of local councils undertaken as part of implementing the *Protection of the Environment Operations (Amendment) Act 2005*. DECC received local council input on the effectiveness and use of environment protection notices. For further information, see the Report to Parliament on the Review of the POEO Act and Taverner Research Company (2003) *Review of the Protection of the Environment Operations Act 1997: a report on 93 questionnaires completed by Environmental Officers of the Councils of NSW*, prepared for the NSW EPA.

The proposed Regulation also provides benefits such as:

- simplicity — CPI indexation is a simple process that can be used to recover the cost of issuing clean-up, prevention and noise control notices without having to continually amend the Regulation.
- consistency — indexing clean-up, prevention and noise control notice fees to CPI is a common practice used in other government organisations to ensure that the revenue base is not eroded by the costs of inflation. For example, in Victoria the service fee for pollution abatement notices is \$430 and is indexed annually to CPI under the *Monetary Units Act 2004*.
- certainty — indexing the fee to CPI is expected to encourage local councils to use the appropriate tool in response to pollution incidents since the fee level will be set to maintain cost recovery. By linking the fee to CPI, there is an incentive for local councils to issue notices as they would be able to recover their costs.

4.3 Summary

Recent legislative reviews have found clean-up, prevention and noise control notices to be effective tools in protecting the environment in NSW, particularly on non-scheduled premises. However, local councils have raised concerns about being able to recover the costs associated with issuing notices under the POEO Act.

As notices are often issued in response to emergency pollution incidents, for example, requiring that immediate clean-up be undertaken, they often draw on considerable local council resources. By enabling local councils and DECC to more fully recover the cost of issuing clean-up, prevention and noise control notices, the proposed amendment will strengthen the capacity of these agencies to take action to protect and restore the NSW environment.

5 Environment protection licence fees

This section outlines proposed amendments to annual licence fees.

Under the current Regulation, the annual licence fee is made up of:

- an administrative fee based on the type and scale of licensed activity
- a load based fee (for premises conducting specified activities) proportional to the quantity and types of pollutants discharged and the conditions of the receiving environment.

Schedule 1 of the Regulation identifies activities that are subject to the LBL scheme which is based on the polluter pays principle. Under the scheme, load fees increase with the quantity and harmfulness of emissions. The load based fee is calculated as a function of the following components:

- the assessable load (AL) for each 'assessable pollutant', which must be determined in order to calculate the total load fee for any licence year
- the pollutant weighting (PW), which accounts for the impact of the pollutant
- the pollutant critical zone (CZ) weighting, which accounts for the sensitivity of the receiving environment
- the pollutant fee unit (PFU), which is the dollar value used in the load fee calculation formula for any licence fee period.

The Regulation sets out the method of calculating the load based fee and sets a fee rate threshold (FRT) which is a reasonably achievable discharge level. If the assessable load is greater than the FRT, the fee rate doubles for the assessable load greater than the FRT. The FRT provides a financial incentive for a licensee to minimise their assessable pollutant load.

Pollutant fees payable under the LBL scheme are illustrated in Figure 1.

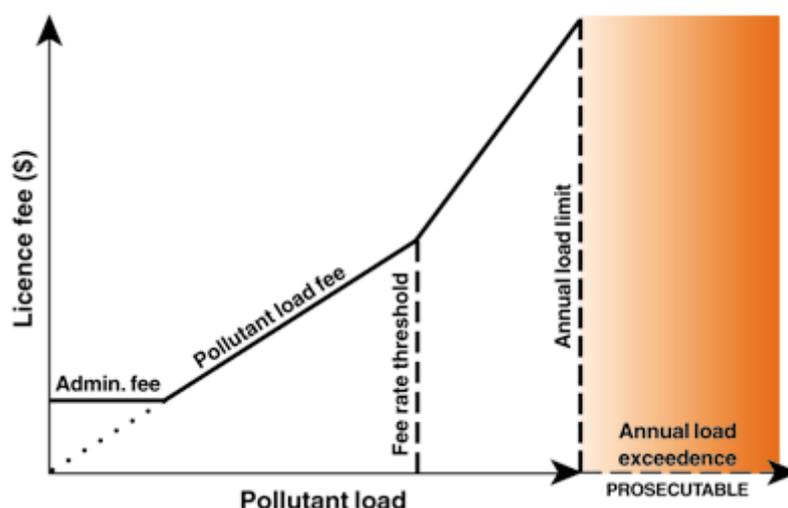


Figure 1 Fees payable under the LBL scheme

5.1 Administrative fees

The NSW Government's stated commitment to implementing the polluter pays principle extends to include the recovery of administrative costs from polluters.¹¹ That is, revenue is generated through fees to recover the costs of administering and implementing licences (the administrative fee).

The Regulation requires that all environment protection licence holders pay an administrative fee based on the type and size of the licensed activity. The administration fee unit (AFU) was set with regard to the cost of administering environment protection licences. The AFU of \$95 was in place from 2000 until 1 July 2007 when it was increased to \$100 as part of a partial CPI catch-up.

The review of the Regulation found that licence administration is operating effectively and recommended no changes to the basic licensing approach for the proposed Regulation. However it was recognised that the revenue collected from licence administrative fees (expected to be approximately \$12.8 million in 2007–08) only represents a partial recovery of the costs incurred by DECC (\$25 million). While DECC has introduced a more risk-based approach to managing environmental protection licences which is considered to have reduced the difference in costs associated with licence administration and the actual revenue collected through licence administrative fees.

Revenue from licence administrative fees does not achieve full cost recovery. It is important that administrative fees be increased to recover the real cost of licence administration. In this discussion, revenue from load fees has not been included because they are an incentive to reduce pollutant emissions. Therefore, they should not be considered as part of the cost recovery mechanism since the best case scenario is that revenue from load fees would decrease each year as industry implements cleaner production practices and reduces emissions, and therefore reduces their LBL fees.

The objective of this amendment is to allow DECC to continue environment protection licensing and maintain the current level of cost recovery and to maintain current licence fees.

5.1.1 Options considered

Two options for amending the administrative fees payable for holding an environment protection licence were considered:

Option 1 – no change (base case)

Option 2 – adjust the AFU annually, based on projected annual CPI increases over the term of the proposed Regulation.

Under option 1, the AFU would remain at its current rate of \$100 for the five years of the proposed Regulation. This option does not meet the objective of maintaining cost recovery of administering the licence system for DECC, nor for maintaining the real cost of licence fees for industry.

¹¹ OECD (1996), *Integrating Environment and Economy: Progress in the 1990s*, Organization for Economic Cooperation and Development, Paris. p22: 'The [polluter pays principle] is extended [in 1975, 1978] to include the allocation of government's administrative costs to polluters.'

The proposed changes to the AFU for option 2 based on annual CPI projections of 2.5% for 92,250 licences are outlined in Table 4. The data highlights that the AFU increases by two CPI estimates (i.e. \$5 or 5%) in 2009–10 to adjust for the lack of change in 2008–09.¹² The AFU amounts are rounded to the nearest dollar in order to simplify licence administrative payments which are based on the number of AFUs (as an integer) payable for each activity at an appropriate unit of measure such as production or capacity.

Table 4 Proposed amendments to the administrative fee unit

Period	Administrative fee unit ^a	Annual increase in total revenue ^b
2007–08	\$100	\$0
2008–09	\$100	\$0
2009–10 ^c	\$105	\$461,200
2010–11	\$108	\$276,700
2011–12	\$110	\$184,500
2012–13	\$113	\$276,700

^a NSW Treasury (2006) 2006–07 Budget Paper. Budget Statement (Chapter 6) projects CPI as 2.5% per annum.

^b It is assumed that the increase in fees has no impact on the number of licences.

^c Two CPI estimates are applied (2 x 2.5%) to adjust for the absence of a CPI increase to the AFU in the 2008–09 period.

Option 2 is the preferred option since by linking the payment to CPI it maintains the value of the administrative fees in real terms and maintains cost recovery for DECC’s administration of the licensing system while offering clear indication to all licensees of their likely licence fees over the next five years.

5.1.2 Costs and benefits of the proposed amendment

Indexation of the AFU to CPI will result in the increase of licence fees paid by industry regulated by the POEO Act by approximately 2.5% per annum over the five years of the Regulation. The expected total administrative fee revenue from licensees not in the LBL scheme for 2007–08 is \$9.2 million.¹³

The proposed amendment would maintain partial recovery of the cost to DECC of administering the Regulation. Since licence administrative fees are designed based on the type and the size of the activity and are set to recover the costs of administering those licences, gradual AFU increases linked to CPI will avoid eroding the fee base and support the continued administration of the licensing system while also maintaining the ‘real’ cost of an environment protection licence for licence holders.

CPI indexation is a simple process that can be used to secure DECC’s licensing revenue without having to continually amend the Regulation. The indexing of fees to CPI is used to ensure licensing revenue in other government agencies is not eroded by inflation; for example the waste levy under the Protection of the Environment Operations (Waste) Levy Regulation 2005, motor vehicle tax under the *Motor*

¹² Note that increases to licensing fees have previously been applied in line with the financial year.

¹³ The estimated administrative fee increase is based on licensees who currently pay an administration fee only, that is they are not subject to load fees as part of the LBL Scheme.

Vehicles Taxation Act 1988, and the *Monetary Units Act 2004* (Victoria) provide for licence fee units to be converted to monetary values in line with the CPI. There are very minor costs to government in the proposed amendment. These involve providing support and advice to licensees and making changes to the licensing database and industry guidance materials to implement the changes each year. However, these costs are minor and will be absorbed by the additional revenue generated by the annual AFU increases.

5.1.3 Summary

If there were no change to the licence AFU, licensing revenue would be eroded by increases in CPI and the gap between full and actual (partial) cost recovery would increase. The proposed amendment offers a simple method of ensuring that licence administration costs move generally in line with the costs of administering these licences, consistent with recommendations of the National Competition Policy review.¹⁴ This proposal is also consistent with revenue administration in other jurisdictions.

5.2 Pollutant fee unit

Under the LBL scheme, licensees who conduct specific fee-based activities pay pollutant load fees proportional to the quantity and types of pollutants discharged and the conditions of the receiving environment. The PFU is one of the parameters used to calculate pollutant fees.

Table 5 shows that the PFU was incrementally increased to \$35 over the first years of the program to aid transition. The PFU was increased by 5% from 1 July 2006 as part of a partial CPI catch-up for load and administrative fees.

Table 5 Pollutant fee unit amount

Period	Pollutant fee unit
1999–2000	\$0
2000–2001	\$24
2001–2002	\$29
2002–2006	\$35
2006–2007	\$36.75

The objective of this amendment is to ensure pollutant fees continue to provide an incentive to reduce emissions.

5.2.1 Options considered

Three options have been considered for setting the PFU:

Option 1 – no change to the PFU (base case)

Option 2 – determine the pollutant fee based on the external costs of assessable pollutants to the community

Option 3 – amend the Regulation to automatically index the pollutant fee unit to projected CPI.

¹⁴ <http://health.gov.au/internet/main/publishing.nsf/Content/pharmacy-ncpr-index>

Under option 1, it is expected that annual revenue from LBL fees received from licensees would continue at the \$34.9 million expected for the 2007–08 period. Maintaining the PFU at its current level would, over time, reduce the incentives for industry to reduce pollutant emissions. Therefore, option 1 clearly does not address the objective of ensuring that pollutant fees continue to provide an incentive to reduce emissions.

It should be noted that option 1 would not exclude changes being made to the PFU on an ad hoc basis by amendment regulations at any time as occurred as part of the Protection of the Environment Operations (General) Amendment (Licensing Fees) Regulation 2007 where the PFU was increased from \$35 to \$36.75. However, it is considered that there is more benefit in providing industry with clarity on future LBL fee increases so that they can be included in plans to implement pollution reduction measures.

Basic economic principles suggest there would be merit in setting the pollutant load fees to reflect the impact of each pollutant on the environment as proposed by option 2. It could also be argued that this approach would most accurately reflect the polluter pays principle. However, there are substantial data requirements that need to be met prior to its implementation.

Table 6 provides a range of estimated external (health) costs for a number of selected air assessable pollutants and shows the broad range of external costs determined by different studies for the same pollutant. For example, there is a ten-fold range in the estimate for external costs for fine particulates. The data illustrates the difficulty in setting fees based on the external cost because the fee may be set either above the level considered appropriate to compensate society for the impacts of pollution or at a cost considered to impose an unfair burden on licensees. The data range indicates that a fee level cannot be confidently set based on a specific external cost of pollution estimated due to the absence of comprehensive information on the external costs of pollution at this time.

Table 6 Comparison of LBL pollutant fee with external cost for selected air pollutants

Air pollutant ^a	LBL fee per tonne	External cost per tonne ^b
NO _x	\$33 – \$1,158	\$3,100 – \$22,400 ^c
PM ₁₀	\$459	\$31,500 – \$267,300 ^d
VOCs	\$24 – \$849	\$1,800 – \$14,900 ^e

^a NO_x: nitrogen oxides, PM₁₀: particulates up to 10 µm diameter, VOCs: volatile organic compounds

^b Cost estimates have been converted to Australian currency (where required) and adjusted for CPI to provide a health cost for 2008.

^c The NO_x external cost range is based on Australian ¹⁵ and European Commission ^{16,17} studies of the ozone-related health costs of NO_x emissions.

^d Department of Environment and Conservation (NSW) data ¹⁸

^e Based on European Commission studies ^{17,18} of the ozone-related health costs of VOCs emissions.

¹⁵ Coffey Geosciences Pty Ltd (2003) Fuel quality and vehicle emissions standards cost benefit analysis prepared for MVEC Review of vehicle emissions and fuel standards post 2006, October 2003.

¹⁶ Holland, M. and Watkiss, P. (2002) *Benefits table database: estimates of the marginal external costs of air pollution in Europe, V E1.02a*. <http://ec.europa.eu/environment/enveco/air/pdf/betaec02a.pdf>.

¹⁷ Holland, M., Pye, S., Watkiss, P., Droste-Franke, B. and Bickel, P. (2005) *Damages per tonne emissions of PM2.5, NH3, NOx, and VOCs from each EU25 Member State (excluding Cyprus) and surrounding seas*, March 2005, www.cafe-cba.org/assets/marginal_damage_03-05.pdf.

¹⁸ DEC (2005) *Pollution Economics: Health Costs of Air Pollution in the Greater Sydney Metropolitan Region*, www.environment.nsw.gov.au/resources/air/airpollution05623.pdf.

A further difficulty in this option is that the economic rationale for this approach applies to the actual pollutant load fee, rather than the PFU. The pollutant load fee payable by LBL scheme licensees is made up of several components as shown in Appendix 1. Since the PFU does not determine the pollutant load fee in isolation from these other components, the external cost of pollutants could be levied on licensees more than once (for example, where some portion of the external cost is already included in the pollutant critical zone weightings or pollutant weightings).

Given these concerns and difficulties, option 2 is not the preferred option currently. It appears more appropriate to consider the link between the external costs representing the impacts of different pollutants with the other aspects of the LBL scheme such as linking appropriate assessable pollutants with fee-based activities, and changes to critical zone weightings and pollutant weightings. These issues are discussed in section 6.

Option 3 proposes to amend the Regulation to automatically index the PFU to projected CPI over the term of the proposed Regulation. Table 7 shows the proposed PFU over the next five years and highlights a 5% increase in PFU in 2008–09 to make up for the lack of increase in 2007–08. This option provides all LBL scheme licensees clear indication of the likely impact on their LBL fees over the next five years and maintains the value of the PFU in real terms by linking the fee to CPI. This will ensure the relevance of the LBL scheme as pollutant fees will continue to provide an incentive to reduce emissions. For this reason option 3 is the preferred option.

Table 7 Proposed amendment to the pollutant fee unit

Period	Proposed PFU ^a	Projected increase in total annual revenue ^b
2007–08	\$36.75	\$0
2008–09	\$38.61 ^c	\$1,776,000
2009–10	\$39.58	\$921,000
2010–11	\$40.57	\$944,000
2011–12	\$41.58	\$968,000
2012–13	\$42.62	\$1,039,000

^a NSW Treasury (2006) 2006–07 Budget Paper – Budget Statement (chapter 6) estimates CPI as 2.5% per annum.

^b Revenue changes are not realised until the reporting period following implementation.

^c Two CPI estimates are applied (2 x 2.5%) to adjust for the absence of a CPI increase to the PFU in the 2007–08 period.

5.2.2 Costs and benefits of the proposed amendment

Linking the PFU to CPI is expected to result in an average increase in pollutant load fees (i.e. from licensees paying LBL fees) of 2.5% per annum based on an assumption that pollutant loads are consistent. The proposed amendment would provide an across the board increase to all licensees who pay an LBL fee. Based on the expected revenue in 2007–08 of \$34.9 million, the increase in the PFU would be expected to increase LBL revenue by approximately \$900,000 per annum with the increase spread evenly across the 280 LBL licensees.

The costs to individual LBL licensees would be expected to be 2.5% per annum assuming that production and emission levels do not change. Costs to government

are minor, involving simple changes to information management systems in order to facilitate the annual changes to PFUs and Annual Returns.

The major benefit of the proposal is the simplicity of implementation and the transparency of future fee increases for stakeholders. CPI indexation is a simple process that can be used to ensure that LBL fees maintain their 'real' value without having to continually amend the Regulation. Further, it is common for government legislation to maintain the real value of charges as outlined in section 5.1.2. Since it is critical to maintain the incentive in LBL to ensure the scheme is successful, linking PFU with CPI is a simple method to maintain the current incentive for participants, since LBL costs would erode in value over time without such a measure being put in place.

5.2.3 Summary

To maintain the incentive currently provided by pollutant load fees in 'real' terms (i.e. not eroded by CPI), continual increases are needed to the fee level to maintain the incentive for licensees to reduce pollution in a cost effective and timely manner. The proposed amendment links PFU increases to CPI over the next five years and provides industry with clarity on future LBL fee increases so that industry is able to incorporate this cost information into decision making on future expenditure.

The proposed amendment does not place a cost burden on licensees to the extent that a pollutant load fee based on estimated actual external costs of pollutants would, as discussed in option 2. It provides for the continuation of the LBL scheme as an incentive for pollution abatement and allows future refinement in the way that fees are set.

The PFU forms only part of the calculation used to determine a licence holder's actual pollutant load fee. Where data from the operation of the LBL scheme to date supports the need for a greater incentive in the proposed Regulation, this can be achieved by amending one or more components of the pollutant load fee (as described in section 6). The subsequent sections of this document assess potential amendments to these other components of the fee.

6 Changes to the load-based licensing scheme

The LBL scheme applies the polluter pays principle which is a mechanism to control, reduce and prevent pollution. The fundamental feature of the approach of LBL is the use of pollutant 'load' (the amount of pollutant emissions in kilograms) discharged as the basic unit of measure, rather than the pollutant concentration. LBL focuses on the total amount of pollution emitted per year and the LBL fee is calculated on the potential environmental impact of that pollution. It offers polluters an incentive to reduce their fees by reducing their pollutant loads.

The requirement for licensees to report the emitted load of specified assessable pollutants under the LBL scheme:

- ensures licensees are informed about the types and loads of pollutants arising from their activities
- provides a transparent and clear basis for calculating pollutant fees
- allows DECC to collect information about the types and loads of pollutants being discharged into the environment from specific premises and fee-based activities (i.e. industry sectors), which helps inform policy and program development.

Appendix 2 contains a short summary of the environmental impact of each of the LBL assessable pollutants.

The pollutant load fee (or LBL fee) is based on the *amount* of pollution (the pollutant load), how *harmful* it is, and the sensitivity of the receiving environment (*where* it is released). Licensees who are subject to LBL only pay an LBL fee when the sum of their assessable pollutant load fees is higher than the administrative fee (i.e. the administrative fee is the minimum licence fee payable under LBL).

For more detailed information on LBL and how fees are calculated see the *Guide to Licensing* at www.environment.nsw.gov.au/licensing/licenceguide.htm or the summary in Appendix 1.

Schedule 1 of the Regulation sets out the fee-based activities that are part of LBL; that is, those activities that have assessable pollutants and associated FRT factors. The following selection criteria¹⁹ were used when the LBL scheme was developed to determine which assessable pollutants apply to each fee-based activity:

- The potential of the pollutant to cause serious environmental harm is known and well understood.
- The nature of environmental harm caused is considered compatible with the load based approach.
- Robust pollutant measurement techniques are available.
- The industry is known to have significant discharges of the pollutant.

This section outlines the proposed amendments to the LBL scheme for specific fee-based activities which aim to address the above criteria.

In reviewing the LBL scheme, DECC considered all aspects of the scheme including assessing whether the pollutant weightings, critical zone weightings and FRT factors were set at appropriate levels and whether all significant industrial sources of

¹⁹ EPA (1998) Regulatory Impact Statement for the proposed Pollution Control Regulation 1998, p 28.

pollutant emissions in NSW were captured by the scheme. This assessment has led to the following proposed amendments to the LBL scheme:

- 1 adding additional assessable pollutants to some fee-based activities to improve the LBL coverage of significant industrial emission sources in NSW
- 2 removing the assessable pollutants listed for cement or lime handling
- 3 adding assessable pollutants to some fee-based activities that currently do not have assessable pollutants listed
- 4 adding a production threshold to the activity of petroleum and fuel production below which assessable pollutants do not apply
- 5 amending or adding FRT factors in order to ensure that they provide an incentive to poorly performing licensees.

Each of these amendments is discussed further below.

Appendix 3 contains a summary of the fee impacts of the proposed changes to each of the LBL fee-based activities over the five years of the Regulation. It should be noted that where a licensee conducts multiple activities, the fee impacts from all fee-based activities have been assigned to the fee-based activity that is considered to contribute the greatest portion of the LBL fee. This means that there may be some inconsistency between the discussion of fee impacts and the total revenue projection outlined in Appendix 3.

6.1 Adding additional assessable pollutants to LBL activities

It is important that pollutant load fees are paid by all significant industrial emitters of assessable pollutants in NSW so that the economic incentive to reduce emissions is applied equitably. Adding an assessable pollutant to one or more LBL fee-based activities means that the pollutant load fee provides an incentive for the licensee to consider investing in equipment and/or practices to reduce emissions, and consequently their load based fee.

A review of the coverage of current LBL assessable pollutants was undertaken. This was done by comparing the total load reported for each assessable pollutant from all LBL premises with total emissions reported to the NPI. Broadly, the NPI covers a greater range of industry sectors than LBL and so provides information on a greater range of sources. DECC could thereby assess whether any significant emitters of assessable pollutants were not currently required to pay LBL pollutant load fees for those emissions.

Through this review it was found that significant industrial emission sources of arsenic, lead, mercury and benzo[a]pyrene (BaP) are not being captured by LBL and therefore are not subject to an incentive mechanism to reduce emissions. This information is discussed below.

Arsenic

Arsenic is currently an assessable air pollutant under the LBL scheme for three fee-based activities:

- non-ferrous metal production (ore concentrates)
- thermal treatment of general waste
- thermal treatment of hazardous and other waste.

A review of three years of NPI data from 2002–2005 indicates that the LBL scheme does not capture some of the more significant air point-source emissions of arsenic in NSW. The review found that arsenic emissions from industrial premises reporting to the NPI were initially about 2,000 kg per annum, but dropped to around 1,000 kg for 2004–05 after the closure of two large premises. This resulted in the LBL coverage of industrial arsenic emissions dropping from 60% in 2002–03 to only 0.1% in 2004–05. This reveals a significant gap in the coverage of arsenic emissions by LBL.

Table 8 identifies those LBL activities with high arsenic emissions that *do not* pay load fees on their emissions. It shows that the fee-based activities identified all emit significant quantities of arsenic to the environment every year.

Table 8 LBL activities that report significant arsenic air emissions to the NPI but do not pay load fees

Fee-based activity ^a	Average annual arsenic emissions for 2002–05 (kg)	Total NSW industrial arsenic emissions for 2002–05 (%)
Coke production	194	12.9
Electricity generation from coal	191	12.7
Glass production – container glass	100	6.7
Iron and steel production (iron ore)	70	4.7
Petroleum and fuel production ^b	37	2.5
Iron and steel production (scrap metal)	35	2.3
Total		41.8

^a Where a licensee undertakes multiple activities on a site, NPI emissions data has been assigned to the activity considered to result in the greater portion of those emissions.

^b The number of licensees does not include those that have a capacity to produce less than 10,000 tonnes. This is as per the recommendation in section 6.4 to remove assessable pollutants for these premises.

For the remaining point-source arsenic emissions reported to the NPI for 2002–2005:

- 39% was emitted by two major premises with arsenic as an assessable pollutant that ceased operations in 2004 and so are no longer relevant
- 19% comes from a large number of small emitters which include but are not limited to activities not in the LBL scheme, such as agricultural produce industries, explosives manufacture, livestock processing and wood or timber milling activities
- The remainder was emitted by the LBL premises that currently have arsenic as an assessable pollutant, such as those that conduct thermal treatment of hazardous and other waste.

Lead

Lead is currently an air assessable pollutant under the LBL scheme for seven fee-based activities:

- non-ferrous metal production (ore concentrates)
- non-ferrous metal production (scrap metal)
- energy recovery from general waste
- energy recovery from hazardous and other waste

- recovery of waste oil
- thermal treatment of general waste
- thermal treatment of hazardous and other waste.

A review of the 2002–2005 NPI data indicates that the LBL scheme does not capture some of the more significant industrial air point source emissions of lead in NSW. Lead emissions from industrial premises reporting to the NPI were 30,700 kg in 2002–03, but this value dropped to around 10,000 kg in 2004–05 after the closure of two major premises. LBL premises conducting the activities listed above contribute only 8% (or 770 kg) of lead emissions reported from point sources to the NPI.

Table 9 details those LBL activities in the NPI with high lead emissions that *do not* pay load fees on their emissions. It shows that these activities often emit an average of several hundred kilograms of lead to the air every year.

Table 9 LBL activities that report high lead air emissions to the NPI but do not pay load fees

Fee-based activity ^a	Average annual lead emissions for 2002–05 (kg)	Total NSW average lead emissions for 2002–05 (%)
Iron and steel production (iron ore)	7,200	41.9
Electricity generation from coal	890	5.2
Glass production – container glass	650	3.8
Coke production	490	2.8
Cement or lime production	460	2.7
Petroleum and fuel production ^b	410	2.4
Iron and steel production (scrap metal)	220	1.3
Aluminium production (alumina)	110	0.6
Total		61.7

^a Where a licensee undertakes multiple activities on a site, NPI emissions data has been assigned to the activity considered to result in the greater portion of those emissions.

^b The number of licensees in this activity does not include those premises that have a capacity to produce less than 10,000 tonnes. This is as per the recommendation in section 6.4 to remove assessable pollutants for these premises.

For the remaining point source lead emissions reported to the NPI for 2002–2005:

- 29% was emitted by premises that have now ceased operation
- 4% was emitted by premises that currently have lead as an assessable pollutant
- 6% comes from a large number of small emitters which include but are not limited to ceramics production, petrochemical production, livestock processing industries, paper production and wood or timber milling activities.

Mercury

Mercury is currently an assessable air pollutant under the LBL scheme for the following three fee-based activities:

- non-ferrous metal production (ore concentrates)
- thermal treatment of general waste
- thermal treatment of hazardous and other waste.

A review of the 2002–2005 NPI data indicates that the LBL scheme does not capture some of the more significant air point-sources of mercury in NSW. The review found that mercury emissions from point sources at industrial premises reporting to the NPI averaged at about 1,600 kg per annum and that the initial low coverage of these mercury emissions by LBL dropped to zero in 2004–05.

Table 10 details the LBL activities with high mercury emissions that *do not* pay load fees on their emissions. It shows that these activities discharge an average of 70–520 kg of mercury to the environment every year.

Table 10 LBL activities that report high mercury emissions to the air to the NPI but do not pay load fees

Fee-based activity ^a	Average mercury emissions (kg)	Total average mercury emissions (%)
Coke production	520	30
Electricity generation from coal	310	18
Iron and steel production (iron ore)	210	12
Cement or lime production	100	5.8
Petroleum and fuel production ^b	70	4.3
Iron and steel production (scrap metal)	65	3.8
Total		74

^a Where a licensee undertakes multiple activities on-site, NPI emissions data has been assigned to the activity considered to result in the greater portion of those emissions.

^b The number of licensees in this activity does not include those premises that have a capacity to refine and manufacture less than 10,000 tonnes. See Section 6.4 for the recommendation to remove assessable pollutants for these premises.

For the remaining point source mercury emissions reported to the NPI for 2002–2005:

- 7% came from a number of small emitters which include glass production, petrochemical production, livestock processing industries and paper production.
- 1% was emitted by premises that had mercury as an assessable pollutant but have since closed down; and,
- 18% was emitted by premises conducting waste activities. Currently, fee-based activities associated with waste activities are not in the LBL scheme. At this time, DECC does not recommend including such activities in the LBL scheme and will continue to regulate emissions through licence conditions and other regulatory tools.

Benzo[a]pyrene

Benzo[a]pyrene (BaP) (equivalent)²⁰ is currently an assessable air pollutant under the LBL scheme for the following fee-based activities:

- coke production
- electricity generation from coal
- iron and steel production (iron ore)

²⁰ Benzo[a]pyrene (equivalent) means benzo[a]pyrene plus 0.1 times the mass of benzo[a]anthracene, benzo[b]fluoranthene, benzo[k]fluoranthene and ideno[1,2,3-c,d]pyrene plus 0.4 times the mass of dibenz[a,h]anthracene.

- petroleum and fuel production
- thermal treatment of general waste
- thermal treatment of hazardous and other waste.

BaP is a subset of the broad class of compounds classified as polycyclic aromatic hydrocarbons (PAHs) that are among the 90 NPI substances. In regulatory jurisdictions overseas, BaP is often used as a marker for total PAHs exposure, as it rarely exists on its own but is associated with a large number of PAHs. Industries do not report on BaP loads to the NPI but some are required to report on their PAHs loads. DECC has assumed that the presence of PAHs also indicates the presence of BaP.

Therefore, although BaP and PAHs are not directly comparable without information on the specific PAHs, LBL premises with BaP data were reviewed against their NPI PAH data for the same period (2002–05). Based on this review, DECC developed some average emission ratios of BaP to PAHs for LBL activities currently with BaP as an air assessable pollutant (Table 11) so that an indicative comparison of NPI and LBL data could be conducted.

Table 11 Average emission ratio of BaP compared with PAHs

Fee-based activity	Average BaP:PAHs ^a
Coke production	0.0004
Electricity generation from coal	0.3139
Iron and steel production (iron ore)	0.0061
Petroleum and fuel production	0.0073
Thermal treatment of hazardous and other waste	0.0186

^a BaP data from LBL and PAHs data from the NPI.

Review of 2002–2005 NPI data indicates that the LBL scheme does not capture some significant air point sources of PAHs (and therefore BaP sources) in NSW. In particular:

- PAHs emissions reported to the NPI from industry over the period averaged 75,000 kg per year
- 51.5% (38,700 kg) of total NSW PAHs emissions from industry are currently included in the LBL scheme.

Table 12 details the two activities that report high PAHs emissions to the NPI but *do not* pay LBL fees on their BaP emissions. It shows that these two activities discharge on average over a thousand kilograms of BaP to the environment every year. The remaining emissions of PAHs are reported in small portions by a large number of premises involved in activities such as the production of ceramics, glass and asphalt, and wood or timber milling.

Table 12 Activities with high PAHs emissions that do not pay LBL fees on BaP emissions

Fee-based activity	Average annual PAHs emissions for 2002–05 (kg)	Total NSW average annual PAH emissions for 2002–05 (%)	Predicted BaP load ^b (kg)
Carbon black production ^a	12,500	16.7	5 – 3,924
Aluminium production (alumina)	12,100	16.1	5 – 3,798
Total	24,600	32.8	10 – 7,722

^a DECC proposes to add a range of air assessable pollutants to carbon black production (section 6.3).

^b BaP emissions calculated using the range of BaP:PAH emission ratios (0.0004–0.3139) in Table 11.

The addition of assessable pollutants to fee-based activities that currently do not have any assessable pollutants (e.g. adding BaP to carbon black production) is discussed in section 6.3.

6.1.1 Options considered

The purpose of this amendment is to ensure the LBL scheme captures the most significant industrial emissions, where this is technically feasible and practical, so that licensees have an incentive to reduce their emissions.

Two options for adding additional assessable pollutants to some scheduled activities were considered:

Option 1 – no change (base case)

Option 2 – add arsenic, lead, mercury and BaP as assessable pollutants to some existing fee-based activities in the LBL scheme where analysis indicates that the coverage of significant emissions sources could be improved.

As discussed above, LBL currently only captures a small percentage of total industrial emissions for arsenic, lead, mercury and BaP. Under option 1, the LBL coverage of these emissions would remain low and there would be no incentive for the LBL premises that have been identified as having significant emissions of these pollutants (but do not currently have them as assessable pollutants) to reduce their emissions of these substances. Therefore, option 1 does not meet the objective of capturing the most significant industrial sources of pollution.

Option 2 proposes to add arsenic, lead, mercury and BaP as assessable pollutants to the LBL fee-based activities that have been identified in the analysis as emitting significant quantities of the pollutants. Table 13 outlines the activities in the LBL scheme for which it is proposed to add arsenic, lead, mercury and BaP added as assessable pollutants.

Table 13 Proposed assessable pollutants to be added to existing fee-based activities under the LBL scheme

Fee-based activity	Arsenic	Lead	Mercury	BaP
Aluminium production (alumina)		✓		✓
Cement or lime production		✓	✓	
Coke production	✓	✓	✓	
Electricity generation from coal	✓	✓	✓	
Glass production – container	✓	✓		
Iron and steel production (iron ore)	✓	✓	✓	
Iron and steel production (scrap metal)	✓	✓	✓	
Petroleum and fuel production	✓	✓	✓	

The changes in Table 13 are projected to improve the LBL coverage of industrial emissions of these pollutants in NSW by the amounts in Table 14. The data illustrates the very strong case for option 2 which would significantly improve coverage by adding additional assessable pollutants to specific fee-based activities. The remaining portion of industrial emissions of these pollutants are reported to the NPI by premises that are not subject to LBL.

Table 14 Projected LBL coverage of arsenic, lead, mercury and BaP point source emissions in NSW

Assessable pollutant	Coverage of industrial emissions ^a	
	Option 1	Option 2
Arsenic	0.1%	60%
Lead	8%	91%
Mercury	0.02%	77%
BaP	51.5%	84%

^a Based on 2004–05 NPI and LBL data

6.1.2 Costs and benefits of the proposed amendment

The main costs to industry of the proposed amendment relate to additional costs of reporting the new assessable pollutants, which may include monitoring costs, plus the additional pollutant fees payable on their emissions.

The possible monitoring costs associated with arsenic, lead, mercury and BaP are highly variable across production systems and it has not been possible to estimate them because of limited information. In particular, it is difficult to determine monitoring costs for these pollutants because:

- The cost of air pollution emissions monitoring is highly variable depending upon the configuration of the production processes. For example, large-scale plants with emission stacks extending across a wide land area will require multiple monitoring sites.
- The actual costs for each premises depends on what else is being monitored at the same time, for example other heavy metals.

It should be recognised that premises will not necessarily be required to monitor for these new assessable pollutants. Since this proposal is based on an analysis of NPI data, the majority of the premises in each fee-based activity are already reporting emissions of the pollutant to the NPI using monitoring or, more likely, an emission factor. Given that the current NPI reporting method would likely be applicable for LBL purposes, reporting the pollutant may not necessarily lead to additional data-gathering or monitoring costs for the premises.

The increased pollutant load fees associated with the proposed amendment can be more easily established. Table 15 outlines the projected impact on load fees from adding arsenic, lead, mercury and BaP as assessable pollutants to the proposed LBL activities.

DECC will receive information on these additional assessable pollutants in the Annual Returns submitted by affected licensees. Processing the information from the proposed amendment will require minimal additional administration costs for DECC since the Annual Returns are currently subject to a compliance check of the completed LBL worksheets for existing assessable pollutants.

There are a number of benefits from the proposed amendment, such as improved emissions information or reduction in emissions. For example:

- The proposed amendment will increase the amount of emissions data that can be used to develop pollution reduction programs or to inform wider DECC policy and program development at the local or regional level since some of the premises in the fee-based activities do not currently report emissions of each pollutant to the NPI (although the majority of the premises do). NPI facilities only report emissions where they trip a relevant threshold, whereas all LBL premises that conduct a fee-based activity must report all assessable pollutants for that activity.
- Linking emissions of the pollutants to fees may lead to some premises looking to improve the accuracy of the emissions data that they currently report to the NPI by either monitoring or developing a site-specific emission factor.
- The proposed amendment will provide an economic incentive for those premises that were previously not required to pay load fees for emitting arsenic, lead, mercury or BaP to reduce their emissions where possible. Reduced emissions can lead to secondary benefits such as avoided health and environmental costs that can arise from emissions of these pollutants.

Table 15 Impact of adding the air assessable pollutants lead, arsenic, mercury and BaP to LBL fee-based activities in 2009–10

Fee-based activity ^a	Baseline LBL fee	Projected load fees				Projected additional LBL fee	Increase in baseline LBL fee (%)
		Arsenic	Lead	Mercury	BaP		
Aluminium production (alumina) ^b	\$475,000	–	\$5,000	–	\$600 – \$435,000	\$5,600 – 440,000	1–93%
Cement or lime production	\$409,000	–	\$19,000	\$41,000	–	\$60,000	15%
Coke production	\$57,000	\$39,000	\$21,000	\$218,000	–	\$278,000	490%
Electricity generation from coal	\$14,300,000	\$41,000	\$42,000	\$139,000	–	\$222,000	2%
Glass production – container glass	\$709,000	\$25,000	\$34,000	–	–	\$59,000	8%
Petroleum and fuel production ^c	\$2,592,000	\$7,000	\$11,000	\$71,000	–	\$89,000	3%
Iron and steel production (iron ore)	\$4,150,000	\$13,000	\$206,000	\$104,000	–	\$323,000	8%
Iron and steel production (scrap metal)	\$139,000	\$7,000	\$9,000	\$26,000	–	\$42,000	30%
Total		\$132,000	\$347,000	\$599,000	\$600 – \$435,000	\$1.0 – \$1.5 million	

^a Where a premises conducts multiple fee-based activities, the estimated load and projected load fees have been assigned to a single fee-based activity for simplicity since the breakdown of the reported NPI emission for the whole site is not known.

^b Fee calculations for BaP are based on the estimated BaP emissions range for aluminium production (alumina) in Table 14.

^c Fee calculations for petroleum do not include those premises with a threshold below 10,000 tonnes (section 6.4).

6.1.3 Summary

An analysis of the coverage of the LBL scheme with total industrial pollutant emissions in NSW has identified that significant emission sources of arsenic, lead, mercury and BaP are not captured by the LBL scheme. Consequently, there is a lack of equity for some major industrial emitters of these pollutants. These industrial emitters have no economic incentive to reduce emissions levels below compliance whereas other premises involved in the LBL scheme pay fees on their emissions. In order to address this lack of equity and improve the operation of the LBL scheme the preferred option is to add the assessable pollutants arsenic, lead, mercury and BaP to the fee-based activities set out in Table 14, as for option 2.

6.1.4 Further discussion – other new assessable pollutants

DECC examined other pollutants of national interest that are not LBL assessable pollutants, such as those under the NPI or the National Environment Protection Measure for Ambient Air Quality, to assess whether they should be added to the LBL scheme. The review of major industrial sources of these pollutants of concern indicated that LBL already provides a reasonable coverage of these pollutants or indicator pollutants. For example, the LBL scheme currently includes several air toxics as assessable pollutants (for example arsenic, lead, mercury, benzene, VOCs and BaP) with dioxins²¹ being the only significant class of air toxics not currently included in the LBL scheme.

In addition the review found that currently the benefits of adding additional pollutants such as dioxins or PM_{2.5}²² to the LBL scheme are not clear due to unreliable methodology for calculating emissions or increased cost burden on licensees to monitor and report on emissions without providing a substantial benefit to the environment. However, it should be noted that DECC may regulate emissions of these and other pollutants through licence conditions and under the Clean Air Regulation.

DECC will continue to review the suitability and applicability of adding additional assessable pollutants above those proposed in this Regulation in the future.

6.2 Removing assessable pollutants listed under cement or lime handling

Cement or lime handling typically involves crushing, grinding and bagging cement and lime ready for distribution. These materials are used in concrete production and other building materials. In contrast to cement or lime handling, cement or lime production is a high-risk activity because it involves combustion and complex processes using chemical additives. For cement or lime production, electrostatic precipitation and scrubbing is generally used to control air emissions, especially particulates.

There are 15 premises that have cement or lime handling as their *only* LBL fee-based activity. The combined administrative fees for these licenses amount to \$39,200 while the combined load fees amount to about \$1,500. None of these

²¹ Dioxins are a group of compounds that are structurally and chemically related to polychlorinated dibenzo-*para*-dioxins (PCDDs) and polychlorinated dibenzofurans (PCDFs).

²² PM_{2.5} is particulate matter 2.5 micrometres in diameter or less.

licensees pay LBL fees because their emissions of the assessable pollutants – coarse and fine particulates – are relatively small and therefore they only pay administrative fees.²³

Producers involved in this activity have an incentive to reduce particle emissions because it maximises the amount of product they can sell. That is, cement and lime that is lost in particulate emissions causes a direct loss of revenue.

In 2004–05, the combined particulate load (coarse and fine particulates) from cement and lime handlers was around 10 tonnes, which is less than 0.1% of total particulate emissions reported to the LBL scheme. DECC does not expect the cement and lime handling industry to expand its production levels significantly in the future, nor does it expect the industry sector's capture of particulate emissions to decrease given the direct impact on profits. Therefore, the current level of particulate emissions is not expected to increase in the foreseeable future.

Taking the points raised above into account, it is clear that the LBL scheme is not providing any additional economic incentive to improve environmental performance.

6.2.1 Objective

The strength of the economic incentive in LBL is directly related to the magnitude of the LBL fees. When the total assessable pollutant fee is less than the administrative fee, the LBL fee equals zero. Where this occurs, LBL does not provide an incentive to reduce pollutant loads. It also implies that the premises/industry sector does not have significant discharges of the pollutants – one of the criteria for inclusion in the scheme. In such a situation, LBL may not be the appropriate tool to encourage pollution reduction in these industries.

Given this, it is clear that maintaining cement or lime handling in LBL is providing no incentive for these premises to improve their environmental performance.

The proposed amendment is to remove assessable pollutants listed under cement or lime handling in the Regulation, thereby removing this fee-based activity from the LBL scheme. The objective of this amendment is to remove administrative requirements on both industry and government that provide no environmental benefits and to allocate DECC and industry resources according to the level of environmental risk.

6.2.2 Options considered

Two options were considered:

Option 1 – no change (base case)

Option 2 – remove the assessable pollutants – coarse and fine particulates – listed under the activity 'Cement or lime handling'.

Under option 1, premises licensed for cement or lime handling would continue to report emissions of coarse and fine particulates in their Annual Return to DECC, for the purpose of calculating pollutant load fees for these two assessable pollutants. DECC would continue to process the Annual Return which involves verifying the

²³ The POEO General Regulation requires that only the administrative or the total assessable pollutant fee be paid (whichever is higher).

accuracy of the calculation and entering data into the licensing database. Given the discussion above, it is considered unlikely that these premises would ever emit loads of coarse and fine particulates that would require them to pay LBL fees. Hence, this option maintains an administrative burden on both the licensees and government while providing no incentive for the licensees to improve environmental performance.

Under option 2, licensees would continue to complete an Annual Return but there would be no requirements to submit load data and so LBL worksheets would not be submitted to DECC. While the licensee does not have to report loads of coarse and fine particulates, environment protection licence conditions would still apply to the premises, and these license conditions require the operations to be conducted in a competent manner.

This option would result in DECC not receiving emission data from these facilities through any mechanism since they do not report to the NPI as they do not trip any of the NPI reporting thresholds. Given the very small emissions of coarse and fine particulates from these licensees, it is not considered that such a loss of data would be significant with respect to DECC's coverage of emission sources in NSW.

Therefore, option 2 is the preferred option since the objective is to remove administrative requirements on both industry and government that provide no environmental benefits. Option 1 would continue to place unnecessary administrative requirements on both licensees and government.

6.2.3 Costs and benefits of the proposed amendment

The proposed amendment will have no impact on the total fees payable by affected licensees since all the affected licensees currently pay administrative fees only and will continue to do so under the proposal. It is expected that the proposed amendment to the Regulation will not have any impact on the levels of particulate emissions from premises that undertake this activity since it has provided no incentive to reduce emissions.

Particulate load data would no longer be collected for LBL purposes by licensees who undertake cement or lime handling and, as a result, this information would no longer be held by DECC. Currently, licensees calculate their loads using emissions factors as opposed to actual monitoring. Therefore, loads are likely to be overestimated as emission factors are generally conservative. LBL load data indicates that the proportion of particulates arising from *all cement and lime handling activities* represented less than 0.01% of total particulate emissions reported by *all LBL licensees*. Continued collection of this information is considered to offer little value in the future due to the low particulate emission levels.

There will be minor administrative costs to DECC to facilitate removal of LBL requirements for these licenses, but these costs will be offset by the reduced resources required to administer the LBL component of Annual Returns and assess compliance with LBL. DECC would not send LBL worksheets for completion to licensees as part of their annual licence renewal or conduct a compliance check of the completed worksheets. This is expected to release DECC resources to focus on higher risk premises, where more significant environmental benefits can be achieved. The costs to government to conduct these tasks are estimated as \$715 per year.²⁴

²⁴ This estimate is based on the cost to Government of 13 hours of staff time per year, valued at \$55 per hour. DECC estimates that the LBL component of the licence anniversary notice for this industry currently requires one hour per licence per annum.

Industry will gain savings benefits since affected licensees would no longer have to provide load data information on an LBL worksheet and include this data in their Annual Return at the end of the licence year. The savings to industry of conducting these tasks is estimated at approximately \$845 per annum.²⁵

6.2.4 Summary

The analysis shows that the proposed amendment will reduce the administrative burden of licensing on both licensees and the government, saving \$500–1,000 annually, with no corresponding adverse impacts on the environment. While particulates are an important air quality issue in NSW, the level of particulate emissions arising from cement or lime handling operations are insignificant as a proportion of total particulate emissions for premises subject to LBL and therefore no longer appear to warrant inclusion in the LBL scheme.

Pollution reduction programs could still be required for specific poorly performing licences. In addition, DECC is able to apply concentration limits on environment protection licences to control any potential acute localised particulate impacts where necessary.

Removing the assessable pollutants listed for cement or lime handling allows DECC and industry to allocate resources that are commensurate with the level of environmental risk.

6.3 Adding new activities to LBL

The coverage of major industrial emissions of assessable pollutants by LBL was also examined to determine whether activities that have no assessable pollutants (that is, activities not covered by LBL) should pay load fees for specific assessable pollutants in order to improve the coverage and equity of the LBL scheme.

6.3.1 New LBL activity – ‘Carbon black production’

One activity of interest that was identified through analysis of its significant emissions reported to the NPI was carbon black production.

Carbon black products are used as a reinforcing agent in rubber compounds (especially tyres) and as a black pigment in printing inks, surface coatings, paper, and plastics. They are created through the partial combustion or thermal decomposition of gaseous or liquid hydrocarbons (for example natural gas, coal tar oils and petrochemical oils). This process creates extremely small particles of highly dispersed elemental carbon.

Air emissions from carbon black industries include particulates, carbon monoxide, VOCs, NO_x, SO_x, PAHs and heavy metals. Gaseous air emissions can vary

²⁵ This estimate is based on the cost to industry of 13 hours staff time per year, valued at \$65 per hour. DECC expects that licensees would spend one hour preparing the LBL documentation per year. Licensees who undertake cement and lime handling currently calculate the load fee by multiplying the emission factors (for coarse and fine particulates) provided in the *Load Calculation Protocol* with the rate of production.

considerably according to the grade of carbon black being manufactured. Gaseous emissions may be controlled with carbon monoxide boilers, incinerators or flares.

A review of NPI data indicates that significant loads of assessable air pollutants are discharged by the carbon black industry in NSW. These quantities are comparable to the loads of the various assessable pollutants that are emitted by other licences that are already included within the LBL scheme.

It can be seen in Table 16 that carbon black producers emit BaP, fine particulates, NO_x, VOCs and SO_x that exceed the median load on which LBL licensees are required to report and pay fees.

Table 16 Comparison of median loads for carbon black producers with other LBL activities

Assessable pollutant	Median NPI emission reported by carbon black producers over 2000–05 (kg)	Median 2004–05 LBL load (kg)	Number of LBL premises with assessable pollutant
BaP ^a	90	0.05	23
Fine particulates	16,000	1,808	97
NO _x	390,000	15,538	83
SO _x	850,000	32,082	58
VOCs	6,900	3,086	63

^a Estimated from reported PAH emissions using an average BaP:PAH ratio for petroleum refining activities of 0.0073.

In addition, carbon black production is not a fee-based activity in Schedule 1 of the Regulation. Therefore, licensees that conduct this activity pay licence fees for other activities, such as chemical storage and waste activities.

Options considered

The aim of this proposed Regulation is to expand the coverage of the LBL scheme so that all current significant sources of industrial emissions in NSW are subject to an additional economic incentive to reduce emissions. Two options were considered to meet this aim with respect to carbon black production.

Option 1 – no change (base case)

Option 2 – create a new fee-based activity titled ‘Carbon black production’ with selected air assessable pollutants.

Under option 1, licensees scheduled under this activity in Schedule 1 of the POEO Act would continue to pay administrative fees under some other fee-based activity in Schedule 1 of the Regulation such as ‘Other activities being any activity not otherwise included in a classification in this Schedule’ or ‘Chemical storage activities’. Licensees would not be required to pay administrative fees for the activity undertaken at the site, nor would they be required to pay load fees for emission of pollutants that are of equivalent magnitude to premises that are currently part of LBL. Consequently, this option clearly does not meet the aim of the amendment.

Option 2 would create a new fee-based activity called ‘Carbon black production’ with associated air assessable pollutants (i.e. a new LBL fee-based activity). This proposal would include an administrative fee scale for this industry in Schedule 1 of

the Regulation, which would equitably apply the polluter pays principle across all industries emitting significant amounts of environmentally harmful pollutants.

The proposed changes to Schedule 1 of the current Regulation are highlighted in Table 17, including administrative fee scales, assessable pollutants and FRT factors. The FRT factors have been developed based on an emission factor range taken from *Dutch Notes on Best Available Technology for the Carbon Black Industry* (2002) in order to reflect good practice.

Table 17 ‘Carbon black production’

Administrative fee	
Annual production capacity	Administrative fee units
Not more than 5,000 tonnes	25
More than 5,000 but not more than 20,000 tonnes	65
More than 20,000 tonnes	165

Load-based fee	
Air pollutants	Threshold factor
Benzo[a]pyrene	0.005
Fine particulates	0.3
NO _x and NO _x (summer)	11
SO _x	8
VOCs and VOCs (summer)	0.4

Water pollutants	Threshold factor
Nil	Not applicable

The preferred option is option 2 since the objectives of this amendment are to ensure the LBL scheme captures all current industrial activities that discharge a significant level of LBL assessable pollutants where this is technically feasible and practical. Option 1 would not meet this objective since it would continue the current inequity whereby carbon black producers, which have been shown to emit significant quantities of pollutants, are not required to pay load fees for their emissions nor administrative fees commensurate to their activity.

Costs and benefits of the proposed amendment

The main costs to industry from the proposed amendment result from any additional administrative, pollutant monitoring and reporting costs associated with completing the data requirements for the new assessable pollutants, plus new costs associated with paying load fees for emissions of the assessable pollutants.

The premises that conduct this activity currently monitor for a variety of pollutants – PM₁₀, NO_x, H₂S, SO_x and total suspended solids – as licence condition requirements. Given that licensees that produce carbon black are already reporting emissions of the proposed assessable pollutants to the NPI, it is reasonable to assume that no additional monitoring (or relatively minor modifications to existing monitoring regimes) would need to be conducted in order for them to comply with the proposed LBL requirements.

The other additional cost is the LBL fees associated with emissions. Table 18 outlines the estimated impact to annual load fees from adding assessable pollutants to carbon black producers for premises situated outside of the metropolitan region or in the Sydney Basin for the 2008–09 period. If the premises are situated in the

Hunter or Wollongong regions, then higher load fees (to take into account the NO_x and VOCs critical zone weightings) would result in LBL fees of \$65,205 and \$144,269 respectively.

Table 18 Projected load fee implications for ‘Carbon black production’

Assessable pollutant	Annual median load (kg) ^a	FRT (kg) ^b	Estimated load fee ^c	Estimated load fee in the Sydney Basin ^d
BaP ^e	90	150	\$10,077	\$10,077
PM ₁₀	16,000	9,000	\$11,100	\$11,100
NO _x	390,000	330,000	\$15,678	\$218,918
SO _x	850,000	240,000	\$12,434	\$12,402
VOCs	6,900	12,000	\$176	\$2,462
		LBL fee	\$49,465	\$254,959

- a Based on NPI data reported over the 2000–05 reporting periods.
- b Based on an actual quantity of activity equal to 30,000 tonnes production. Note that enhanced load fees are payable for fine particulates, NO_x and SO_x since their emission is greater than the FRT.
- c Estimated load fee for a licensee outside the Sydney metropolitan region (\$38.61 in 2009–10).
- d The load fees for NO_x and VOCs include additional fees for the critical zone weighting for the Sydney Basin, plus fees for NO_x (summer) and VOCs (summer) emissions.
- e BaP emissions are based on NPI median PAH emissions of 12,000 kg multiplied by 0.0073 (the average BaP:PAH emission ratio for petroleum refining activities).

While the estimated increase in fees is significant, when the reported emissions from this type of activity are compared with other premises that already pay load fees under the LBL scheme, it appears a more equitable application of the polluter pays principle. This fee increase will provide licensees conducting this activity with a strong incentive to implement better strategies to reduce their emissions and consequently reduce their load fee.

There is a range of actions that licensees in this activity could undertake to reduce their projected LBL fee, such as introducing new pollution control equipment, fuel switching and modifying production practices. Actions may include negotiating an LRA (see section 7), whereby the licensee could forego paying a significant portion of pollutant load fees that would be due in exchange for implementing works within a four-year period that would reduce their assessable pollutant loads to agreed levels.

There will be additional costs placed on government in order to implement the proposed changes. DECC will incur administration costs associated with implementing the changes into the licensing information management system, and processing, verifying and auditing the additional information on assessable pollutants in the Annual Returns submitted by affected licensees.

The proposed amendment would ensure that there is a financial incentive for the premises to reduce emissions from carbon black production, which include fine particulates, NO_x, SO_x, VOCs and BaP. It will also apply LBL more equitably to industry as NPI data shows that premises conducting this activity emit LBL assessable pollutants in the same order of magnitude as many premises that are subject to LBL.

Summary

Introducing the new fee-based activity, 'Carbon black production', including assessable pollutants into the proposed Regulation will provide an incentive for premises conducting this activity to reduce their emissions of fine particulates, NO_x, SO_x, VOCs and BaP. As well as improvements to health and the environment due to reducing emissions, the proposed change will make LBL a more economically equitable scheme by including all activities that emit significant loads of assessable pollutants.

6.3.2 New LBL activity – 'Electricity generation from diesel'

Industries generating electrical power from diesel generally use similar equipment to industries generating electricity from gaseous or solid fuel (for example gas or coal). That is, gas turbines, reciprocating engines and boilers can easily fire either gaseous or liquid fuels.

Air emissions associated with electricity generation from diesel are typically particulates, NO_x, sulfur compounds, carbon dioxide, carbon monoxide, VOCs and PAHs. Heavy metals may be emitted if waste oils are used.

Air emissions can be controlled by using better quality fuel, selecting appropriately designed plant and a wide range of end-of-pipe pollution controls. Controls include low sulfur fuels, wet or dry low NO_x burners, steam injection, NO_x reduction using non-catalytic reduction or selective catalytic reduction, ammonia injection, oxidation catalysts, lean-burn technology and various plant control technologies.

Significant loads of assessable air pollutants can be discharged by the activity. The quantities are comparable to the pollutant loads emitted by other licensees that are already included in the LBL scheme.

The quantities of air emissions produced by electricity generation from diesel are broadly comparable with emissions from solid- and gas-fired electricity production, but this may vary according to the pollutant, the cycle of operation, the size and type of plant and the pollution control equipment fitted.

The key pollutants and estimated loads that may be emitted by generating electricity from diesel burning are summarised in Table 19. Comparison of the likely loads of each pollutant from this activity with the median LBL load reported for that pollutant indicates that the likely emissions are significantly higher than the median LBL load. This indicates that premises conducting this activity should be subject to LBL in order to address equity considerations with other forms of electricity generation.

Table 19 Key pollutants and loads from ‘Electricity generation from diesel’

Assessable pollutant	Estimated load (kg)		Median LBL load (kg)	Median LBL load (kg) from electricity generation
	Bank of large reciprocating engines	Large gas turbine		
BaP	0.4	1	0.05	1.3
PM ₁₀	50,000	200,000	1,808	357,850
NO _x	425,000	1,900,000	15,538	2,964,000
SO _x	100,000	290,000	32,082	25,690,000
VOCs	38,000	115,000	3,086	n/a

DECC does not presently license any industries generating electrical power from diesel, but expects that several operations may apply for environment protection licences for this activity over the next five years. Under current arrangements, new premises constructed to generate electricity from burning diesel would not be required to pay LBL fees.

The proposed amendment aims to address the situation where LBL could provide an incentive for generation from diesel as opposed to solid fuels such as coal or gas where LBL fees apply.

Options considered

Two options have been considered:

Option 1 – no change (base case)

Option 2 – add air assessable pollutants to the new fee-based activity ‘Electricity generation from diesel’.

Under option 1, any premises that generates electricity from burning diesel would not be subject to LBL since only electricity generation from coal or gas has assessable pollutants. This option would mean that electricity generators that burn diesel would not be required to pay load fees even though they may emit quantities of air pollutants of the same magnitude as gas or coal generators who produce similar quantities of electricity and who are required to pay load fees. Clearly, this is not an equitable outcome. Further, this outcome may send a message to industry that electricity generation from diesel is preferable to generation from cleaner fuels such as gas. Such an outcome does not represent Government policy and would exacerbate air quality concerns in NSW. Therefore, option 1 is not the preferred option.

Option 2 proposes that any electricity generation plants that burn diesel would be required to pay load fees for specific assessable pollutants as is currently required for coal-fired or gas-fired generation. This option leads to a fairer outcome whereby all generators are required to pay load fees for emissions of pollutants which provides an equivalent incentive for reducing their emissions.

Table 20 lists the proposed assessable air pollutants and FRT factors for electricity generation from diesel. The proposed FRT factors are equal to the equivalent FRT factors for coal-fired electricity generation.

Table 20 Proposed air assessable pollutants and fee rate threshold factors

Assessable pollutant	FRT factor
Benzo[a]pyrene	0.0036
Fine particulates	54
NO _x	2,700
SO _x	2,650
VOCs	76

Costs and benefits of the proposed amendment

Currently, there are no premises that are licensed for electricity generation from diesel. Therefore, there are no immediate costs to industry from this amendment. However, if new premises are constructed that undertake this activity, costs will include licence fees and monitoring and reporting costs to meet the proposed LBL requirements.

An accurate assessment of costs cannot be made, however it can be assumed that the fees for this activity will be similar to fees for existing activities generating electricity from solid or gaseous fuels. This is because emissions per unit of activity and proposed FRTs are broadly similar to activities generating electricity from solid or gaseous fuels.

Future licensees would be required to conduct monitoring and reporting to meet likely licensing and NPI requirements. This monitoring will generally meet LBL requirements, and DECC does not expect that any monitoring purely for LBL purposes would be required. In some cases, relatively minor modifications to standard monitoring regimes may be required.

DECC will incur additional administrative costs in processing and verifying the LBL data submitted in the Annual Return by the affected licensee. These tasks will require minimal additional resources since it is not expected that there will be a significant number of new premises conducting this activity.

The major benefit of the proposed amendment is that it would ensure that there is an equivalent financial incentive for any new activity generating electrical power from diesel to reduce its emissions in line with other electricity generators that operate on coal or gas. This will potentially reduce external environmental and health costs associated with emissions from this activity.

The proposed amendment would also provide industry and DECC with an indication of how the activity performs. The information collected on assessable pollutants from this industry will assist in the development of programs to improve industry performance levels or to inform wider DECC policy and program development at the local or regional level.

Summary

Expanding the LBL requirements on electricity generation to include the new fee-based activity 'Electricity generation from diesel' by introducing new assessable pollutants in the Regulation for this activity provides incentives to reduce emissions that may cause serious environmental harm. It also ensures an equitable application of the polluter pays principle across activities that generate electricity and emit a similar load of these assessable pollutants.

6.3.3 Further discussion – adding new assessable pollutants for fee-based activities that currently do not have assessable pollutants

As part of the review of the Regulation, DECC considered adding assessable pollutants to a number of other scheduled activities, such as aquaculture, mining, agricultural produce and intensive livestock industries. The analysis indicated that either the methodologies for measuring or estimating emissions were unreliable, or inclusion of these activities in LBL would place a cost burden on the licensees greater than any commensurate benefit for the environment. DECC will continue to review the suitability and applicability of adding assessable pollutants to scheduled activities that do not currently have assessable pollutants in the future.

6.4 Adding a threshold to ‘Petroleum and fuel production’ below which assessable pollutants do not apply

The fee-based activity ‘Petroleum and fuel production’ includes premises that have a capacity to produce more than 100 tonnes of petroleum per year.²⁶ Annual production levels for petroleum facilities in NSW appear to fit into three distinct production categories:

- greater than 3,000,000 tonnes
- approximately 30,000 tonnes
- less than 10,000 tonnes.

Large petroleum operations involve the cracking and distillation of crude oil into its different fractions which are further processed. The main environmental impacts at these premises relate to:

- air pollutants such as VOCs, SO_x, NO_x and hydrogen sulfide, which are released from the various chemical processes
- pollutants in water emissions from the process water used in refining and as cooling water
- solid waste generated from the process sludges and spent catalysts.

By comparison, the smaller petroleum operations that are included in this scheduled category mainly undertake blending of gasoline or fuel with other chemicals. The main emissions are VOCs.

Table 21 compares the loads of assessable pollutants emitted by small petroleum producers (i.e. premises that produce less than 10,000 tonnes of petroleum per year) with all petroleum producers and with total loads of the pollutants emitted by all LBL licensees. The data shows that the magnitude of loads emitted from small petroleum producers is insignificant compared with total loads from all petroleum producers (i.e. less than 0.2%). For example, large petroleum producers emit a total of 2.4 tonnes of benzene annually whereas small petroleum producers typically emit a total of seven kilograms of benzene per year (0.3%).

²⁶ The definition of petroleum includes aviation fuel, petrol, kerosene, mineral turpentine, fuel oils, lubricants, wax, bitumen, liquefied gas and the precursors to petrochemicals, such as acetylene, ethylene, toluene and xylene.

Table 21 Comparison of selected assessable pollutant loads from petroleum producers with all LBL premises

Assessable pollutant	Total load (tonnes)		
	LBL premises	Petroleum producers	Petroleum producers <10,000 tonnes
No. of premises	282	12	5
Benzene	360	2.4	0.007
BaP	0.23	0.012	0.00005
Fine particulates	7,400	290	0.007
Hydrogen sulfide	110	9	0.005
NO _x	160,000	2,600	4.5
SO _x	290,000	4,800	0.4
VOCs	4,900	2,300	3
Biological oxygen demand (BOD)	65,000	25	0.001
Oil and grease	11,000	19	0.003
Total suspended solids	64,000	49	0.002
Total PAHs	0.11	0.042	0.000008
Total phenolics	0.98	0.98	0

Based on 2004–2005 LBL data.

Further analysis of the LBL data from petroleum production premises that produce less than 10,000 tonnes of petroleum indicates that the total assessable pollutant fee is significantly less than the administrative fee, which means that none of the premises is paying an LBL fee. It appears unlikely that these premises would pay an LBL fee unless production levels significantly increased 10-fold or more).

LBL is intended to provide an incentive for industry to reduce emissions. However, this analysis has shown that LBL is not providing any economic incentive for small petroleum producers to improve their environmental performance. Therefore, the aim of this amendment is to change the way that LBL is applied to small petroleum producers to improve their efficiency.

Options considered

Two options were assessed for improving the incentive provided by LBL for premises with 10,000 tonnes production capacity for petroleum production:

Option 1 – no change (base case)

Option 2 – add a production capacity threshold to petroleum production, below which the current assessable pollutants do not apply.

Under option 1, all 'Petroleum and fuel production' activities licensed by DECC would continue to be required to report on the current assessable pollutants for this fee-based activity. As noted for the small petroleum producers, LBL provides no incentive since the premises are only paying administrative fees and are unlikely to ever emit pollutant loads that will require them to pay LBL fees. Therefore, this option does not address the problem.

For option 2, a threshold would be set below which assessable pollutants are not applicable. The threshold is set at a nominal level to represent a judgement of low risk. This proposal is consistent with other fee-based activities such as 'Electricity generation from coal' where a threshold defines the activity level above which assessable pollutants apply.

Under this proposal it is considered that a threshold of 10,000 tonnes per year would be appropriate given the information in Table 21. There are five premises licensed for petroleum production with production less than 10,000 tonnes per year of petroleum. These premises all pay an administrative fee of \$2,500 each and pay no LBL fee because of the low pollutant loads. In 2004–2005, the load-based fee component for these licensees averaged \$310, well below the administrative fee.

A higher threshold, such as 30,000 tonnes, has been considered but is not recommended since some of the premises that produce between 10,000 and 30,000 tonnes per annum pay LBL fees, meaning that LBL currently provides an incentive to reduce their emissions.

The preferred option is option 2, which will introduce a threshold of 10,000 tonnes per year production of petroleum below which the current assessable pollutants do not apply. This option will reduce the administrative burden of LBL reporting on premises that do not pay LBL fees and are unlikely to in the future. The proposed change will focus LBL so that it affects licences where it will provide an incentive to improve environmental performance.

Costs and benefits of the proposed amendment

The proposed amendment means that those premises under the 10,000 tonnes per year threshold would no longer report loads of assessable pollutants. This would reduce the administrative burden and associated reporting costs (including any monitoring costs that are completed solely for LBL purposes) on the affected premises that are currently required to report on emissions of 12 assessable pollutants. The total resource savings from no longer reporting this information in the Annual Return are not readily quantifiable. However, it is estimated that the saving to industry of not conducting the administrative tasks associated with reporting LBL data in the Annual Return is approximately \$1,625 per annum²⁷ with additional savings possible as a result of reduced monitoring costs. It should be noted that no change to licence fee revenue from these premises is expected since they will continue to pay administrative fees.

The proposed amendment will also reduce administration requirements for DECC. DECC would not send LBL worksheets for completion to licensees as part of their licence anniversary process or conduct a compliance check of the completed worksheets. This is expected to release DECC resources to focus on higher risk premises, where more significant environmental benefits can be achieved. The cost to DECC is estimated at \$330 per year.²⁸

The amendment will also result in DECC no longer receiving this emissions data since it is unlikely that it would be reported to the NPI. However, as shown in Table 21, the emissions are minor and at current production levels the premises appear to

²⁷ This estimate is based on the cost to each licensee of five hours staff time per year, valued at \$65 per hour.

²⁸ This estimate is based on the cost to government of six hours of staff time per year, valued at \$55 per hour. DECC estimates that the LBL component of the licence anniversary notice for this industry currently requires 1.5 hours per licence per annum.

be unlikely to emit significant loads of pollutants. Hence, the loss of this emissions data is not considered significant given the benefits to both the licensee and government in terms of reduced administrative costs.

Summary

The proposed amendment will introduce a threshold of 10,000 tonnes per year for petroleum production below which the current assessable pollutants do not apply. The objective of this amendment is to ensure that requirements on LBL premises to monitor and pay pollutant fees apply to assessable pollutants where there are sufficient benefits to justify such requirements.

The analysis shows that the proposed amendment will reduce the administrative burden placed by LBL on both the licensees affected and the Government, with no likely adverse impacts on the environment due to the very low emissions from the premises affected by the change. While the impact of air emissions on air quality in NSW is important, the level of emissions from the affected premises is minor compared to air emissions from the larger petroleum producers. Therefore, it is not efficient administratively to include small operators in the LBL scheme since they do not pay LBL fees because their emissions are small. In any case, LBL is not providing an incentive to these operators to reduce their emissions and is not the most effective tool to manage low emission levels.

DECC can still regulate emissions from poorly performing premises through conditions placed on their operating licences. The proposed amendment will allow DECC resources to focus on the aspects of petroleum production that have significant environmental impacts and reduce the burden of licensing for those premises where LBL is not providing an incentive.

6.5 Amending current or adding new fee rate threshold factors

Schedule 1 of the Regulation includes an FRT factor for each assessable pollutant for which each fee-based activity is required to pay a pollutant load fee. The FRT factor is used to calculate the applicable pollutant fee (a component of the annual licensing fee for LBL premises) using the formula set out in Appendix 1 and illustrated in Figure 5.1.

The FRT is an emission threshold for each industry type and pollutant which is set at a level that can be reasonably achieved with modern technology. The threshold should only be exceeded if an operator is not using modern technology, or if its management and control systems are poor. Doubling the load fee beyond this threshold provides a strong incentive for industry to reduce high levels of pollution promptly.

FRT factors were included in LBL to provide an added incentive to poorly performing LBL licensees to reduce their emissions as load fees effectively double for emissions above the FRT. For example, coke production has an FRT factor of 0.45 kg of PM₁₀ per tonne of coke produced. Hence, load fees for PM₁₀ emissions from coke production are:

- \$459 per tonne for less than 0.45 kg of PM₁₀ per tonne of coke produced
- \$919 per tonne for more than 0.45 kg of PM₁₀ per tonne of coke produced.

Existing FRT factors were developed based on performance information (mostly from the United States) and, where available, represent industry specific Reasonably Available Control Technology standards. As such, FRT factors were initially designed to represent the environmental performance that each industry should be able to achieve using Reasonably Available Control Technology.

DECC has collected five years of pollutant load data and annual production rates from all LBL premises. This data was used to generate the rate of emissions per unit of production for each LBL premises and for each fee-based activity, which in turn was used to determine if the FRT factors were providing added incentive to LBL premises to reduce emissions.

The review indicated that in about two-thirds of cases, FRT factors were not providing any added incentive for LBL premises to improve their performance. In many cases, the existing FRT factors were at least an order of magnitude greater than the average emissions per unit production that the industry was currently achieving. For example, the FRT factor for fine particulates for licensees conducting the activity 'Paint/polishes/adhesives production' is currently 5 kg per tonne per year while average emissions per unit production for the vast majority of paint/polishes/adhesives production licensees (11 licensees) is 0.0356 kg per tonne per year, and the worst performing premises are emitting at 0.2 kg per tonne per year.

The objective of this amendment is to ensure FRT factors establish an adequate level of environmental performance and provide added incentive to poorly performing licensees to improve their environmental performance.

6.5.1 Options considered

Three options for amending or adding new FRT factors were considered:

Option 1 – no change (base case)

Option 2 – set FRT factors according to industry best practice/ best available technology standards

Option 3 – amend FRT factors where relevant to reflect average industry emission levels currently achieved in NSW where the FRT factor is providing no additional incentive for industry to reduce emissions.

Under option 1, there would be no change to the current FRT factors. This option does not address the requirement to amend FRT factors that clearly do not give industry a reasonable incentive to improve environmental performance.

For example, Table 22 shows the percentage of the 15 licences in the fee-based activity 'Ceramics production (excluding glass)' that are performing below the existing assessable pollutant FRT factor. For these licensees the existing FRT factor provides little or no added economic incentive to reduce pollutant emissions.

Table 22 Current and proposed impact of FRT factors for ceramics production

Assessable pollutant	Current FRT factor	Premises below FRT (%)	Proposed FRT factor	Projected premises below FRT (%)
Coarse particulates	0.18	93%	0.085	60%
Fine particulates	1.58	100%	0.11	73%
Fluorides	0.8	100%	0.12	80%
NO _x	10.5	100%	0.22	60%
SO _x	18.2	100%	0.53	60%

Based on 2004–05 LBL data.

Option 2 would likely address the proposed requirement of setting FRT factors that are relevant to the industry sector and provide an incentive for improved production. This option would establish FRT factors on best practice/best available technology standards sourced from best practice studies in Australia and/or performance standards overseas. However, the disadvantages of this option are that comprehensive data to develop such an approach is not readily available, nor is overseas data necessarily applicable to Australian production practices. This is evident since the current FRT factors were based on such studies and have been found not to be relevant for industry practices in NSW.

Option 3 proposes to amend FRT factors where they are currently providing no additional incentive for industry to reduce their emissions to reflect average industry emission levels currently achieved in NSW. Where the review of emissions of assessable pollutants per unit production has found a large disparity between current industry performance and the FRT factor exists, DECC proposes to decrease the FRT factor. This will provide added incentive to LBL licensees to reduce their emissions and better reflect actual reasonably achievable control technology in NSW.

The proposed amendment is to change or add new FRT factors for 15 out of the 28 LBL activities, for one or more assessable pollutants in the LBL scheme as detailed in Table 23. A number of FRT factors will remain unchanged because:

- there is currently insufficient data to justify a change, or
- the existing FRT factor already provides incentive for licensees to improve their performance and does not need to be changed.

A number of new FRT factors are also proposed – refer to section 6.1 for further information. In this case DECC has used average emissions per unit production using 2002–2005 NPI data or emissions standards from overseas literature. DECC intends to review these factors at a later date.

The preferred option is option 3 because option 1 clearly will not address the problem and option 2 cannot be implemented fully due to the lack of current comprehensive information. The changes to FRT factors proposed by option 3 are based on the average performance that each industry (in NSW) has actually achieved over the last five years rather than a theoretical assessment of what the industry should be able to achieve based on international emission standards. Option 3 will best ensure that the FRT factors are set at a level that is relevant to NSW production practices and where they may provide an incentive for some premises to improve performance.

Table 23 Proposed changes to existing and new FRT factors

Fee-based activity	Pollutant	Current FRT factor	Proposed FRT factor
Aluminium production (alumina)	Coarse particulates	5	0.75
	Fine particulates	12	0.96
	Fluorides	1	0.75
	Lead (air)	—	0.00011
	Benzo[a]pyrene	—	0.07
Aluminium production (scrap metal)	Fluorides	1	0.056
	NO _x	4	0.74
	SO _x	9.6	0.46
Carbon black production	Benzo[a]pyrene	—	0.005
	Fine particulates	—	0.3
	NO _x	—	11
	SO _x	—	8
	VOCs	—	0.4
Cement or lime production	Coarse particulates	0.23	0.1
	Fine particulates	0.37	0.28
	Lead (air)	—	0.00061
	Mercury (air)	—	0.00054
Ceramics production	Coarse particulates	0.18	0.085
	Fine particulates	1.58	0.11
	Fluorides	0.8	0.12
	NO _x	10.5	0.22
	SO _x	18.2	0.53
Coke production	Benzene	0.072	0.028
	Benzo[a]pyrene	0.00073	0.00003
	Coarse particulates	0.45	0.22
	Fine particulates	0.45	0.3
	VOCs	0.83	0.015
	Arsenic (air)	—	0.00085
	Lead (air)	—	0.0021
	Mercury (air)	—	0.0022
Electricity generation from coal	Benzo[a]pyrene	0.0036	0.00066
	Selenium	0.14	0.025
	Arsenic (air)	—	0.0037
	Lead (air)	—	0.019
	Mercury (air)	—	0.0042
Electricity generation from gas	NO _x	2,700	1,655
	Salt	3.6	0.0029
	Total suspended solids	0.18	0.066
Electricity generation from diesel	Benzo[a]pyrene	—	0.0036
	Fine particulates	—	54
	NO _x	—	2,700
	SO _x	—	2,650
	VOCs	—	76

Fee-based activity	Pollutant	Current FRT factor	Proposed FRT factor
Glass production—container glass	Arsenic (air)	—	0.00028
	Lead (air)	—	0.0018
Iron and steel production (iron ore)	Arsenic (air)	—	0.000014
	Lead (air)	—	0.0014
	Mercury (air)	—	0.000041
Iron and steel production (scrap metal)	Fine particulates	0.77	0.33
	NO _x	1.95	0.12
	SO _x	3.38	0.5
	Arsenic (air)	—	0.000057
	Lead (air)	—	0.00024
	Mercury (air)	—	0.00013
Non-ferrous metal production (scrap metal)	NO _x	0.57	0.37
	VOCs	2.28	0.11
Paper or pulp production	BOD	5.55	0.41
	Coarse particulates	0.39	0.026
	Fine particulates	1.49	0.075
	NO _x	3.51	1.53
	Total suspended solids	8.35	0.57
	Total nitrogen	0.1	0.078
	Zinc	0.13	0.0013
Paints/polishes/adhesives production	Benzene	0.27	0.015
	Fine particulates	5	0.035
	NO _x	3	0.068
	VOCs	8.73	2.1
Petroleum and fuel production	Benzene	0.004	0.00044
	Benzo[a]pyrene	0.005	0.000002
	BOD	0.14	0.0034
	Fine particulates	0.2	0.039
	Hydrogen sulfide	0.031	0.002
	NO _x	0.5	0.33
	Oil and grease	0.12	0.0015
	SO _x	0.6	0.44
	Total PAHs	0.07	0.000005
	Total phenolics	0.27	0.00011
	Total suspended solids	0.36	0.0052
	Arsenic (air)	—	0.000011
	Lead (air)	—	0.000059
Mercury (air)	—	0.000011	
Plastics resins production	Benzene	0.5	0.00073
	Fine particulates	5	0.041
	NO _x	3	0.092
Plastics reprocessing	Benzene	0.5	0.00073
	Fine particulates	5	0.041
	NO _x	3	0.092

6.5.2 Costs and benefits of the proposed amendment

The proposed amendment to current FRT factors will not affect all licensees conducting the fee-based activities where FRT factors are proposed to be decreased. For those industries conducting these activities that are emitting pollutants at or above current NSW industry average, the proposed change will have no impact since the FRT will not impact on their pollutant fee calculations unless their operating performance declines. However, for those premises that emit pollutants at a level below current NSW industry average, the proposed change may affect the pollutant fee calculation and therefore provide an incentive to improve performance.

For the latter group of licensees, the proposed amendment is not expected to increase monitoring or reporting, but it will result in increased pollutant fees if they do not improve their performance. Based on 2004–2005 LBL data, the proposed changes in FRT factors would result in an estimated increase in total LBL fees for industry of approximately \$0.5 million per annum. This is an increase of about 2% in total fees payable by LBL licensees. The calculated fee increase does not take into account the further fee increases expected from the addition of lead, arsenic, mercury and BaP as assessable air pollutants to some LBL activities.

Table 24 sets out the licence fee impacts for each fee-based activity with proposed changes to their FRT factors. Six fee-based activities account for 97% of the projected revenue increase:

- coke production — 54%
- aluminium production (alumina)— 16%
- ceramics production — 8%
- paints/polishes/adhesives production — 7%
- petroleum and fuel production — 6%
- electricity generation from gas — 6%.

This fee increase will provide the affected licensees with incentive to implement better strategies to reduce emissions to the environment and consequently reduce the LBL fee. The fee increase may also encourage licensees to negotiate an LRA as discussed in section 7.

The proposed changes to current FRT factors will have no impact on DECC administrative practices since there is no new information arising from the changes. For the new FRT factors (e.g. for carbon black production and the new assessable pollutants arsenic, lead, mercury and BaP), there will be an increase in the administrative workload for DECC, however this is not considered significant and can be incorporated into current workloads.

The benefits of the proposed amendment are that:

- it provides greater incentive for those premises that perform worse than the industry average to improve their performance while rewarding industry that is performing at or above current NSW industry averages
- it will likely lead to reductions in pollutant emissions where licensees take actions to improve their performance so that their LBL fees are not affected by the FRT
- changing FRT factors to reflect the average actual industry performance sends a meaningful message to industry and the public on what an acceptable level of performance is within industry.

Table 24 Projected load fee increase for loads emitted from each fee-based activity due to proposed FRT factor changes

Fee-based activity	Baseline total load fees ^a	Projected load fee increase due to FRT factor	Projected increase due to FRT factor
Aluminium production (alumina)	\$474,607	\$88,592	19%
Aluminium production (scrap metal)	\$78,474	\$3,487	3.2%
Cement or lime production	\$420,320	\$2,393	0.6%
Ceramics production	\$269,082	\$41,019	15%
Coke production	\$2,441,900	\$292,059	12%
Electricity generation from coal	\$14,331,369	\$234	0%
Electricity generation from gas	\$181,622	\$33,215	18%
Iron and steel production (scrap metal)	\$122,562	\$2,929	2.4%
Non-ferrous metal prod (scrap metal)	\$41,899	\$1,944	4.6%
Paper or pulp production	\$30,724	\$2,219	7%
Paints/polishes/adhesives production	\$60,010	\$36,340	61%
Petroleum and fuel production	\$1,886,600	\$33,548	1.7%
Plastic resins production	\$150,334	\$1,237	0.8%
Total	\$21,055,832	\$539,218	

^a Estimated load fees for the 2007–08 period. Note that the sum of the individual assessable pollutant load fees for each fee-based activity is used. That is, a single site may pay fees for emissions of an assessable pollutant from multiple fee-based activities. This results in variation between the data in this table and Appendix 3 where premises' LBL fees are all assigned to a single fee-based activity.

6.5.3 Summary

Changing the FRT factors to reflect the average actual industry performance sends a meaningful message to industry and the public on what an acceptable level of performance is within the industry. The proposed amended FRT factors outlined in Table 22 are expected to provide for additional incentive for LBL licencees to improve their environmental performance as measured by average industry standards where they are currently performing below the industry average.

6.6 Reporting actual quantity of activity for summer assessable pollutants

The POEO (Licensing Fees) Regulation 2007 commenced on 30 June 2007 with a requirement for specific premises operating in the Sydney Basin area to pay higher fees for emissions of NO_x and VOCs over summer (December, January and February) when air quality problems are worse.

Due to an oversight in the drafting of that Regulation, no requirement was included for affected premises to report their actual quantity of activity for the summer period — actual quantity of activity relates to either production for a manufacturing plant or throughput for a chemical storage facility. This means that when calculating the FRT for the assessable pollutants NO_x(summer) and VOCs(summer), an FRT for a 12 month period is calculated instead of a FRT for a 3 month period (summer). Effectively this means that the FRT for the assessable pollutants NO_x(summer) and

VOCs(summer) has no impact on the calculation of load fees. That is, the FRT is not providing an incentive to reduce emissions of NO_x(summer) and VOCs(summer) in the way it was intended to.

The aim of this proposal is to amend the Regulation so that the assessable pollutants, NO_x(summer) and VOCs(summer), are potentially subject to the incentive provided by the FRT factor as are emissions of all other assessable pollutants.

6.6.1 Options considered

Two options for reporting the actual quantity of activity over summer were considered:

Option 1 – no change (base case)

Option 2 – require premises which report emissions of NO_x(summer) and/or VOCs(summer) to report actual quantity of activity for the summer period.

Under option 1, there would be no change to the current situation where the FRT does not play any part in determining the load fees for the summer pollutants because the FRT is calculated based on a 12 month period while the emissions are only for a 3 month period – i.e. only an extremely poorly performing plant would be affected by the current situation. This option does not place any incentive for the licensee to consider and improve its environmental performance for the summer period when air quality problems are worse.

Option 2 proposes that any licensee required to pay load fees for emissions of NO_x(summer) or VOCs(summer) would have to report actual quantity of activity for the summer period, and this information would be used to determine an FRT for the emission. This option leads to a more equitable outcome whereby the FRT for NO_x(summer) and VOCs(summer) is calculated analogously to that of all the other assessable pollutants; consequently the FRT may provide added incentive for some licensees to reduce their emissions.

6.6.2 Costs and benefits of the proposed amendment

There are about 60 licensees that are required to report and pay load fees for NO_x(summer) or VOCs(summer) that would potentially be impacted by this change. It is not possible to determine the financial impact of the proposed amendment on these licensees because DECC has not received a complete dataset for the summer pollutants and cannot project accurate seasonal production/throughput and pollutant load data for the summer period from annual LBL data.

The proposed change requiring the reporting of actual quantity of activity (summer) will have a minor impact on DECC administrative practices since a new information data field will be reported from about 60 premises. This will result in some one-off changes being required to the information management system to accept the data, plus there will be a minor increase in the annual administrative workload for DECC. These changes are not considered significant and can be integrated into current workloads.

The benefits of the proposed amendment are:

- that the FRT is applied consistently and equitably to the calculation of all LBL pollutant load fees

- potential reductions in emissions of NO_x and VOCs during the summer where licensees improve their performance so that their NO_x(summer) and VOCs(summer) fees are not affected by the FRT.

6.6.3 Summary

Requiring premises that must pay load fees for NO_x(summer) or VOCs(summer) to report actual quantity of activity (summer) corrects inequity between the current methods for calculating FRTs. The proposed amendment will provide additional incentive during summer when air quality is poor for LBL licensees to improve their environmental performance.

7 Load reduction agreements

Under the Regulation, there are provisions that allow licensees to enter into LRAs with DECC. LRAs provide immediate fee reductions for companies which are willing to commit to future reductions of assessable pollutant loads, thereby freeing funds for investment in abatement strategies or technology that reduce levels of pollutants emitted. This increases investment in pollution reduction technology, resulting in improved air and water quality and potentially promoting the development of new, more sustainable business practices and attitudes by industry.

LRAs last for a maximum of four years, giving licensees up to three years to implement upgrades and the final year of the agreement to demonstrate attainment of the agreed load reduction. At the end of a successful LRA period, the agreed load reduction becomes the basis for negotiating the new load limit on the environment protection licence.

7.1. Fee repayment methodology

LRAs were developed as a measure to encourage licensees to divert funds that would otherwise go to LBL fees into the implementation of pollution reduction. Figure 2 shows the method of calculating fee savings where a licensee achieves the agreed load reduction.

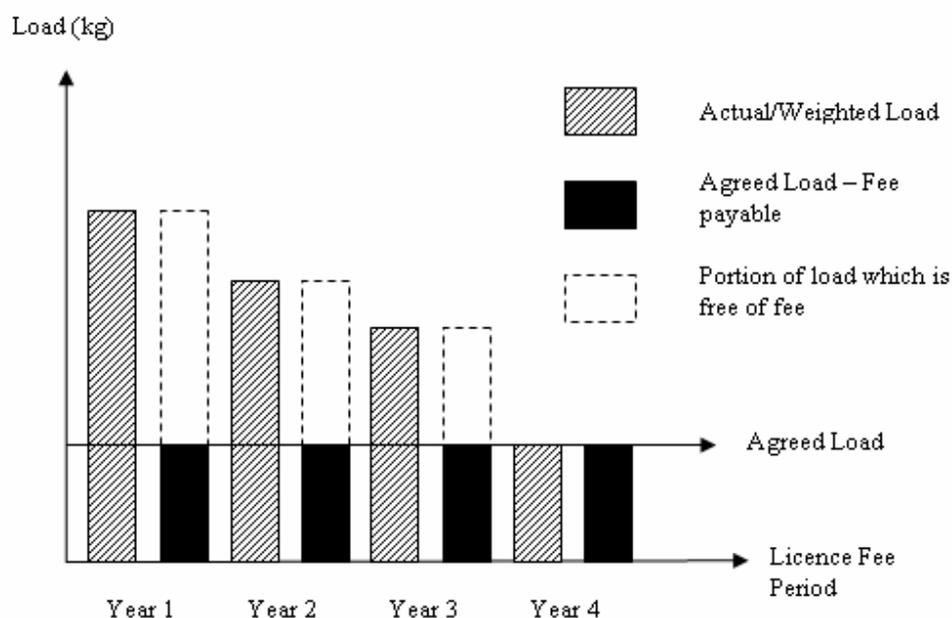


Figure 2 Fee savings achieved by an LRA

If a licensee fails to achieve the agreed load by the expiration of the LRA period, they are required to repay fee savings gained over the period of the LRA in accordance with clause 28B of the Regulation.

A licensee may choose to terminate the LRA if they become aware that they are unable to achieve the agreed load by the nominated time frame, in which case they are required to repay the fee savings gained over the time they held the LRA.

Fee repayments following the expiration or termination of an LRA are calculated using a 'maximum load', which is taken to be the lowest reported load over the agreement period minus one per cent. Fee repayments are calculated based on the difference between the fee that would have been payable if the load had been equal to the agreed load under the agreement and the fee that would have been payable if the load had been equal to the maximum load.

This calculation method is based on the principle that if the licensee achieves a partial reduction in load then they retain some financial benefit under the LRA. Experience has shown that while the principle is supported in some cases, the calculation methodology outlined in clause 28B of the current Regulation is overly complex and difficult to implement.

There have also been instances where a low assessable load has been reported during the period of the LRA, but ongoing load reductions have not been achieved. In these instances, the fee repayments were based on the single low load reported.

Consequently, it is proposed that this clause be amended to ensure that the repayment calculation methodology is made clearer and more transparent and the principle of allowing licensees to gain the benefit of any permanent reduction of load is maintained.

7.1.1 Options considered

Two options for clarifying fee repayment methodology for LRAs were considered.

Option 1 — no change (base case)

Option 2 — amend the repayment methodology whereby licensees that fail to achieve agreed loads repay all fee savings gained under the LRA (being the difference between the agreed and actual or weighted loads).

Under option 1 there would be no change to the fee repayment methodology which is overly complex and difficult to implement. This option does not improve the clarity of the requirement.

Option 2 is the preferred option as it clarifies that licensees who fail to achieve their agreed loads upon expiration or termination of their LRA repay all their fee savings to DECC (being the difference between the agreed and actual loads). It also eliminates ambiguity and confusion with respect to the fee repayment calculation and ensures that the fee repayment methodology encourages licensees to enter into LRAs where agreed loads are both economically viable and achievable.

Figure 3 shows the proposed method of calculating fee repayments where a licensee does not achieve the agreed load reduction.

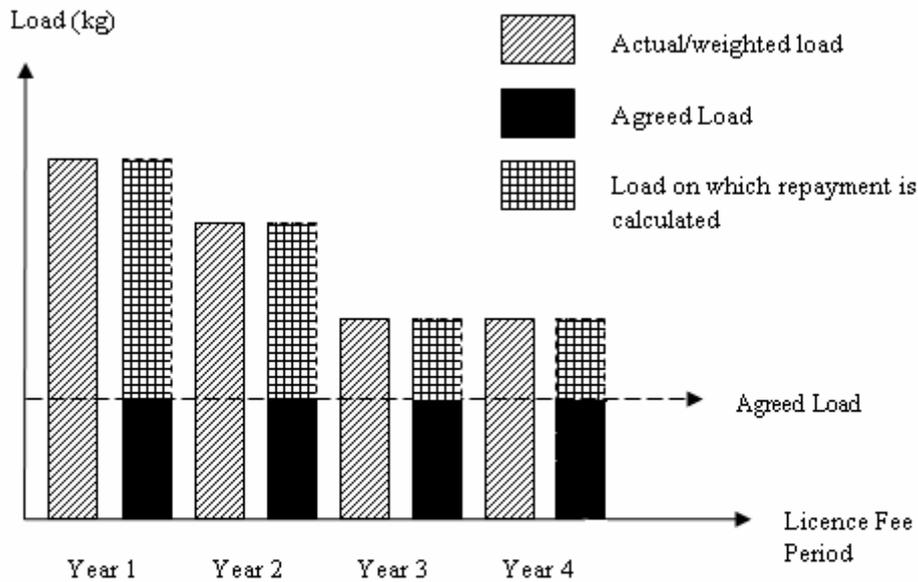


Figure 3 Repayments due when an LRA is not met

7.1.2 Costs and benefits of the proposed amendment

For those licensees who successfully undertake the proposed works and achieve the agreed loads by the end of the LRA period, there would be no financial impact resulting from the proposed amendment. For those licensees who fail to achieve their agreed load, the proposed amendment will require them to repay the difference between the actual load they achieve and the load agreed to under the LRA. The exact economic and financial impact of the proposed amendment on fee repayments is hard to estimate as it largely depends on the premises and the loads achieved.

There will be no impact on the hours of work for industry. There would be no additional administrative workload imposed on licensees as a result of the proposed amendment.

This methodology is simple and easy to understand, ensuring that on termination or expiry all licensees that have not achieved their agreed loads will repay any fee savings gained under the LRA.

To date a total of 30 LRAs have been entered into and completed. Of these only seven were successful, and six partially successful. The remainder of licensees did not achieve the agreed load. Licensees should set realistic targets and not enter into an LRA without ensuring that they have capacity to achieve the terms of the agreement. Licensees will also need to set realistic contingencies and monitor their progress against their indicator milestones.

The proposed approach would provide a clear and transparent methodology for determining fee repayments. There will be a reduction in hours of work for DECC officers, as less time will be spent on calculating and verifying the appropriate fee repayment calculations. The savings have been estimated at five hours per LRA.

In addition, the proposed amendment is consistent with the LBL scheme's aim to provide an incentive to licensees to invest in pollution abatement to reduce their pollutant load fees.

Under LBL, licensees that partially reduce their loads already receive a fee saving by reducing their actual load. Where the agreed loads are not achieved, the requirement for licensees to repay all the fee savings gained during the LRA period ensures the continued integrity of the LBL scheme, in which fee savings act as an incentive to reduce the discharges into the environment.

While it is not possible to quantify the degree to which the LRA provides an incentive (additional to LBL), successful completion of LRAs to date indicates the significant potential of both savings to industry and load reductions available through an LRA. For example, a local council entered into an LRA in 2001 to reduce its total phosphorus load from a sewage treatment plant. At the end of the four year agreement it had reduced its total phosphorus load by 70%, well within the agreed load. At the end of the agreement the council reduced its LBL fees by 48%, saving approximately \$36,000 over the term of the agreement.²⁹

7.1.3 Summary

LRAs provide financial assistance to licensees by allowing them to allocate a portion of their funds that would otherwise have to be spent on pollutant load fees, to invest upfront in pollution abatement measures to reduce their pollutant load. The proposed amendment to the LRA repayment methodology improves the effectiveness of the fee-based incentive offered by LRAs by ensuring that the LBL fee payable is consistent with the actual pollutant load emitted by the end of the reporting period.

7.2 Load reduction agreement reporting requirements

To date a total of 30 LRAs have been entered into by licensees.³⁰ Ten of these were terminated before completion. In some of these cases, licensees were aware of problems early on; however, DECC was not informed and the licensee did not choose to terminate the agreement until close to the end of the LRA term. This has led to delays in finalising the repayments and significant administrative load on DECC that could have been alleviated through early notification of the likely need to terminate the LRA.

A review of the current LRA framework indicates that modifications are required to identify early both potential and actual problems with individual LRAs. The proposed amendment is that licensees who enter into LRAs be required to report on the progress of the works committed to on an annual basis. This will ensure that DECC is aware of the status of any ongoing works required for completion of the LRA and will identify where there is high risk of LRA failure.

7.2.1 Options considered

Two options were considered for improving the risk management procedures surrounding LRA completion.

²⁹ DECC LBL annual return data 2001–05.

³⁰ Seven LRAs were successful, six were partially successful and 17 were not successful.

Option 1 – no change (base case)

Option 2 – include an annual reporting requirement for LRAs.

Under option 1, there would be no change to the reporting requirements for LRAs. This would continue the current situation where licensees are not required to notify DECC of any potential problems in meeting the terms of the LRA.

Option 2 would require the licensee to submit annual reports during the term of the LRA reporting on the progress of the agreed works. The report would alert DECC officers to any issues or delays associated with the LRA. This will avoid the (current) situation where problems generally only come to light when the licensee decides to terminate the LRA.

The reporting requirements will also act as an annual reminder to licensees of their obligations under LRAs and of the implications of not achieving the terms of the LRA. As all LRAs currently reflect requirements set out in clause 26(1) of the Regulation this reporting requirement would also be included in the terms of the LRA. This option would best meet the objective of early identification of risks to LRA completion.

7.2.2 Costs and benefits of proposed amendment

Under the proposal to introduce annual LRA reporting requirements, it is expected that licensees will only need to provide a brief summary of the status of the works, an explanation for any delays and possible implications on the overall LRA time frame. The requirement for a progress report will incur an estimated three hours work for licensees for each year of the LRA.

The amount of follow-up work for DECC officers will be dependent on the content of the reports. It is estimated that the review of a report will be approximately two hours' work. If there are risk management issues arising from the report then there may be up to four days of meetings and discussions with the licensees about these problems and their possible solutions.

It is not possible to quantify the environmental benefits of the proposed change since it would be necessary to know the number of LRAs that would be entered into over the five year lifespan of the proposed Regulation. It would also be necessary to know the type and volume of load reductions that would be included in each of these agreements, and the extent to which the reporting requirements improved the ability of the licensee to achieve the terms of the agreement.

Regular reporting would ensure that licensees are keeping track of the proposed and actual progress of pollution reduction works under their LRAs and that they inform DECC of any apparent issues with their ability to achieve the terms of that LRA. This would also facilitate improved management of LRA requirements by industry and government so that they achieve their potential pollution reductions.

Early identification of problems potentially affecting the successful conclusion of the LRA will lead to a greater likelihood of implementation of measures to achieve the LRA. If a termination is required, then this can occur earlier, incurring fewer costs for the licensee and for DECC as administrative costs would be lower and the licensee would have to repay less penalty interest.³¹

³¹ If an LRA is unsuccessful on expiration or is terminated early, the licensee must repay in full any fee savings including penalty interest accrued by entering into an LRA.

7.2.3 Summary

The proposed amendment will introduce annual reporting requirements for licensees undertaking an LRA. The actual costs of introducing the proposed amendment are expected to be small in comparison with the benefits of early identification of licensee problems in meeting LRA objectives. Requiring participating licensees to report on their progress is considered appropriate given the extent of fee savings achievable through an LRA.

8 Licensing reform

The current environment protection licensing system requires the same administrative effort, and consequential compliance costs for industry, regardless of the risk posed by the activity. Over almost a decade of regulating industry largely through licensing under the POEO Act, it is clear that some activities do not pose the same environmental risk as others.

In recognition of this, and to achieve the Government's priorities in reducing the regulatory burden on industry, DECC has adopted a risk-based approach to regulatory activities that provides for resources to be focused on activities that pose a higher risk to the environment. Of the 3,200 licences currently administered by DECC, about 20% are internally classified as 'high risk' and an intensive regulatory approach is taken for these licensed premises. High risk activities include the large emitters (air, noise, water) that are subject to LBL fees. The low risk licences, however, still require the same level of administrative support from DECC and the same level of administrative costs for industry.

DECC proposes to extend the environmental risk-based approach to licensed activities by regulating certain low risk activities via an alternative approach to licensing. DECC will still be able to take enforcement action (including prosecution) in the event of poor environmental management or a pollution incident. A foundation principle will be that DECC will remain the ARA for these activities. In other words, there will be no shifting of responsibility to local government.

The concept of using alternative tools for licences to regulate lower risk industries is not novel. Many State Government environment protection agencies around Australia rely on licensing only for high risk activities and a variety of alternative tools to regulate low risk ones. Examples of these alternative tools include notices (Victoria), accredited codes of practice (Queensland) and industry sector based regulations (Western Australia).

The objective of this proposal is to reduce administrative and compliance costs for industry types identified as having a low environmental risk, to increase the parity of environmental requirements for these industry types with other jurisdictions, and as a result increase the appeal of conducting business in NSW.

8.1 Options considered

Two options have been considered for licensing low risk activities:

Option 1 – no change

Option 2 – remove the licensing requirements from certain low risk activities and regulating their operation by existing environmental legislation provisions.

Option 1 continues the current situation where all activities that are licensed by DECC require the same administrative effort, and consequential compliance costs for industry, regardless of the risk posed by the activity.³² This does not meet the government's goal to remove unnecessary red tape and cut costs for industry.

³² The administrative fee varies between activities and for different levels of operations (such as production level) within the same activity based on the expected cost of DECC regulatory actions – DECC achieves only partial cost recovery from administrative fees.

Option 2 would involve removing specific activities that are considered to be low risk from Schedule 1 of the POEO Act and the Regulation which would mean that they no longer require a licence from DECC to operate. It is estimated that of the 3,200 licences currently administered by DECC, up to 1,000 premises licensed for concrete batching works, bitumen works, mobile plant or transport of non-trackable waste could be regulated by existing legislative provisions such as clean-up notices, prevention notices, penalty infringement notices and prosecutions. DECC's interactions with these activities are well understood and arise mainly as a result of localised amenity concerns (for example, dust or noise).

Option 2 is the preferred option because it will reduce red tape, cut costs for industry and government, and allow government resources to be focused on activities that pose a higher risk to the environment. This option will reduce red tape and cut costs for industry, in line with *NSW State Plan priority P3: reducing red tape*.

8.2 Costs and benefits of the proposed Regulation

Table 25 provides a summary of the activities where the licensing requirement is proposed to be removed, including a description of the activity and the typical environmental issues faced, plus an estimate of the licence numbers and administrative fees paid.

There are a number of direct cost savings for industry from the proposed Regulation:

- Occupiers that conduct the specified activity would no longer be required to pay an annual licence administrative fee. This would result in fee savings for these facilities in the range \$200–\$13,500 per annum depending on the activity and size of the operation. The total saving for industry would be about \$1.8 million.
- There will also be administration cost savings for industry since there will no longer be a requirement to submit an Annual Return to DECC. It is estimated that each occupier would spend, on average, one hour completing this documentation leading to a saving for all occupiers of \$63,895 per annum.³³

There are no direct costs to industry from regulation by means other than licensing. Cost recovery from industry by DECC for any regulatory actions taken under existing provisions is discussed further below.

The costs and savings to government for the preferred option are as follows:

- Licensing revenue will decrease by about \$1.8 million (5%).
- There will be a reduction in the administrative costs for government in regulating licensed facilities. DECC's administration costs will be reduced since there will no longer be Annual Returns for the affected licences – a savings estimated at \$54,065 per annum.³⁴

³³ Based on a cost of \$65 per hour for 983 licences.

³⁴ Based on an average processing time of one hour per annual return costed at \$55 per hour.

Table 25 Summary of the activities affected by the proposed amendment

POEO scheduled activity	Estimated number of current licences	Estimated total licence fees per annum	Typical environmental issues
Bitumen pre-mix or hot-mix industries – the mixing of crushed or ground rock with bituminous materials has a capacity to produce more than 150 tonnes per day or 30,000 tonnes per year. This activity does not include works of a temporary nature exclusively providing product for a construction site and located on or adjacent to that site.	31	\$169,000	dust, noise
Concrete works that produce pre-mixed concrete or concrete products and have an intended production capacity of more than 30,000 tonnes per year of concrete or concrete products.	240	\$1,200,000	dust, noise
Transport of non-trackable waste – the transport of any one or more of the following types of waste for fee or reward (including occupiers of waste facilities, and persons who carry on waste activities, that are licensed under this Act and who transport any such waste to or from those facilities): (a) transport of hazardous waste or other waste – the transport of hazardous waste, restricted solid waste, liquid waste, clinical and related waste or friable asbestos waste (or any combination of them) (not being excluded waste) of more than 200 kg in any load (b) transport of waste tyres (not being excluded waste) of more than 200 tonnes in any year or 2 tonnes in any load	618	\$361,000	Small scale spills, illegal dumping, litter Note: DECC's waste tracking system with support or compliance enforcement will be an important tool for the ongoing regulation of waste transporters.
Mobile plant activities – includes any one or more scheduled activities carried out by means of mobile plant.	94	\$45,000	dust, noise
Total	983	\$1,775,000	

Cost recovery mechanisms

Under the POEO Act (as described in section 4), DECC can recover the administrative costs of issuing an environment protection notice (clean-up, prevention or noise control) and all reasonable costs and expenses under a compliance cost notice (in respect of an issued clean-up notice).

In the event of detected poor performance (highlighted through community complaints or a pollution incident), strong compliance enforcement action would be taken, with a focus on cost recovery to ensure compliance with environment protection requirements. Where regulatory action was necessary (for example, compliance inspections, reinspections, monitoring, assessments), DECC would recover the costs incurred.

Improved integration of environmental planning and environment protection functions in development assessment

Central to the regulation of industry in NSW is the effective integration of consent/approval requirements and DECC licensing requirements. Failure to integrate these requirements can complicate compliance issues for industry, government and the community. It can also represent a regulatory burden for industry. These issues have been raised as part of NSW Treasury's red tape review.

Under Part 3A (Major Projects), Part 4 (Integrated Development) and Part 5 of the *Environmental Planning and Assessment Act 1979*, DECC is required to provide its licensing requirements to the consent/determining authority, as part of the approvals/consent process. For development proposals that would continue to require a licence, DECC's current arrangements for providing approval/licence requirements to the consent/determining authority will remain. However, development proposals for activities subject to the proposed amendment will no longer require DECC's specific environmental requirements set out during the planning approval process, but will simply be subject to the general provisions for environmental protection that are set out in the POEO Act.

8.3 Summary

Streamlining industry's regulatory requirements and lowering costs by removing the need for licensing for specified scheduled activities of lower environmental risk will reduce red tape and cut administration costs for industry whilst still maintaining credible regulation. The costs and benefits from the proposal to remove licence requirements for specific low risk activities can be summarised as follows:

- Those low risk activities regulated through existing legislative provisions will no longer be required to pay annual licence fees (saving industry \$1.8 million and reducing licensing revenue by the same amount) and the regulatory burden will be reduced as the requirement to provide an Annual Return detailing performance against licence conditions will also be removed.
- DECC will still be able to take enforcement action (including prosecution) in the event of poor environmental management or a pollution incident. Cost recovery mechanisms will support these processes.
- The planning approvals process will be simplified and streamlined for these activities. This approach accords with the government's current direction for reforms to the planning legislation.

The activities no longer requiring a licence would continue to be regulated by DECC using tools presently available under the POEO Act, including environment protection notices, penalty notices and prosecution provisions. Approximately 1,000 lower risk environmental activities could be regulated by this proposed approach. The proposal will rationalise, simplify and strengthen the regulatory framework for environment protection and improve the efficiency of its administration. These outcomes strongly accord with the government's current directions under the NSW State Plan.

9 Burning of biomaterial: requirements for electricity generation

In August 2002, the Premier announced the government's intention to limit the use of native forest biomaterial for power generation, effective from 1 January 2003. The biomaterial policy seeks to achieve this by:

- prohibiting the development of stand-alone native forest biomaterial power plants (at present, there are no such plants in NSW)
- prohibiting the harvesting of native forests solely to supply biomaterial for power generation
- restricting the co-firing of native forest biomaterial in power plants to certain forest sources.

Forests NSW data shows that there is currently 2.3 million hectares of native forest in NSW.³⁵ The protection of native forests results in benefits to biodiversity, ecotourism and recreational amenity. Analysis of an effective global program for the conservation of wild nature found that preserving resources yields higher benefits than either sustainable harvesting or exploitation of the resources.³⁶ This finding is consistent with the government's policy on preserving native forests because they provide substantial long-term non-use benefits to the general community.

In 2003, an amendment to the Regulation included a prohibition on electricity generators from using native forest biomaterial other than that obtained from:

- authorised or existing plantations
- ancillary plantation operations
- land on which exempt farm forestry is being carried out
- sawdust or sawmill waste
- waste from wood processing.

The amendment also prescribed reporting requirements for affected electricity generators and established guidelines for record keeping and the preparation and auditing of reports.

Chapter 3B of the Regulation states that it is an offence for an occupier of any premises to use native forest biomaterial to produce electricity.³⁷ Electricity generation works are defined as being works that supply, or are capable of supplying, 200 kW of electricity. The reporting provisions of the Regulation only apply to those electricity generators that use forest biomaterial to generate electricity only. A licensee who generates electricity without burning any forest biomaterial is not required to report. The record keeping provisions were included to ensure that generators did not use native forest biomaterial in electricity generation (inadvertently or deliberately) and then record the biomaterials used under the name of a different fuel source.

³⁵ Forests NSW (2004) *Seeing: Social, Environmental and Economic Report 2003/04*, p8, www.forest.nsw.gov.au/publication/e_sv/03-04/default.asp.

³⁶ Balmford A. et al. (2002), Economic reasons for conserving wild nature, *Science* 297, 950–95.

³⁷ Chapter 3B of the Regulation also includes provisions for biomaterial reports sent to DECC to be made publicly available, offences for providing false information, that DECC establish guidelines as to the keeping of records, and the preparation and auditing of reports, and declaring the EPA as the ARA for any matter arising under this chapter.

DECC's implementation of the biomaterial reporting requirements indicates that while protection of native forests in NSW continues to be an important issue, the continuation of the requirement for electricity generators to report on their biomaterial use has returned no perceivable environmental benefits.

This section outlines a proposed amendment to the reporting requirements for electricity generating facilities which burn biomaterial.

9.1 Background

Implementation of the provisions to date indicates that the volume of forest biomaterial being used to generate electricity is insignificant. DECC undertook extensive communication with local councils during development and implementation of the Regulation so that local councils could assist to educate affected facilities in their area about the new requirements of the Regulation and to ensure that these new requirements were understood by affected facilities.³⁸

In 2004–05, biomaterial reports were received from five licensed premises. The majority of premises (identified through the communication program at the beginning of the reporting year) reported that they had not used forest biomaterial over the reporting period.

While the policy was intended to target both non-licensed and licensed premises, *only licensed premises submitted a biomaterial report*. No non-licensed electricity generators reported using biomaterials for electricity generation. DECC undertook a review of the information provided in the biomaterial reports and all reports received were found to comply with the requirements of the Regulation and the *Guidelines for the Burning of Biomaterial: Record Keeping and Reporting Requirements for Electricity Generating Facilities*.³⁹

Additional compliance measures were considered to return limited environmental benefits compared to the resources required for their implementation.⁴⁰

DECC's review found that:

- the proportion of electricity created from burning biomaterial averages less than 2% for licensed coal-fired electricity generators; the total output of these generators is reported to be 32,700 gigawatt hours
- two licensed premises not licensed under electricity generation submitted a report
- all reports from affected electricity generators complied with the requirement for their reports to be certified by an independent auditor prior to being lodged with DECC
- while the Regulation includes provisions for public access to annual biomaterial reports, DECC received no requests to access these reports.

³⁸ Prior to commencement of the biomaterial reporting provisions, local councils were the ARA for premises that were not licensed under Schedule 1 of the POEO Act but supplied or were capable of supplying over 200 kW of electricity.

³⁹ www.environment.nsw.gov.au/resources/legislation/biomaterial0510.pdf

⁴⁰ Compliance approaches considered included comparison of the amount of energy generated by burning biomaterial reported to DECC with information provided under the Mandatory Renewable Energy Target scheme at www.greenhouse.gov.au/renewabletarget/index.html (through both the REC registry at <https://www.rec-registry.gov.au/> and annual reports to the Office of the Renewable Energy Regulator), and the amount of electricity from biomaterial reported to the Australian Greenhouse Office.

The amendment removes the reporting requirement while maintaining the prohibition on electricity generators from using native forest biomaterial other than that obtained from:

- authorised or existing plantations
- ancillary plantation operations
- land on which exempt farm forestry is being carried out
- sawdust or sawmill waste
- waste from wood processing.

It will continue to be an offence to generate electricity using native forest biomaterial defined in clause 57L of the Regulation. DECC will continue to be the ARA for any matter arising under Chapter 3B.⁴¹

Authorised DECC officers would be able to enforce the prohibition as per the general offence provision (clause 57L) as the proposed amendment will retain this prohibition.

DECC will continue to administer some licenses that include specific conditions relating to the amount of biomaterial that may be used in the co-firing process.⁴² In addition, DECC will continue to be able to ensure compliance with clauses 57L and 57M of the General Regulation through, for example, targeted inspections, requests for information under section 191 or section 193 if non-compliance is suspected, compliance audit, and mandatory audit provisions in the POEO Act.

9.2 Options considered

Two options for amending the reporting requirements for burning native forest biomaterial were considered:

Option 1 – no change (base case)

Option 2 – remove the reporting requirements from the Regulation.

Under option 1, the record keeping and reporting requirements for electricity generators who burn forest biomaterial to submit an annual biomaterial report to DECC would continue.

Option 2 would remove all reporting requirements from the Regulation and would also remove the:

- requirements for biomaterial reports sent to DECC to be made publicly available (clause 57O)
- requirement that DECC establish guidelines regarding the keeping of records, and the preparation and auditing of reports (clause 57Q).

⁴¹ Clause 57R of the Regulation declares the EPA as the ARA for Chapter 3B of the current Regulation.

⁴² Macquarie Generation has, under its licence, an agreement that wood waste must only be fed to the boiler at a rate of less than or equal to 5% of the coal feed rate. Delta Electricity has, under its licence, an agreement that solid alternative fuel may only be fed to the boiler at a rate of less than or equal to 5% weight of the coal feed rate.

9.3 Costs and benefits of the proposed amendment

There are not expected to be any additional costs associated with the proposed amendment for industry or government; however, both groups will face reduced costs, for example:

- industry will no longer have to report on their biomaterial usage and comply with the requirement for biomaterial reports to be independently certified. This represents a saving to industry of \$30,000 per year.
- DECC will no longer administer the reporting requirements, leading to savings that have been estimated at \$10,000 per year.

Under the proposed option, there is a small risk that the use of prohibited native forest biomaterial sources for electricity generation will increase. However, it is difficult to quantify both the amount of native forest biomaterial that is currently being used in the co-firing process for electricity generation, and the change that would result from the proposed amendment.

This risk is expected to be reduced for premises that are licensed by DECC because DECC officers would have more contact with these premises and greater opportunity to incorporate conditions on biomaterial usage into the licence and/or enforce the prohibition, if required.

As outlined above, DECC data indicates that all electricity generating premises that use biomaterial for electricity are licensed by DECC. Local councils are the ARA for premises that have electricity generating capacities that are under the licensing threshold in Schedule 1 of the POEO Act. This would not change as a result of the proposed amendment.

While data compiled by DECC indicates that biomaterial being used by small electricity generating premises is minimal, the prohibition and the offence provisions would continue under this option, signalling a message to industry and the community that native forest biomaterial should be protected and providing a deterrent for clearing native forests to produce fuel to generate electricity.

The proposed change also affects the principle of community right to know. The reporting provisions require that reports by electricity generators which use forest biomaterial to generate electricity are made available to the public upon request. This ensures that the community right to know needs are met.

DECC undertook an extensive communication plan during the development of the current regulatory provisions and it is considered that sufficient measures have been taken to ensure that the community is aware that affected electricity generators are required to report this information and that this information can be obtained from DECC on request. For licensed premises, all stakeholders could participate in the licence review process.

To date, the community has not exercised the right to access this information. The information and community right to know benefits have not been quantified but are considered lower than the cost to government and industry to administer and comply with the reporting and recording requirements of the current Regulation.

The proposed Regulation will continue the current prohibition against using native forest biomaterial for electricity generation, and DECC can still use its regulatory powers to address any non-compliance where biomaterial is found to be used for

electricity generation. The requirements to keep records and the offence and penalty provisions will still apply.⁴³

For licensed premises, DECC can request information on biomaterial reporting through licence conditions, section 191 or 193 notices. In addition, non-compliance with the prohibition could be identified through site inspections.

For licensed facilities, the incorporation of site-specific conditions relating to the use of prescribed biomaterial sources (for example, based on permissible biomaterial sources in the surrounding area) could assist DECC officers to monitor biomaterial usage in the area and assess the probability that valuable native vegetation would be used to generate electricity. Given the information collected to date this appears to be unwarranted but if future information provided evidence to the contrary, this approach could be considered.

9.4 Summary

DECC's assessment suggests that the environmental benefits from continuing the requirement to report on biomaterial use in electricity generation under the base case do not justify or outweigh the cost to industry of complying with the reporting requirements or the cost to government of administering the reporting requirements. The proposed amendment will result in significant savings for both DECC and industry.

The recording, prohibition and offence provisions would continue under option 2, signalling a message to industry and the community that native forest biomaterial should be protected and providing a deterrent from clearing native forests to generate electricity. DECC-authorized officers can enforce the prohibition which will remain in the Regulation. In addition, DECC will continue to administer a number of electricity generation licences with specific conditions to allow the use of biomaterial in the co-firing process if necessary.

⁴³ The maximum penalty for a corporation is 400 penalty units and 200 penalty units for an individual.

10 Licensing of Forests NSW activities

Forests NSW is the only licensee that conducts the fee-based activity 'Logging operations'. In 1999, a review of these licences was undertaken in response to issues associated with the incorporation of the environment protection licence into integrated forestry operations approvals (IFOAs) issued under the *Forestry and National Park Estate Act 1998*. The purpose of IFOAs is to integrate the regulatory regimes for environmental planning and assessment, the protection of the environment and threatened species conservation.

One option considered was to retain the existing single licence covering Forests NSW activities; alternatively, multiple licences applicable to areas subject to IFOAs, as well as licences for non-IFOA operations, could be issued. The decision was made that five environment protection licences were to be issued to Forests NSW – four IFOA licences and one non-IFOA licence. This would avoid the legal and administrative complexity of issuing and maintaining a single licence linked to multiple IFOAs.

Under the Regulation, licences for the fee-based activity 'Logging operations' attract an administrative fee based on 5,500 fee units per licence. The size of the fee was based on the recovery of costs associated with the regulation of logging activities across the state, as covered by one licence. The decision to issue an additional four licences to reflect the IFOAs resulted in an increase in licence fees for Forests NSW of \$2.09 million.

In 1999, the Director General of DECC endorsed a proposal to 'exempt' Forests NSW from paying more than one administrative fee. In accordance with clause 15(1) of the Regulation, a 'notional' refund of the fees for four of the licences was granted. In effect, Forests NSW only pays the equivalent of one licence fee for five licences.

The objective of the proposed amendment is to change the way that 'Logging operations' are licensed in order to remove the administrative burden for DECC and the licensee repaying licence fees.

10.1 Options considered

Two options for amending the current way that forestry licences are administered were considered:

Option 1 – no change (base case)

Option 2 – reduce the number of administrative fee units for the fee-based activity 'Logging operations'.

Under option 1, the current 5,500 administrative fee units would continue to apply for logging operations and DECC would be required to continue to refund the fees for four licences to Forests NSW according to the agreement in 1999. This would not reduce the current administrative burden for either DECC or the licensee and so is not the preferred option.

Under option 2, the number of administrative fee units payable for logging operations would reduce from 5,500 to 1,100 (or \$110,000 per licence). This proposal would remove the requirement for DECC to 'notionally' refund fees each year since although Forests NSW fees per licence would decrease, its total licence fees for all

five licences would remain the same. For government, there would be no impact on the overall revenue collected. Given that licence fees for all licences would be paid and no refunds made, this option would meet the objective of reducing the administrative burden for DECC and Forests NSW associated with repaying licence fees. Hence, this is the preferred option.

10.2 Costs and benefits of the proposed amendment

There are not expected to be any additional costs associated with the proposed Regulation for industry or government, however, both groups will face reduced administrative costs associated with the repayment of fees for four licences. These cost savings are minor.

Under the proposed option, there is a small possibility that Forests NSW may surrender four of the five current licences and vary the remaining licence to cover all activities, resulting in a decrease in revenue of \$440,000. While this is a possibility, it is not likely to occur as this change would require Ministerial approval.

10.3 Summary

The preferred option of decreasing the number of licence administrative fee units for logging operations from 5,500 to 1,100 has the benefit of being revenue neutral and of removing the administrative burden of repaying fees each year. Potentially this may lead to Forests NSW surrendering four of the current licences and varying the remaining licence to cover all activities, resulting in a decrease in revenue of \$440,000. While this is a possibility, it is not likely to occur as this change would require Ministerial approval.

11 Exemption for cold water pollution offences for the Snowy Hydro Corporation

The current Regulation exempts an entity from prosecution if its works comply with specific conditions that would require investigation and works to address cold water pollution under the *Water Management Act 2000*. These conditions can be placed on works approvals through existing provisions in the *Water Management Act 2000*.

Jindabyne and Tantangara dams are operated by Snowy Hydro Corporation and regulated by the Snowy Water Licence (under the *Snowy Hydro Corporatisation Act 1997*). Therefore these dams are not currently covered by the Regulation.

The proposed amendments to the Regulation are to provide an exemption for the Jindabyne and Tantangara dams operated by Snowy Hydro Corporation if they comply with the specific licence conditions relating to cold water pollution.

It is also proposed that the Snowy Hydro Corporation's licence be updated (through a licence review) in parallel with the proposed Regulation. This review will involve the inclusion of new conditions relating to cold water pollution to give effect to the exemption from cold water pollution.

Appendix 1 Calculating load fees

The pollutant load fee is calculated using one of two equations depending on whether the assessable load is greater than or less than the FRT. The pollutant fee increases at the FRT which is a reasonably achievable discharge level above which the fee rate doubles. Where the assessable load is greater than the FRT, the licensee is penalised and is required to pay double the load fee for that portion of assessable load greater than the FRT. The equations are:

If $AL < FRT$

$$\text{pollutant load fee} = (AL \times PW \times CZ \times PFU) / 10,000$$

If $AL > FRT$

$$\text{pollutant load fee} = ((2 \times AL - FRT) \times PW \times CZ \times PFU) / 10,000$$

where:

- AL = the assessable load measured in kilograms for each 'assessable pollutant' which must be determined in order to calculate the total load fee for any licence year
- PW = the pollutant weighting which accounts for the impact of the pollutant
- CZ = the pollutant critical zone weighting which accounts for the sensitivity of the receiving environment
- PFU = the pollutant fee unit (PFU)
- FRT = fee rate threshold which is equal to the FRT factor multiplied by the actual quantity of activity for that activity.

Appendix 2 Environmental impacts of pollutants

Arsenic

Arsenic is a known human carcinogen. Inhalation of arsenic has been shown to be strongly associated with lung cancer, while ingestion of arsenic has been linked to a form of skin cancer and also to bladder, liver, and lung cancer. Arsenic is known to induce cardiovascular diseases, developmental abnormalities, neurologic and neurobehavioural disorders, diabetes, hearing loss and hematologic, gastrointestinal, renal and respiratory disorders.

As a water pollutant, arsenic has a high toxicity to aquatic life and can bioaccumulate in fish and shellfish. It only has a moderate chronic toxicity to birds and land animals.

Benzene

Benzene is an air toxic that can adversely affect human health and the environment even at very low concentrations. Long-term exposure to benzene can have carcinogenic and genotoxic effects, causing direct damage to genetic material.

Benzo[a]pyrene

BaP is a probable human carcinogen that may also cause genetic and reproductive damage in humans. It is moderately persistent in the environment. It readily binds to soils and if released to water, will adsorb very strongly to sediments and particulate matter.

Biological oxygen demand

Reduced availability of oxygen in water increases environmental stresses on most aquatic organisms and can cause death. At reduced dissolved oxygen concentrations it is known that many toxic compounds become increasingly toxic. The toxicity of zinc, lead, copper, pentachlorophenol, cyanide, hydrogen sulphide and ammonia all increase at low dissolved oxygen concentrations. Decrease in the dissolved oxygen concentration can be detrimental to aquatic ecosystems.

Cadmium

Cadmium has a high toxicity to aquatic life. There is limited information on the short and long term effects of cadmium on terrestrial plants and animals, except in test animals which developed lung and testicular cancer.

Chromium

Chromium compounds, in particular chromium(VI) compounds, can result in the death of animals, birds and fish, and death or low growth rates in plants. Chromium(VI) also has a high potential for accumulation in fish as it does not break down or degrade easily.

Coarse particulates

Concerns about coarse particles are generally more about nuisance, such as damage to or soiling of materials, or adverse effects on sensitive vegetation through surface coating. However, if coarse particles are contaminated by other materials such as lead, health can be affected as a result of ingestion.

Copper

Copper is readily accumulated by plants and animals. Toxic effects of metals occur when the rate of uptake exceeds the rates of physiological or biochemical detoxification and excretion. It can reduce photosynthesis in blue-green algae.

Fine particulates

Fine particulates have been linked to asthma and other health effects and can cause death to the sick and aged. Concern is growing about the health risks of finer fractions of particles as these can travel into the lower respiratory tract. These particulates provide large surface areas for the adsorption of acid gases and reduce ultraviolet light from the sun. This causes light scattering and reduced visibility.

Fluoride

Fluoride emissions can cause plant damage and reduce crop yield at quite low concentrations. Fluorosis can occur in cattle grazing on grass exposed to fluorides.

Hydrogen sulfide

Hydrogen sulfide has a high, acute (short-term) toxicity to aquatic life, birds and animals. There is limited information on long term effects. In humans, it is toxic at concentrations from two to five parts per million and rapidly causes unconsciousness.

Lead

Lead is a heavy metal and, when present in the body, can impair brain function, especially in children. It adversely affects several body organs and systems, with changes in cell functioning and nervous system development appearing to be the most sensitive to increasing lead exposure.

The full impact of lead on an ecosystem and its biota is also not well understood, although its toxic effects on all organisms are widely recognised. Crustaceans are extremely sensitive, and molluscs and polychaetes are known to have a particularly high uptake of lead. Waterfowl that ingest lead shot or fishing sinkers when shovelling sediment for food experience damage to the nervous system, kidneys and liver, paralysis, and inhibition of haemoglobin synthesis, which lead to death.

Mercury

Mercury exposure at high levels can result in clinically observable neurotoxicity, for example, mad hatters' disease. Exposure can also result in subtle decrements in motor skills and sensory ability, tremors, inability to walk and convulsions, harm the brain, heart, kidneys, lungs, and immune system of people of all ages. It has been demonstrated that high levels of mercury in the bloodstream of unborn babies and young children may harm the developing nervous system, causing learning difficulties.

As a water pollutant, mercury is not as toxic to fish as some other metals, such as cadmium, copper, lead or zinc. The concentrations of mercury in most surface waters are generally much too low to cause any direct toxic effects to either adult fish or the more sensitive early life stages. The main danger is methylmercury, which accumulates in the internal organs and disrupts the central nervous system. Even low levels of mercury cause muscle break-down, weight loss and reduced fertility in some waterbirds.

Nitrogen oxides

NO_x contribute to acid rain and are precursors to photochemical smog. They may irritate respiratory systems, exacerbate asthma in susceptible individuals, and increase susceptibility to cardiovascular disease and respiratory infections.

Nutrients including total nitrogen and total phosphorus

Excessive quantities of nutrients can lead to degradation of water quality due to rapid growth and multiplication of algae and macrophytes. This can lead to a number of environmental impacts on waterways, including:

- increased turbidity and lowering of dissolved oxygen levels
- reduced diversity of aquatic animals and change in community structure
- impediment to fish migration
- reduced photosynthesis
- creation of odour and unsightly appearances which lead to loss of recreational amenity
- in some cases toxic blooms of cyanobacteria and algae causing fish kills and rendering water unfit for human consumption.

Oil and grease

As a surface slick, oil decreases sunlight penetration, reduces re-aeration of the water and is unsightly. Oil and grease can cause coating of the intertidal shoreline and also result in a visible stain at the waterline of watercraft. Waterbirds are also affected by oil and grease, either by ingestion or by coating their plumage. Bacterial action and weathering will eventually decompose oil and grease. High levels of surfactants used to treat oil spills are toxic to fish, invertebrates and macrophytes. They can reduce photosynthesis, affecting algae and seagrass growth.

Pesticides and PCBs

Most organic pesticides, polychlorinated biphenyls and industrial organic chemicals are toxic to aquatic organisms. Some also bioaccumulate in the food chain.

Salt

Changes in salinity may affect aquatic organisms in two ways:

- directly by toxicity through physiological changes (particularly osmoregulation) – both increases and decreases in salinity can have adverse effects
- indirectly by modifying the species composition of the ecosystem and affecting species that provide food or refuge.

Selenium

Selenium and its compounds have high acute toxicity to aquatic life and mammals and moderate acute toxicity to birds. Fish can bioaccumulate selenium, building up high levels. Alkali disease is a disease in livestock resulting from chronic consumption of high levels of selenium and is characterised by hair loss, deformation of hooves, anaemia, erosion of joints, and effects on the heart, liver and kidneys.

Sulfur oxides

SO_x are the principal pollutants associated with acid deposition. The impacts of acid deposition include corrosion of iron and steel, reduced crop yields, damage to vegetation and acidification of freshwater lakes.

In particular, sulfur dioxide (SO₂) is a respiratory irritant which is most dangerous when adsorbed onto fine particulate matter. It is toxic to humans at around 10 parts per million (over eight hours). Exposure to ambient levels of sulfur dioxide has been associated with reduced lung function and increased incidence of respiratory symptoms and diseases.

Total suspended solids

The main impacts of suspended solids are reduced penetration of sunlight through water (which reduces the biological activity of aquatic organisms), smothering of bottom-dwelling biota by sediment, and clogging gills of fish. Other environmental impacts include:

- reduced light penetration, affecting photosynthesis rates of algae, submerged macrophytes and seagrass
- clogging of gills of fish and invertebrates
- hindering feeding of some macroinvertebrates
- reduced substrate habitat value, including voids, affecting some fish and invertebrates which need voids for feeding and respiration
- rapid siltation which smothers seagrass meadows and estuarine soft sediment habitats
- increased deposition of inert sediments which can reduce food supplies for some invertebrates and increased organic matter which can alter invertebrate species
- taste and appearance of water supply.

Total phenolics

Acute toxic effects may include death of animals and death or low growth rate in plants. Longer term effects may include shortened lifespan and reproductive problems.

Polycyclic aromatic hydrocarbons

Although many different PAHs have been identified, there is limited published toxicological data on them. One of the best characterised and most toxic PAH is benzo[a]pyrene, discussed above.

Volatile organic compounds

The major environmental significance of VOCs is their role in the formation of photochemical smog. In the lower atmosphere, ozone is formed by the reaction of NO_x and VOCs in warm, sunny conditions. Other environmental effects depend on the composition of the VOCs, their concentration and the length of exposure. Effects may also occur due to secondary impacts, for example, smog. In liquid form and in solution, VOCs can impact water and soil.

The health effects also depend on the specific composition of the VOCs, the concentration and the length of exposure. General effects of lower concentrations include eye, nose, and throat irritation, headaches, loss of coordination, nausea, and damage to liver, kidneys, and the central nervous system. Some VOCs can cause cancer in humans and animals.

Zinc

The toxicity of zinc in water is influenced by water hardness and pH; water is less toxic with greater hardness and pH. Generally, zinc is acute and chronic toxic to aquatic life in polluted waters.

Appendix 3 Revenue projections for all proposed amendments

The table summarises the projected revenue for the changes outlined in this document for the five years of the proposed Regulation.

Fee-based activity	2007-08 revenue	2008-09 revenue	Fee increase from FRT changes from 2009-10 onwards	2009-10 revenue	Fee increase from new APs from 2009-10 onwards	2010-11 revenue	2011-12 revenue	2012-13 revenue
Agricultural phosphate fertiliser production	\$19,882	\$19,882	\$0	\$20,887	\$0	\$21,421	\$21,939	\$22,492
Aluminium production (alumina)	\$474,607	\$474,607	\$88,592	\$587,220	\$9,914	\$611,887	\$627,191	\$642,805
Aluminium production (scrap metal)	\$107,322	\$107,322	\$3,487	\$116,231	\$0	\$119,211	\$122,077	\$125,159
Ammonium nitrate production	\$132,938	\$132,938	\$0	\$139,666	\$0	\$143,175	\$146,756	\$150,409
Carbon black production	\$2,500	\$2,500	\$0	\$17,325	\$261,365	\$261,365	\$267,902	\$274,571
Cement or lime handling	\$39,200	\$39,200	\$0	\$41,160	\$0	\$42,336	\$43,120	\$44,296
Cement or lime production	\$409,113	\$409,113	\$2,393	\$429,835	\$61,948	\$500,785	\$512,774	\$525,740
Ceramics production	\$293,598	\$293,598	\$41,020	\$348,772	\$0	\$357,755	\$366,276	\$375,554
Chemical storage – petroleum	\$233,209	\$233,209	\$0	\$244,992	\$0	\$251,265	\$257,321	\$263,813
Coke production	\$56,555	\$56,555	\$1,335	\$60,753	\$285,543	\$347,822	\$356,522	\$365,397
Electricity generation from coal	\$14,299,287	\$14,299,287	\$233	\$15,023,239	\$228,274	\$15,628,942	\$16,019,863	\$16,418,682
Electricity generation from gas	\$181,622	\$181,622	\$33,215	\$224,030	\$0	\$229,658	\$235,402	\$241,263
Glass production – container glass	\$708,620	\$708,620	\$0	\$744,485	\$60,744	\$823,933	\$844,542	\$865,567
Glass production – float glass	\$397,181	\$397,181	\$0	\$417,283	\$0	\$427,766	\$438,466	\$449,382
Iron and steel production (iron ore)	\$4,150,626	\$4,150,626	\$290,724	\$4,651,423	\$330,858	\$5,099,139	\$5,226,682	\$5,356,801
Iron and steel production (scrap metal)	\$139,062	\$139,062	\$2,928	\$149,018	\$43,633	\$196,455	\$201,253	\$206,306
Non-ferrous metal production (ore concentrates)	\$79,500	\$79,500	\$0	\$83,475	\$0	\$85,860	\$87,450	\$89,835
Non-ferrous metal production (scrap metal)	\$57,642	\$57,642	\$1,945	\$62,494	\$0	\$64,124	\$65,612	\$67,289
Paint/polishes/adhesives production	\$129,215	\$129,215	\$36,340	\$171,674	\$0	\$176,237	\$180,161	\$184,827
Paper or pulp production	\$117,009	\$117,009	\$2,219	\$125,140	\$0	\$128,343	\$131,438	\$134,753
Petrochemical production	\$680,871	\$680,871	\$0	\$715,320	\$0	\$733,360	\$751,570	\$770,330
Petroleum and fuel production	\$2,591,671	\$2,591,671	\$32,182	\$2,754,893	\$90,754	\$2,914,951	\$2,987,682	\$3,062,128
Plastics reprocessing	\$189,002	\$189,002	\$1,238	\$198,556	\$0	\$203,687	\$208,505	\$213,799
Recovery of waste oil	\$6,500	\$6,500	\$0	\$6,825	\$0	\$7,020	\$7,150	\$7,345

Fee-based activity	2007-08 revenue	2008-09 revenue	Fee increase from FRT changes from 2009-10 onwards	2009-10 revenue	Fee increase from new APs from 2009-10 onwards	2010-11 revenue	2011-12 revenue	2012-13 revenue
Sewage treatment – large plants	\$6,955,472	\$6,955,472	\$0	\$7,307,398	\$0	\$7,491,612	\$7,677,776	\$7,869,371
Sewage treatment – small plants	\$2,472,444	\$2,472,444	\$0	\$2,597,424	\$0	\$2,663,604	\$2,728,436	\$2,797,029
Thermal treatment of hazardous and other waste	\$6,500	\$6,500	\$0	\$6,825	\$0	\$7,020	\$7,150	\$7,345
Revenue from LBL premises	\$34,914,649	\$34,914,649	\$537,851	\$37,229,018	\$1,373,032	\$39,520,911	\$40,502,866	\$41,513,643
Revenue from non-LBL premises	\$7,465,750	\$7,465,750		\$7,839,038		\$8,063,010	\$8,212,325	\$8,436,298
Revenue from non-LBL premises subject to licensing reform	\$1,775,000	\$1,775,000		\$0		\$0	\$0	\$0
Total licensing revenue	\$44,155,399	\$44,155,399		\$45,068,056		\$47,583,921	\$48,715,191	\$49,949,941



New South Wales

Protection of the Environment Operations (General) Regulation 2008

under the

Protection of the Environment Operations Act 1997

[The following enacting formula will be included if the Regulation is made:]

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Protection of the Environment Operations Act 1997*.

Minister for Climate Change and the Environment

Explanatory note

The objects of this Regulation are to remake, with some amendments, the provisions of the *Protection of the Environment Operations (General) Regulation 1998*, the *Protection of the Environment Operations (Penalty Notices) Regulation 2004* and the *Protection of the Environment Operations (Savings and Transitional) Regulation 1998*.

The Regulation makes provision with respect to the following matters:

- (a) environment protection licences, including the payment of licence fees under a pollution load-based licensing scheme,
- (b) water pollution, including the definition of water pollution and exemptions from the offence of polluting waters,
- (c) compliance with the *National Environment Protection (National Pollutant Inventory) Measure* made under the *National Environment Protection Council Act 1994* of the Commonwealth,
- (d) vehicle testing and inspection, including the approval of persons and places in connection with such testing and inspection,
- (e) the issuing of penalty notices under certain environmental legislation,
- (f) the identity of the appropriate regulatory authority (within the meaning of the *Protection of the Environment Operations Act 1997 (the Act)*) for certain types of activities,
- (g) exemptions from certain provisions of the Act,

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Explanatory note

- (h) the prohibition on the burning of native forest bio-material in electricity generating works,
- (i) fees relating to environment protection notices,
- (j) the notification of pollution incidents,
- (k) forms for police warrants of entry concerning noise,
- (l) the time for making an appeal against a noise control notice relating to the keeping of animals,
- (m) the evaluation of green offset schemes or green offset works,
- (n) the restrictions on requirements for financial assurances,
- (o) the matters to be included in the public register kept under section 308 of the Act,
- (p) the keeping of a register in relation to certain non-scheduled activities,
- (q) repeals, savings, transitional and formal matters.

Chapters 4 and 6 and Schedule 8 to, this Regulation comprise or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*—namely, matters arising under legislation that is substantially uniform or complementary with legislation of the Commonwealth or another State or Territory, matters of a machinery nature and matters of a savings or transitional nature.

This Regulation is made under the *Protection of the Environment Operations Act 1997*, including section 323 (the general regulation-making power) and Schedule 2, and the various provisions of the Act mentioned in the Regulation.

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Contents

	Page
Chapter 1 Preliminary	
1 Name of Regulation	9
2 Commencement	9
3 Definitions	9
Chapter 2 Environment protection licences	
Part 1 Licence fees	
Division 1 Preliminary	
4 Interpretation	11
5 Licence fee period	12
6 Changes in licence fee period	12
Division 2 Licence application fees and annual fees	
7 Licence application fee	13
8 Annual licence fee	13
Division 3 Administrative fees	
9 Amount of 1 administrative fee unit	13
10 Calculating amount of administrative fee	14
11 Refunds—application fees	14
12 Refunds and waivers—annual licence fees	14
Division 4 Load-based fees	
13 Objects of load-based licensing scheme	15
14 Circumstances in which no load-based fee payable	15
15 Requirement to calculate and record actual load	15
16 Calculation of load-based fee	16
17 Determining the assessable load—Step 2 of load based fee calculation	17
18 Fee rate thresholds—Step 3 of load-based fee calculation	17
19 Calculating the fee for each assessable pollutant—Step 4 of load-based fee calculation	18
20 Nitrogen oxides or VOCs discharged in Sydney basin area in summer—Step 6 of load-based fee calculation	19
21 Load calculation protocol	20
22 Determination of load-based fee where insufficient information provided by licence holder	21

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Contents

	Page
23 Refunds—errors in calculations	21
Division 5 Load reduction agreements and fee reductions	
24 Definitions	22
25 Effect and term of load reduction agreement	22
26 Applications for load reduction agreements	22
27 Content of load reduction agreements	23
28 Amendment of load reduction agreement	23
29 Agreement of no effect without condition in licence	24
30 Termination of agreement	24
31 Amounts payable on termination or expiration	24
32 When amounts must be paid	25
33 Payment by instalments	25
34 Effect of transfer of licences on load reduction agreements	26
Division 6 Economic measures with respect to load-based fees	
35 Application	26
36 Aggregation of licences for purpose of payment of licence fees—“bubble licence arrangements”	26
Division 7 Time for payment of licence fees and penalties for late payment	
37 Administrative fee—time for payment and penalty for late payment	26
38 Load-based fee—time for payment and penalty for late payment	27
39 Refunds and waivers—penalties for late payment	27
Division 8 Change in activity classification or scale during licence fee period	
40 Application of this Division	28
41 Adjustment of administrative fee	28
42 Adjustment of load-based fee	28
Part 2 Load-Based Licensing Technical Review Panel	
43 Constitution of Review Panel	28
44 Members of Review Panel	29
45 Functions of Review Panel	29
46 Membership and procedure of Review Panel	29

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Contents

	Page	
Part 3	Miscellaneous licensing provisions	
47	Additional matters included in definition of “scheduled development work” for which licence required	29
48	Commencement of licensing requirement for existing activities not previously required to be licensed	30
49	Exclusion of Part 5 of EPA Act	30
50	Matters to be set out in statement of reasons for grant or refusal of licence applications	30
51	Transfer of licences	30
52	Refusal of certain licence applications	31
53	Other relevant legislation	31
54	Application of payments	31
55	Preservation of records	31
Chapter 3	Water pollution	
Part 1	Exemptions	
56	Exemption from water pollution offence for pollutants discharged from Victorian premises into River Murray	33
57	Exemption from water pollution offence for pollutants discharged into sewer	33
58	Exemption from water pollution offence in relation to certified on-board sewage treatment systems	34
59	Exemption from water pollution offence for pollutants arising from operation of engines propelling vessels	34
60	Exemption from water pollution offence in relation to cold water releases	34
Part 2	Other	
61	Prescribed matter for the definition of “water pollution” in Act	35
62	Methodology for testing for matter in waters	35
63	Emergency prohibition or regulation of aquatic activities—safety of drinking water	35
Chapter 4	National Pollutant Inventory	
Part 1	Preliminary	
64	Object of Chapter	37
65	Interpretation	37
66	Occupiers to whom this Chapter applies	37

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Contents

	Page
Part 2 Reporting and record keeping requirements	
67 Collection of data from reporting facilities	37
68 Occupier must keep data for period of 4 years	38
Part 3 Estimation techniques	
69 Emission and transfer estimation techniques	39
70 Application for approval of estimation technique	39
71 Determination of application for approval estimation technique	39
Part 4 Exemptions from reporting requirements	
72 Exemption on ground of national security	40
73 Exemption on ground of commercial confidentiality	41
Chapter 5 Vehicle testing and inspection	
74 Definitions	42
75 Approved mechanics	42
76 Approved inspection stations	43
77 Maximum fee for test or inspection	44
78 Vehicle inspection reports	44
79 Variation of approvals under Chapter	45
80 Surrender of approvals under Chapter	45
81 Suspension or revocation of approvals under Chapter	46
Chapter 6 Penalty notices	
82 Penalty notice offences	47
83 Enforcement officers	47
84 Amounts of penalty payable	49
85 Service of penalty notices on owners of vehicles or vessels	49
Chapter 7 Miscellaneous	
Part 1 Appropriate regulatory authority	
86 Marine Parks Authority	50
87 Maritime Authority	50
88 Director-General of Department of Environment and Climate Change	51
89 Burning of bio-material in electricity generating works	51
90 Inner West Light Rail	52

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Contents

	Page
91 Outdoor entertainment activities	52
92 Non-scheduled activities for which EPA is appropriate regulatory authority	53
93 Waste activities licensed before replacement of Schedule 1 to Act	54
Part 2 Exemptions from provisions of Act	
94 Exemption from prohibition on placing advertising material on vehicles	54
95 Exemption for noise control and abatement provisions	54
Part 3 Burning of bio-material in electricity generating works	
96 Definitions	55
97 Native forest bio-material not to be used for electricity generation	56
98 Record-keeping	56
Part 4 Other	
99 Fee for administrative costs of clean-up, prevention and noise control notices	57
100 Land pollution—meaning of certain expressions for defences relating to substances	57
101 Notification of pollution incidents	57
102 Warrants relating to noise abatement directions	57
103 Appeals regarding noise	58
104 Evaluation of green offset schemes or works	58
105 Additional restriction on requiring financial assurances	59
106 Additional matters to be included in public register	59
107 Keeping of register in relation to certain non-scheduled activities	60
108 Repeal of Regulations	60
109 Savings and transitional provisions	61
Schedule 1 Licensing fees	62
Schedule 2 Load-based fee calculation	115
Schedule 3 Open coastal waters	120
Schedule 4 Membership and procedure of Load-Based Licensing Technical Review Panel	121
Schedule 5 Prescribed matter for the definition of water pollution	125

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Contents

	Page
Schedule 6	
Penalty notice offences	127
Schedule 7	
Forms relating to noise abatement directions	139
Schedule 8	
Savings and transitional provisions	143

Public consultation draft

Clause 1 Protection of the Environment Operations (General) Regulation 2008
Chapter 1 Preliminary

Protection of the Environment Operations (General) Regulation 2008

under the

Protection of the Environment Operations Act 1997

Chapter 1 Preliminary

1 Name of Regulation

This Regulation is the *Protection of the Environment Operations (General) Regulation 2008*.

2 Commencement

This Regulation commences on 30 June 2009.

Note. This Regulation replaces the *Protection of the Environment Operations (General) Regulation 1998*, the *Protection of the Environment Operations (Penalty Notices) Regulation 2004* and the *Protection of the Environment Operations (Savings and Transitional) Regulation 1998* (which are repealed by clause 108).

3 Definitions (cf 3 POEO (General) Reg 1998)

(1) In this Regulation:

Approved Methods Publication means:

- (a) in relation to air pollutants—the document entitled *Approved Methods for the Sampling and Analysis of Air Pollutants in New South Wales*, prepared by the EPA and published in the Gazette, as in force from time to time, or
- (b) in relation to water pollutants—the document entitled *Approved Methods for the Sampling and Analysis of Water Pollutants in New South Wales*, prepared by the EPA and published in the Gazette, as in force from time to time.

Department means the Department of Environment and Climate Change.

Director-General means the Director-General of the Department.

the Act means the *Protection of the Environment Operations Act 1997*.

Transport of Dangerous Goods Code means the document entitled *Australian Code for the Transport of Dangerous Goods by Road and Rail*, approved by the Ministerial Council for Road Transport and published by the Australian Government from time to time.

Public consultation draft

Clause 3 Protection of the Environment Operations (General) Regulation 2008
Chapter 1 Preliminary

- (2) Terms used in Schedule 1 to this Regulation that are defined in Schedule 1 to the Act have the same meanings as they have in Schedule 1 to the Act.
- (3) Notes included in this Regulation do not form part of this Regulation.

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008
Environment protection licences
Licence fees

Clause 4
Chapter 2
Part 1

Chapter 2 Environment protection licences

Part 1 Licence fees

Division 1 Preliminary

4 Interpretation (cf 5 POEO (General) Regulation 1998)

In this Part and Schedule 1:

actual load, in relation to an assessable pollutant, means the actual load of the pollutant determined in accordance with clause 17.

administrative fee, in relation to a licence, means the administrative fee determined in accordance with Division 3, that is payable as part of the annual fee for the licence.

administrative fee unit means the administrative fee unit for a licence period determined in accordance with clause 9.

agreed load, in relation to an assessable pollutant means the load specified under a load reduction agreement as the maximum load that will be discharged during the final licence fee period for the licence that is covered by the agreement.

air pollutant means a pollutant specified as an air pollutant in a Table in Part 2 of Schedule 2.

assessable pollutant means an air pollutant or water pollutant specified in relation to an activity in Schedule 1.

licence fee period—see clause 5.

load, in relation to an assessable pollutant, means the mass or quantity of the pollutant.

load-based fee, in relation to a licence, means the load-based fee, determined in accordance with Division 4, that is payable as part of the annual fee for the licence.

load calculation protocol means a protocol to be applied in the calculation of load-based fees, as in force under clause 21.

load reduction agreement means an agreement, entered into under Division 5, in which a licence holder agrees that the reported load of an assessable pollutant discharged in the course of carrying out an activity to which the licence applies will not exceed a specified load during the final licence fee period for the licence that is covered by the agreement.

Step, in relation to the calculation of a load-based fee, means a step set out in clause 16.

summer period, in relation to a licence fee period for a licence, means all the days during the licence fee period that occur during the months of December, January or February.

Public consultation draft

Clause 5	Protection of the Environment Operations (General) Regulation 2008
Chapter 2	Environment protection licences
Part 1	Licence fees

Sydney basin area means the local government areas of Ashfield, Auburn, Bankstown City, Baulkham Hills, Blacktown City, Botany Bay City, Burwood, Camden, Campbelltown City, Canada Bay, Canterbury City, Fairfield City, Hawkesbury City, Holroyd City, Hornsby, Hunter's Hill, Hurstville City, Kogarah, Ku-ring-gai, Lane Cove, Leichhardt, Liverpool City, Manly, Marrickville, Mosman, North Sydney, Parramatta City, Penrith City, Pittwater, Randwick City, Rockdale City, Ryde City, Strathfield, Sutherland Shire, City of Sydney, Warringah, Waverley, Willoughby City and Woollahra.

water pollutant means a pollutant specified as a water pollutant in a Table in Part 2 of Schedule 2.

weighted load, of an assessable pollutant is the actual load of the pollutant, adjusted in accordance with an applicable load calculation protocol.

5 Licence fee period (cf 7 POEO (General) Regulation 1998)

- (1) Each period of 12 months (commencing from the issue of a licence) is a **licence fee period** for a licence.
- (2) However, a licence fee period comes to an end if the licence ceases to be in force (but not if the licence is suspended).
- (3) A licence fee period is not affected by any transfer of the licence.

6 Changes in licence fee period (cf 7A POEO (General) Regulation 1998)

- (1) The EPA may, by notice in writing given to the licence holder, change licence fee periods for a licence to provide common licence fee periods for different licences held by the same person or for other good cause. The notice has effect according to its tenor.
- (2) The EPA may change licence fee periods on the application of the licence holder or on its own initiative. The EPA may decline to deal with an application unless the licence holder pays the EPA such reasonable fee as the EPA determines for dealing with the application.
- (3) If licence fee periods are changed under this clause, the total of the licence fees for the licence in respect of all the periods affected by the change is, despite anything to the contrary in this Regulation, the same as it would have been if the change had not been made.
- (4) The EPA is, because of subclause (3), to make any refunds in respect of fees already paid or require payment of any additional amount of fees for relevant licence fee periods.
- (5) Any such additional amount is to be paid by the licence holder to the EPA not later than 60 days after notice is given of the change in licence fee periods under this clause.

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008
Environment protection licences
Licence fees

Clause 7
Chapter 2
Part 1

- (6) The provisions of Division 7 relating to the payment of interest on unpaid fees applies to any such additional amount.

Division 2 Licence application fees and annual fees

7 Licence application fee (cf 11 (1) (a) POEO (General) Regulation 1998)

For the purposes of section 53 (2) (c) of the Act, the fee that must accompany an application for the issue of a licence is the administrative fee for the licence.

8 Annual licence fee (cf 11 (1) (b), (2) and (3) POEO (General) Regulation 1998)

- (1) For the purposes of section 57 (1) of the Act, the annual licence fee payable by a licence holder is payable in respect of each licence fee period for the licence and comprises:

- (a) the administrative fee for the licence, and
- (b) the load-based fee (if any) for the licence.

- (2) Despite subclause (1):

- (a) an administrative fee is only payable as part of the annual licence fee in respect of the second and subsequent licence fee periods for a licence, and
- (b) the annual fee for a supervisory licence referred to in section 87 of the Act comprises only the administrative fee for the licence.

Note. The administrative fee comprised in an annual licence fee is payable within 60 days after the beginning of the licence fee period to which it relates. The load-based fee comprised in an annual licence fee is payable within 90 days after the end of the licence fee period to which it relates. (See Division 7.)

Division 3 Administrative fees

9 Amount of 1 administrative fee unit (cf 6 POEO (General) Regulation 1998)

- (1) An administrative fee unit for a licence fee period that begins on a date in any of the following periods is the amount specified in respect of that period:

- (a) before 1 July 2009—\$100,
- (b) on or after 1 July 2009 and before 1 July 2010—\$105,
- (c) on or after 1 July 2010 and before 1 July 2011—\$108,
- (d) on or after 1 July 2011 and before 1 July 2012—\$110,
- (e) on or after 1 July 2011—\$113.

- (2) For the purposes of calculating the administrative fee that must accompany an application for the issue of a licence, the period during

Public consultation draft

Clause 10	Protection of the Environment Operations (General) Regulation 2008
Chapter 2	Environment protection licences
Part 1	Licence fees

which the licence fee period begins is taken to be the date on which the application is made.

10 Calculating amount of administrative fee (cf 12 and 13 POEO (General) Regulation 1998)

- (1) The administrative fee for a licence is to be calculated by multiplying the amount of one administrative fee unit for the relevant licence fee period by the number of administrative fee units (determined in accordance with Schedule 1) for the activity authorised or controlled by the licence.
- (2) If a licence authorises or controls more than one of the activities listed in Schedule 1, the administrative fee payable is the highest of the administrative fees for those activities calculated under this clause.

11 Refunds—application fees (cf 14 POEO (General) Regulation 1998)

- (1) The EPA may refund the payment of all or any part of an administrative fee that accompanies an application for the issue of a licence if the EPA refuses the application or the application is withdrawn.
- (2) The EPA may grant a refund on its own initiative or if requested by the applicant.
- (3) A request for a refund may only be made within 90 days after the applicant is notified of the refusal or the EPA is notified of the withdrawal, as the case may be.
- (4) However, the EPA may extend the time for making a request if it is satisfied that there is good cause for doing so.
- (5) In considering whether to refund all or part of a fee, the EPA is to have regard to the administrative costs incurred by the EPA in connection with the application.

12 Refunds and waivers—annual licence fees (cf 15 POEO (General) Regulation 1998)

- (1) The EPA may do any one or more of the following if it considers that it is appropriate to do so:
 - (a) refund the payment of all or any part of an administrative fee comprised in an annual licence fee,
 - (b) refund the difference between the administrative fee paid and any lesser amount that would have been payable if the administrative fee had been calculated on the actual level of the activity during the licence fee period to which the fee relates,
 - (c) on approval of an application under section 80 of the Act for surrender of a licence, waive the payment of all or any part of an

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008
Environment protection licences
Licence fees

Clause 13
Chapter 2
Part 1

administrative fee comprised in an annual licence fee for the licence concerned.

- (2) The EPA may grant a refund, or waive payment under subclause (1) on its own initiative or if requested by the licence holder.
- (3) A request for a refund or waiver may only be made within 90 days after the end of the licence fee period to which the fee relates.
- (4) However, the EPA may extend the time for making a request if it is satisfied that there is good cause for doing so.
- (5) In considering whether to refund or waive all or part of an administrative fee, the EPA is to have regard to the administrative costs incurred by the EPA in connection with the licence.

Division 4 Load-based fees

13 Objects of load-based licensing scheme (cf 16 POEO (General) Regulation 1998)

The objects of the load-based licensing scheme are as follows:

- (a) to provide incentives to reduce the load (that is, the quantity or mass) of pollutants emitted based on the polluter pays principle and to do so within an equitable framework,
- (b) to reduce pollution (in particular, assessable pollutants) in a cost effective and timely manner,
- (c) to give industry incentives for ongoing improvements in environmental performance and the adoption of cleaner technologies,
- (d) to provide incentives that are complementary to existing regulation and education programs for environment protection.

14 Circumstances in which no load-based fee payable

There is no load-based fee payable as part of the annual fee for a licence if Schedule 1 specifies, in relation to each activity controlled or authorised by the licence, that there is no load-based fee for the activity.

15 Requirement to calculate and record actual load (cf 18 (1)–(1A) POEO (General) Regulation 1998)

- (1) A licence holder must, for each assessable pollutant for each activity controlled or authorised by the licence, calculate and record the actual load of the pollutant discharged as a result of the carrying out of the activity.
- (2) A licence holder must also calculate and record the actual load for nitrogen oxides and VOCs discharged in the Sydney basin area, during

Public consultation draft

Clause 16	Protection of the Environment Operations (General) Regulation 2008
Chapter 2	Environment protection licences
Part 1	Licence fees

the summer period of each licence fee period, for each activity controlled or authorised by the licence, but only if the particular pollutant is an assessable pollutant in relation to the activity.

- (3) Subclauses (1) and (2) apply whether or not the pollutants referred to in those subclauses were discharged in accordance with the licence and whether or not the licence holder intends to use a weighted load or an agreed load for the purposes of calculating the load-based fee in respect of the licence.
- (4) The licence holder must carry out all necessary monitoring and other steps to enable the calculations of actual loads required by this clause to be made for each licence fee period and for each summer period (as the case may be).

16 Calculation of load-based fee (cf 23 POEO (General) Regulation 1998)

- (1) The steps to determine any load-based fee comprised in an annual licence fee for a licence are as follows:

Step 1

Refer to Schedule 1 to determine the classification or classifications of the activity authorised or controlled by the licence during the relevant licence fee period and the assessable pollutants specified in relation to each such classification.

Step 2

Determine the assessable load of each assessable pollutant discharged during the relevant licence fee period.

Step 3

Calculate the fee rate thresholds for each assessable pollutant discharged during the licence fee period.

Step 4

Calculate the fee for each assessable pollutant discharged during the licence fee period.

Step 5

Total the fees for each assessable pollutant.

Step 6

If nitrogen oxides or VOCs:

- (i) are discharged in the Sydney basin area during the summer period of the licence fee period, and
- (ii) are assessable pollutants for the classification or classifications of the activity concerned,

reapply Steps 2–4 with respect to those pollutants and add the resulting amount to the amount calculated under Step 5.

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008
Environment protection licences
Licence fees

Clause 17
Chapter 2
Part 1

Note. Any discharge of nitrogen oxides or VOCs in the Sydney basin area during the summer period of the licence fee period is to be counted twice. First, as part of the discharge for the whole licence fee period and then in its own right.

Step 7

Subtract the amount of the administrative fee for the licence fee period (other than the amount of any increase in the administrative fee as a penalty for the late payment of the fee).

- (2) A load based fee is taken to be zero, if the fee, when calculated in accordance with this Regulation, is less than zero.

17 Determining the assessable load—Step 2 of load based fee calculation

- (1) For the purposes of determining the load-based fee, the *assessable load* of each assessable pollutant is whichever of the following is the least:
 - (a) the actual load of the pollutant,
 - (b) the weighted load of the pollutant,
 - (c) if an agreed load under a load reduction agreement applies in respect of the pollutant, the agreed load of the pollutant.
- (2) If more than one classification in Schedule 1 applies to the activity, the assessable load of each assessable pollutant is the sum of the assessable loads of that assessable pollutant for each applicable classification.
- (3) To calculate the actual load of an assessable pollutant, the licence holder must use one of the methods provided for the activity in a load calculation protocol.
- (4) If there is no such protocol, or if no method is provided for the activity, the licence holder must take the actual load for each assessable pollutant to be zero.

18 Fee rate thresholds—Step 3 of load-based fee calculation (cf 22 POEO (General) Regulation 1998)

- (1) To determine the fee rate threshold for each assessable pollutant discharged during a licence fee period for a licence, multiply the applicable threshold factor for the pollutant from Schedule 1 by the quantity of activity during the licence fee period (using the units of measure specified in relation to the activity in Schedule 1).

Note. For example, if ceramic production produced 20,000 tonnes of bricks, to determine the fee rate threshold for fluoride, it would be necessary to multiply 0.12 (the threshold factor shown for that activity in Schedule 1) by 20,000 (as the units of measure for ceramic production shown in Schedule 1 is tonnes) giving a result of 2,400 kilograms.

Public consultation draft

Clause 19 Protection of the Environment Operations (General) Regulation 2008
Chapter 2 Environment protection licences
Part 1 Licence fees

- (2) If the activity has more than one classification in Schedule 1, the fee rate threshold for each assessable pollutant is the sum of the fee rate thresholds for each of those classifications.

19 Calculating the fee for each assessable pollutant—Step 4 of load-based fee calculation

- (1) To calculate the fee for each assessable pollutant discharged during the licence fee period:
- (a) use the formula set out in subclause (2) (*Formula 1*) if the assessable load is greater than the fee rate threshold, or
 - (b) in any other case use the formula set out in subclause (3) (*Formula 2*).

- (2) **Formula 1**
Fee =

$$\frac{(2AL - FRT) \times PFU \times PW \times CZ}{10,000}$$

- (3) **Formula 2**
Fee =

$$\frac{AL \times PFU \times PW \times CZ}{10,000}$$

- (4) Where
- AL* = the assessable load of the assessable pollutant discharged, expressed in kilograms.
 - CZ* = the pollutant critical zone weighting for the assessable pollutant determined in accordance with subclauses (5) and (6).
 - FRT* = the fee rate threshold for the assessable pollutant, expressed in kilograms.
 - PFU* = the pollutant fee unit amount for the licence fee period as specified in subclause (7).
 - PW* = the pollutant weighting for the assessable pollutant determined in accordance with subclause (8).
- (5) The pollutant critical zone weightings are as follows:
- (a) for a pollutant shown in a Table in Part 1 of Schedule 2 that is discharged into a critical zone shown opposite the pollutant in the Table—the weighting specified in the Table opposite the pollutant and critical zone,
 - (b) in all other circumstances—1.

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008
Environment protection licences
Licence fees

Clause 20
Chapter 2
Part 1

- (6) If a licence authorises or controls the discharge of a pollutant into more than one critical zone, the critical zone weighting factor for the pollutant is the factor applicable to the zone into which the majority of the pollutant is discharged.
- (7) A pollutant fee unit for a licence fee period that begins on a date in any of the following periods is the amount specified in respect of that period:
- (a) on or after 1 July 2008 and before 1 July 2009—\$38.61,
 - (b) on or after 1 July 2009 and before 1 July 2010—\$39.58,
 - (c) on or after 1 July 2010 and before 1 July 2011—\$40.57,
 - (d) on or after 1 July 2011 and before 1 July 2012—\$41.58,
 - (e) on or after 1 July 2011—\$42.62.
- (8) The pollutant weightings for a pollutant shown in a Table in Part 2 of Schedule 2 is the weighting specified in the Table:
- (a) opposite the pollutant if the pollutant is an air pollutant, or
 - (b) opposite the pollutant in the column headed:
 - (i) “enclosed waters” if the pollutant is a water pollutant discharged into enclosed waters, or
 - (ii) “estuarine waters” if the pollutant is a water pollutant discharged into estuarine waters, or
 - (iii) “open coastal waters” if the pollutant is a water pollutant discharged into open coastal waters.
- (9) In this clause:
- enclosed waters** means all waters other than open coastal waters or estuarine waters.
- estuarine waters** means waters (other than open coastal waters):
- (a) that are ordinarily subject to tidal influence, and
 - (b) that have a mean tidal range greater than 800mm (being the average difference between the mean high water mark and the mean low water mark, expressed in millimetres, over the course of a year).
- open coastal waters** has the meaning given by Schedule 3.

**20 Nitrogen oxides or VOCs discharged in Sydney basin area in summer—
Step 6 of load-based fee calculation** (cf 17A POEO (General) Regulation 1998)

For the purpose of any calculation required to be carried out under Step 6 of the load based fee calculation:

Public consultation draft

Clause 21	Protection of the Environment Operations (General) Regulation 2008
Chapter 2	Environment protection licences
Part 1	Licence fees

- (a) a reference to the quantity of activity during the licence fee period is to be read as a reference to the quantity of activity during the summer period of the licence fee period, and
- (b) a reference to an assessable pollutant discharged during a licence fee period is to be read as a reference to nitrogen oxides or VOCs discharged during the summer period of the licence fee period, and
- (c) the pollutant critical zone weightings for nitrogen oxides or VOC's discharged during that period is 28.

21 Load calculation protocol (cf 18 (3), (4) and (7) POEO (General) Regulation 1998)

- (1) For the purpose of this Division, the EPA may from time to time issue or vary a protocol to be applied in the calculation of load-based fees (*load calculation protocol*) by notice published in the Gazette.
- (2) Without limiting the matters that may be dealt with in a load calculation protocol, a load calculation protocol may do any of the following:
 - (a) set out the means for calculating actual loads and weighted loads, including by the use of monitoring programs, emission factors and other methods,
 - (b) provide for load weighting measures, such as:
 - (i) ceasing or reducing discharges during particularly unfavourable conditions, and
 - (ii) reusing waste water (whether by the licence holder or another person),
 - (c) provide for a reduction in the actual load of a licence holder, for the purpose of the calculation of load-based fees:
 - (i) where any assessable pollutants are transferred, without being discharged, from the licence holder's premises to another person's premises with the consent of the other person, or
 - (ii) where a licence holder receives onto the licence holder's premises naturally occurring loads of assessable pollutants,
 - (d) provide for any reduction in the actual load of a licence holder, for the purpose of the calculation of a load-based fee, arising from the transfer of assessable pollutants to another person's premises to be subject to arrangements for the payment by that other person to the EPA of the amount of any reduction in the load-based fee payable by the licence holder as a result of the transfer,

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008
Environment protection licences
Licence fees

Clause 22
Chapter 2
Part 1

- (e) provide for a reduction in the actual load of a licence holder, for the purpose of the calculation of a load-based fee, by permitting a notional reduction of the amount of an assessable pollutant discharged in a licence fee period by reference to a reduction in the discharge of that pollutant (elsewhere than at the premises where the activity is carried on) as a result of action taken by the licence holder in connection with that activity.

Note. An example of such a reduction may relate to the emission of VOCs by an oil refinery. In addition to action to reduce those emissions from the refinery, action can be taken to produce fuel that will emit less VOCs when in use off the premises of the refinery and this could be taken into account for the purposes of the reduction.

- (3) A load calculation protocol takes effect in relation to an activity from the date specified in the protocol and from that date any previous protocol in relation to the activity ceases to have effect.
- (4) A copy of any load calculation protocol in force under this clause must be available for inspection and purchase by members of the public at the principal office of the EPA. The purchase price may be any reasonable amount that the EPA determines.

22 Determination of load-based fee where insufficient information provided by licence holder (cf 19 POEO (General) Regulation 1998)

- (1) If insufficient information is given to the EPA by a licence holder for the EPA to be able to confirm the correct amount of a load-based fee within 60 days after the final date for payment of the fee, the EPA may determine the amount of the load-based fee having regard to such information, if any, as is available to it.

Note. A licence holder is required to report this information to the EPA in the annual return, required to be furnished as a condition of the licence, in relation to the discharge of assessable pollutants during a licence fee period.

- (2) The amount so determined is taken to be the correct fee amount unless the contrary is established by the person who is liable to pay the fee in any proceedings for the recovery of the fee or other proceedings relating to the fee.

23 Refunds—errors in calculations (cf 24 POEO (General) Regulation 1998)

- (1) If a person, in payment of a load-based fee, pays an amount that is greater than the load-based fee because of an error in calculation of an assessable load, the person is entitled to a refund of the amount overpaid.
- (2) The EPA may grant a refund on the application of the person who paid the fee or on its own initiative.

Public consultation draft

Clause 24	Protection of the Environment Operations (General) Regulation 2008
Chapter 2	Environment protection licences
Part 1	Licence fees

Division 5 Load reduction agreements and fee reductions

24 Definitions (cf 24A POEO (General) Regulation 1998)

In this Division:

annual return, in relation to a licence fee period, means the annual return that is required to be furnished, under the licence concerned, in relation to that period.

reported load means:

- (a) the actual load of an assessable pollutant discharged during a licence fee period that is reported to the EPA by the licence holder in the annual return relating to that period, (unless paragraph (b) applies), or
- (b) if a weighted load of the assessable pollutant is reported to the EPA by the licence holder in the annual return—the weighted load.

25 Effect and term of load reduction agreement

- (1) The effect of a load reduction agreement is that the agreed load under the agreement may be treated (subject to this Division) as the assessable load of the pollutant to which the agreement applies for the purposes of calculating load-based fees for each of the licence fee periods covered by the agreement.
- (2) The maximum term of a load reduction agreement is 4 years.

26 Applications for load reduction agreements (cf 25 POEO (General) Regulation 1998)

- (1) A licence holder or applicant for a licence may apply for a load reduction agreement with the EPA in a form approved by the EPA.
- (2) The EPA may enter into or decline to enter into a load reduction agreement.
- (3) Without limiting the circumstances in which the EPA may decline to enter into a load reduction agreement, it may do so if:
 - (a) the agreement is unlikely to produce a load-based fee reduction of at least \$2,000 over the term of the agreement, or
 - (b) the licence holder or applicant proposes to reduce the discharge under the licence by the end of the agreement only because the licence holder or applicant proposes to close or reduce the scale of operations being conducted at that time.

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008
Environment protection licences
Licence fees

Clause 27
Chapter 2
Part 1

27 Content of load reduction agreements (cf 26 POEO (General) Regulation 1998)

- (1) A load reduction agreement must:
 - (a) specify the agreed load of an assessable pollutant for the purposes of calculating the load-based fee for each licence fee period covered by the agreement, and
 - (b) specify the program proposed to be undertaken in order to attain the agreed load, and
 - (c) set out the circumstances in which amounts are to be paid to the EPA on termination or expiry of the agreement, and
 - (d) include conditions requiring:
 - (i) the licence holder to provide the EPA, with each annual return required under the licence, a report on progress towards attainment of the agreed load during the period to which the annual return relates, and
 - (ii) the licence holder to notify the EPA if the licence holder becomes aware that it is likely that the licence holder will not be able to attain the agreed load.
- (2) A load reduction agreement may also include a condition requiring the licence holder to supply a financial assurance to secure obligations in the event of termination or expiration of the agreement.
- (3) Any such condition must provide for the following matters:
 - (a) the circumstances in which the EPA may make a claim on or realise the financial assurance or part of it,
 - (b) that the calling on and use of a financial assurance does not affect any liability of the licence holder,
 - (c) the effect of failure to provide a financial assurance.
- (4) A financial assurance may be in one or more of the following forms:
 - (a) a bank guarantee,
 - (b) a bond,
 - (c) any other form of security that the EPA considers appropriate and specifies in the load reduction agreement.

28 Amendment of load reduction agreement (cf 25 (5) POEO (General) Regulation 1998)

The provisions of a load reduction agreement may be amended only with the consent of the person who has entered into the agreement (or, in the case of a licence that is transferred, the transferee) and of the EPA.

Public consultation draft

Clause 29	Protection of the Environment Operations (General) Regulation 2008
Chapter 2	Environment protection licences
Part 1	Licence fees

29 Agreement of no effect without condition in licence (cf 26 (1) (e) POEO (General) Regulation 1998)

A load reduction agreement has no effect unless the licence holder's licence is subject to a condition that, on termination or expiration of the agreement, the reported load of an assessable pollutant to which the agreement applies that may be emitted during licence fee periods subsequent to the final licence fee period covered by the agreement is not to exceed:

- (a) the agreed load under the agreement if the reported load for the pollutant for the licence fee period immediately preceding the termination or expiration did not exceed the agreed load, or
- (b) an amount determined by the EPA, after consultation with the licence holder, that is higher than the agreed load if the reported load for that period exceeded the agreed load.

30 Termination of agreement (cf 27 and 28 POEO (General) Regulation 1998)

- (1) Before the end of the term of a load reduction agreement, the licence holder may terminate the agreement in accordance with the agreement.
- (2) If a licence is surrendered by the licence holder or suspended or revoked, the licence holder is taken to have terminated any load reduction agreement relating to licence fees for the licence.
- (3) If, prior to the expiration of a load-based agreement, the licence holder has closed its operations or has otherwise ceased to operate, the licence holder is taken to have terminated the agreement.
- (4) The EPA may terminate a load reduction agreement if:
 - (a) the EPA is of the opinion that the licence holder is unlikely to attain the agreed load before the end of the agreement, or that the licence holder is unlikely to meet the costs of repayment on termination or expiration of the agreement, or both, or
 - (b) the licence holder fails to comply with a condition of the agreement.

31 Amounts payable on termination or expiration (cf 28B POEO (General) Regulation 1998)

- (1) A licence holder who is party to a load reduction agreement that expires or is terminated:
 - (a) is not liable to pay an amount on expiry or termination in respect of an assessable pollutant if the reported load for the immediately preceding licence fee period did not exceed the agreed load for the pollutant under the agreement, or

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008
Environment protection licences
Licence fees

Clause 32
Chapter 2
Part 1

- (b) must pay to the EPA the amounts calculated in accordance with this clause if the reported load for the immediately preceding licence fee period exceeded the agreed load for the pollutant under the agreement.
- (2) The amounts payable on termination or expiration are as follows:
 - (a) for any licence fee period during the agreement in which the reported load exceeded the agreed load, the difference between the fee that would have been payable for that period if the load had been equal to the agreed load under the agreement and the fee that would have been payable for that period but for the agreement,
 - (b) for any licence fee period during the agreement in which the reported load for the pollutant did not exceed the agreed load, no amount is payable,
 - (c) the amount of simple interest on an amount payable under this subclause calculated at the rate of 20% per annum from the date that is 60 days after the end of each licence fee period concerned.
- (3) Subclause (1) does not apply with respect to a load reduction agreement entered into before the commencement of this Regulation.

Note. In relation to load reduction agreements entered into before the commencement of this Regulation, see clause 7 of Schedule 8.

32 When amounts must be paid (cf 28C POEO (General) Regulation 1998)

- (1) An amount payable on termination or expiration of a load reduction agreement must be paid not later than 60 days after a notice requiring payment of the amount is given to the licence holder by the EPA.
- (2) If an amount is not paid (or not fully paid) by the due date for its payment, the amount is to be increased by the amount of simple interest calculated at the rate of 5% per fortnight on the amount unpaid for each whole fortnight that elapses after the due date and before the date of payment.

33 Payment by instalments

- (1) A person by whom an amount is payable on termination or expiration of a load reduction agreement may apply to the EPA for approval to pay the amount by instalments.
- (2) If the EPA grants approval, the amount is to be paid in such amounts and on such dates as the EPA specifies in the approval.
- (3) If an instalment is not paid (or not fully paid) by the due date for its payment, an amount of simple interest (calculated at the rate of 5% per fortnight on the amount of the instalment unpaid for each whole

Public consultation draft

Clause 34	Protection of the Environment Operations (General) Regulation 2008
Chapter 2	Environment protection licences
Part 1	Licence fees

fortnight that elapses after the due date and before the date of payment) is to paid in addition to the instalment.

34 Effect of transfer of licences on load reduction agreements (cf 25A POEO (General) Regulation 1998)

- (1) If a person who has entered into a load reduction agreement transfers the relevant licence, the transferee is, for the purposes of the agreement and this Regulation, taken to be a person who has entered into the agreement with the EPA.
- (2) A transferee may elect, on the transfer of the licence, to terminate the load reduction agreement and this Division applies to that termination.

Division 6 Economic measures with respect to load-based fees

35 Application (cf 36 POEO (General) Regulation 1998)

- (1) This Division applies to a scheme involving economic measures of the kind referred to in this Division that is developed and implemented by the EPA under Part 9.3 of the Act.
- (2) This Division has effect subject to the terms of that scheme.
- (3) This Division does not limit any other scheme that may be developed and implemented under Part 9.3 of the Act.

36 Aggregation of licences for purpose of payment of licence fees—“bubble licence arrangements” (cf 37 POEO (General) Regulation 1998)

- (1) The EPA may, under a scheme to which this Division applies, approve of load-based fees payable for 2 or more licences (whether or not held by the same person) being calculated by aggregating the assessable pollutants discharged in the licence fee periods concerned.
- (2) The EPA may terminate any such scheme at any time, whether because of a failure by the licence holders to pay the load-based fees or otherwise. If it does so, the load-based fees for the relevant licence fee periods are to be re-calculated and become payable for those periods as if the scheme had not been established.

Division 7 Time for payment of licence fees and penalties for late payment

37 Administrative fee—time for payment and penalty for late payment (cf 29 and 30 POEO (General) Regulation 1998)

- (1) The administrative fee for any licence fee period of a licence must be paid not later than 60 days after the beginning of that licence fee period.

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008
Environment protection licences
Licence fees

Clause 38
Chapter 2
Part 1

- (2) If an administrative fee is not paid (or not fully paid) by the due date for its payment, the administrative fee is to be increased by the amount of simple interest calculated at the rate of 5% per fortnight on the amount of the fee unpaid for each whole fortnight that elapses after the due date and before the date of payment.
- (3) The amount of any such increase is prescribed as a penalty for the purposes of section 57 (4) of the Act.
- (4) This clause does not apply to an administrative fee that is required to accompany an application for the issue of a licence.

38 Load-based fee—time for payment and penalty for late payment (cf 31 and 32 (1) and (2) POEO (General) Regulation 1998)

- (1) The load-based fee for any licence fee period must be paid within 90 days after the end of that period.
- (2) If a load-based fee is not paid (or not fully paid) by the due date for its payment, the load-based fee payable is increased by the amount of simple interest calculated at the rate of 5% per fortnight on the amount of the fee unpaid for each whole fortnight that elapses after the due date and before the date of payment.
- (3) Any such increased amount is prescribed as a penalty for the purposes of section 57 (4) of the Act.

39 Refunds and waivers—penalties for late payment (cf 32 (3) POEO (General) Regulation 1998)

- (1) The EPA may refund, or waive the payment of, all or any part of the amount of any increase of a fee payable under this Division if.
 - (a) in the case of an increase in the amount of a load-based fee, the EPA is satisfied that the licence holder was unable to calculate and pay the fee by the due date because of circumstances beyond the control of the licence holder, or
 - (b) in any case, the EPA considers that it is appropriate to do so.
- (2) Subclause (1) (a) does not excuse the licence holder from calculating and paying the load-based fee in respect of some of the pollutants concerned in so far as that calculation is not beyond the control of the licence holder.
- (3) In considering whether to refund or waive all or any part of the amount of any increase of a fee, the EPA is to have regard to the administrative costs incurred by the EPA in connection with the licence.

Public consultation draft

Clause 40 Protection of the Environment Operations (General) Regulation 2008
Chapter 2 Environment protection licences
Part 2 Load-Based Licensing Technical Review Panel

Division 8 Change in activity classification or scale during licence fee period

40 Application of this Division (cf 33 POEO (General) Regulation 1998)

This Division applies if an activity changes to an activity of a different classification or scale under Schedule 1 during the licence fee period.

Note. This clause does not confer authority on a licence holder to alter the classification or scale of an activity.

41 Adjustment of administrative fee (cf 34 POEO (General) Regulation 1998)

- (1) The administrative fee for the licence is to be adjusted proportionately according to the parts of the licence fee period occurring before and after the change in the classification or scale of the activity.
- (2) No adjustment is to be made unless the resultant administrative fee is greater than or less than the unadjusted fee by at least the amount of 2 administrative fee units.
- (3) Any additional amount of any fee already paid or due for payment is to be paid by the licence holder to the EPA not later than 60 days after the change in classification or scale occurs.
- (4) Any reduction in the amount that is in excess of the amount of at least 2 administrative fee units is to be offset against any amount owed by the licence holder to the EPA or otherwise refunded to the licence holder by the EPA.
- (5) The provisions of Division 7 relating to the payment of interest on unpaid administrative fees apply to any additional amount of the fee under this clause.

42 Adjustment of load-based fee (cf 35 POEO (General) Regulation 1998)

The load-based fee for the licence comprises the sum of the load-based fee calculated for the part of the licence fee period occurring before the change in the classification or scale of the activity and the load-based fee calculated for the part of the licence fee period occurring after the change.

Part 2 Load-Based Licensing Technical Review Panel

43 Constitution of Review Panel (cf 40 POEO (General) Regulation 1998)

There is constituted by this Regulation a body corporate to be called the Load-Based Licensing Technical Review Panel.

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008
Environment protection licences
Miscellaneous licensing provisions

Clause 44
Chapter 2
Part 3

44 Members of Review Panel (cf 41 POEO (General) Regulation 1998)

- (1) The Review Panel is to have 7 members appointed by the Minister.
- (2) Of the members:
 - (a) 2 are to be members of staff of the Department nominated by the Director-General, and
 - (b) 5 are to be persons having appropriate scientific or technical qualifications or experience:
 - (i) 2 of whom are to be representatives of industry, and
 - (ii) one of whom is to be a representative of environment groups, and
 - (iii) one of whom is to be a representative of the Director-General, who is nominated by that Director-General and who is not a member of staff of the Department or a representative of industry, environment groups or local government, and
 - (iv) one of whom is to be a representative of local government.

45 Functions of Review Panel (cf 42 POEO (General) Regulation 1998)

- (1) The Review Panel is to advise the EPA about the current or desirable contents of such load calculation protocols as the EPA may refer to the Review Panel.
- (2) The Review Panel may also advise the EPA on such other matters in connection with licences as the EPA may refer to the Review Panel.
- (3) For the purpose of providing any such advice, the Review Panel may seek, receive and consider submissions from interested persons and may gather relevant information from any source.
- (4) In this clause:
load calculation protocol has the same meaning as in Part 1.

46 Membership and procedure of Review Panel (cf 43 POEO (General) Regulation 1998)

Schedule 4 has effect.

Part 3 Miscellaneous licensing provisions

47 Additional matters included in definition of “scheduled development work” for which licence required (cf 43A POEO (General) Regulation 1998)

Pursuant to section 47 (3) of the Act, the following is specified as scheduled development work for the purposes of the Act:

Public consultation draft

Clause 48	Protection of the Environment Operations (General) Regulation 2008
Chapter 2	Environment protection licences
Part 3	Miscellaneous licensing provisions

Work at any premises at which scheduled activities of a class listed in Schedule 1 to the Act are carried on that is designed to enable scheduled activities of a different class listed in that Schedule not authorised by a licence to be carried on at the premises.

48 Commencement of licensing requirement for existing activities not previously required to be licensed (cf 44 POEO (General) Regulation 1998)

The prescribed period for the purposes of section 52 (1) (a) of the Act is 9 months.

49 Exclusion of Part 5 of EPA Act (cf 45 POEO (General) Regulation 1998)

Part 5 of the *Environmental Planning and Assessment Act 1979* does not apply to the issue of an environment protection licence referred to in section 52 (1) of the *Protection of the Environment Operations Act 1997* so long as the licence authorises only the same or substantially the same work or activity, and level of work or activity, as was being carried out immediately before the application for the issue of the licence was made.

50 Matters to be set out in statement of reasons for grant or refusal of licence applications (cf 46 POEO (General) Regulation 1998)

- (1) A statement provided by a regulatory authority, under section 61 or 80 of the Act, of the reasons for the grant or refusal of a licence application must set out the following matters (in addition to any other matters the authority considers appropriate):
 - (a) the significant environmental or other issues that the authority took into account in making its decision on the licence application,
 - (b) any significant environmental outcomes, standards or requirements (if relevant) that the authority considered applicable to the activity the subject of the application and that the authority took into account in making its decision on the application.
- (2) A statement of reasons may set out any of the above matters by reference to information set out in a document that is available to the person requesting the statement of reasons or that is otherwise publicly available.

51 Transfer of licences (cf 48 POEO (General) Regulation 1998)

For the purposes of section 54 (2) (c) of the Act, the fee that must accompany an application for the transfer of a licence is 2 administrative fee units.

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008
Environment protection licences
Miscellaneous licensing provisions

Clause 52
Chapter 2
Part 3

52 Refusal of certain licence applications (cf 49 POEO (General) Regulation 1998)

- (1) An application for the issue, transfer or variation of a licence, or for approval of the surrender of a licence, may be refused by the appropriate regulatory authority:
 - (a) if any fee or other amount due and payable under the Act or this Regulation in relation to the application or licence is unpaid, or
 - (b) if the applicant has previously defaulted in the payment of any such fee or other amount in respect of that or any other licence and the default continues.
- (2) This clause does not limit any other grounds on which the application may be refused.

53 Other relevant legislation (cf 49A POEO (General) Regulation 1998)

Pursuant to section 83 (5) of the Act, the following repealed Acts, provisions of Acts and Regulations are declared to be ***other relevant legislation*** for the purposes of section 83:

- (a) *Clean Air Act 1961*,
- (b) *Clean Waters Act 1970*,
- (c) *Environmental Offences and Penalties Act 1989*,
- (d) *Noise Control Act 1975*,
- (e) *Pollution Control Act 1970*,
- (f) the provisions of the *Ozone Protection Act 1989* omitted by Schedule 4.14 to the Act,
- (g) the provisions of the *Waste Minimisation and Management Act 1995* omitted by Schedule 4.19 to the Act,
- (h) the *Pesticides Act 1978*,
- (i) regulations made under the above Acts or provisions.

54 Application of payments (cf 50 POEO (General) Regulation 1998)

If a person who makes a payment under this Chapter to the EPA does not identify the nature or purpose of the payment, the EPA may apply the payment towards any liability of the person under this Chapter in such manner as it thinks fit.

55 Preservation of records (cf 51 POEO (General) Regulation 1998)

- (1) A licence holder must retain all records used by the licence holder to calculate the amount of a licence fee under Part 1 of this Chapter for a period of not less than 4 years from the date on which the fee was paid or payable, whichever is the later.

Public consultation draft

Clause 55 Protection of the Environment Operations (General) Regulation 2008
Chapter 2 Environment protection licences
Part 3 Miscellaneous licensing provisions

Maximum penalty:

- (a) in the case of a corporation—200 penalty units, or
 - (b) in the case of an individual—200 penalty units.
- (2) A licence holder is liable to a penalty under subclause (1) in addition to the licence fee.

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008
Water pollution
Exemptions

Clause 56
Chapter 3
Part 1

Chapter 3 Water pollution

Part 1 Exemptions

56 Exemption from water pollution offence for pollutants discharged from Victorian premises into River Murray (cf 54 POEO (General) Regulation 1998)

- (1) Section 120 of the Act does not apply to a person who, from premises in Victoria, pollutes or causes or permits the pollution of the waters of the River Murray.
- (2) Subclause (1) applies only in relation to conduct that is authorised by a licence in force under the *Environment Protection Act 1970* of Victoria.
- (3) The EPA may, by order in writing served on any such person, declare that the exemption under this clause no longer applies to the person in respect of pollution from those premises.
- (4) While such an order is in force, the exemption under this clause no longer applies to the person in respect of pollution from those premises.

57 Exemption from water pollution offence for pollutants discharged into sewer (cf 55 POEO (General) Regulation 1998)

- (1) Section 120 of the Act does not apply to the discharge of pollutants into a sewer.
- (2) The exemption under this clause does not apply:
 - (a) in the case of a sewer that is within the area of operations of a sewage authority, unless the discharge of the pollutants into the sewer has the approval of that authority, or
 - (b) in any other case, unless the discharge of the pollutants into the sewer has the lawful approval of the person having the ownership or control of the sewer.
- (3) In this clause, *sewage authority* means:
 - (a) the Sydney Water Corporation Limited or the Hunter Water Corporation Limited, or
 - (b) a water supply authority constituted under the *Water Management Act 2000*, being an authority exercising sewerage functions under that Act, or
 - (c) a council or county council exercising sewerage functions under Division 2 of Part 3 of Chapter 6 of the *Local Government Act 1993*.

Public consultation draft

Clause 58 Protection of the Environment Operations (General) Regulation 2008
Chapter 3 Water pollution
Part 1 Exemptions

- 58 Exemption from water pollution offence in relation to certified on-board sewage treatment systems** (cf 55A POEO (General) Regulation 1998)
- (1) Section 120 of the Act does not apply to a discharge of treated sewage from a certified on-board sewage treatment system installed on a vessel if:
- (a) the system is installed and maintained in accordance with Part 7 of the *Marine Pollution Regulation 2006*, and
 - (b) the discharge occurs in navigable waters other than waters referred to in clause 27 (1) of that Regulation, and
 - (c) at the time of the discharge, the vessel is being operated in accordance with any plan of management approved for the vessel under clause 30 of that Regulation.
- (2) In this clause, *certified on-board sewage treatment system*, *navigable waters* and *treated sewage* have the same meanings as in Part 7 of the *Marine Pollution Regulation 2006*.
- 59 Exemption from water pollution offence for pollutants arising from operation of engines propelling vessels** (cf 56 POEO (General) Regulation 1998)
- (1) Section 120 of the Act does not apply to the operation of an engine propelling a vessel.
- (2) The exemption under this clause does not apply:
- (a) if the engine is operated to dredge sediments, or
 - (b) if the engine has been modified to discharge bilge water as it operates, or
 - (c) if the engine has not been properly maintained so as to minimise pollution.
- 60 Exemption from water pollution offence in relation to cold water releases** (cf 56A POEO (General) Regulation 1998)
- Section 120 of the Act does not apply to the release of water that is more than 2 degrees Celsius colder than the water into which it is discharged if the water is released:
- (a) from a water supply work pursuant to an approval under the *Water Management Act 2000* that contains one or more conditions relating to the work of a type specified in section 100 (3) of that Act, or
 - (b) from Jindabyne Dam or Tantangara Dam and the release is in accordance with all conditions of the Snowy Water licence (within the meaning of the *Snowy Hydro Corporatisation Act 1997*) that relate to cold water releases.

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008
Water pollution
Other

Clause 61
Chapter 3
Part 2

Part 2 Other

61 Prescribed matter for the definition of “water pollution” in Act (cf 52 POEO (General) Regulation 1998)

The matter described in Schedule 5 is prescribed as matter for the purposes of paragraph (c) of the definition of *water pollution* in the Dictionary to the Act.

Note. The definition of *water pollution* for the purposes of the Act includes the placing etc into waters of any matter of a nature, description or class prescribed by the regulations or of matter that does not comply with a standard prescribed by the regulations in respect of that matter.

62 Methodology for testing for matter in waters (cf 53 POEO (General) Regulation 1998)

- (1) This clause applies if a person is required by or under the environment protection legislation, or a licence or notice under that legislation, to test for the presence or concentration of matter in any waters.
- (2) The test methodology is to be:
 - (a) the methodology specified in the requirement for testing, or
 - (b) if no such methodology is specified, the methodology prescribed in the Approved Methods Publication in relation to that matter.
- (3) The procedural details of the test methodology may be varied by the person conducting the test so long as the person can establish that the variation is not such as can affect the results of the test.
- (4) This clause does not apply to a person who is acting in the administration or execution of the environment protection legislation.

63 Emergency prohibition or regulation of aquatic activities—safety of drinking water (cf 57 POEO (General) Regulation 1998)

- (1) The purpose of this clause is to enable the EPA to prohibit or regulate aquatic activities that threaten the safety of drinking water that is part of a public water supply if urgent action is required and other regulatory authorities are not authorised, or have not acted, to protect the safety of that drinking water.
- (2) For that purpose, the EPA may, by order published in the Gazette, prohibit or regulate specified aquatic activities in a specified area of water.
- (3) An order under this clause has effect for the period (not exceeding 3 months) specified in the order, unless the order is sooner revoked by a further order of the EPA published in the Gazette.
- (4) The EPA is to take such measures as it considers appropriate to bring a notice under this clause to the attention of the public, including

Public consultation draft

Clause 63 Protection of the Environment Operations (General) Regulation 2008
Chapter 3 Water pollution
Part 2 Other

publication of the notice in newspapers circulating in the area and notices erected near the area of water concerned.

- (5) A person who contravenes an order under this section is guilty of an offence.
Maximum penalty: 5 penalty units.
- (6) In this section, *aquatic activities* include swimming, bathing, boating, waterskiing or fishing.

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008
National Pollutant Inventory
Preliminary

Clause 64
Chapter 4
Part 1

Chapter 4 National Pollutant Inventory

Part 1 Preliminary

64 Object of Chapter (cf 57A POEO (General) Regulation 1998)

The object of this Chapter is to give effect to, and enforce compliance with, the *National Environment Protection (National Pollutant Inventory) Measure 1998* made under Division 2 of Part 3 of the *National Environment Protection Council Act 1994* of the Commonwealth, as in force on 15 August 2007.

65 Interpretation (cf 57B POEO (General) Regulation 1998)

(1) In this Chapter:

NPIM means the *National Environment Protection (National Pollutant Inventory) Measure 1998* (made under section 14 of the *National Environment Protection Council Act 1994* of the Commonwealth) as in force on 15 August 2007.

occupier means an occupier, within the meaning of the NPIM, to whom this Chapter applies.

reporting threshold for a substance means the reporting threshold for the substance specified in the NPIM.

(2) Terms used in this Chapter that are defined in the NPIM have the same meanings as they have in the NPIM (except as otherwise provided in this Chapter).

66 Occupiers to whom this Chapter applies (cf 57C POEO (General) Regulation 1998)

This Chapter applies to an occupier of a reporting facility if the ANZSIC code for one or more activities undertaken at the facility:

- (a) has been agreed between the participating jurisdictions referred to in the NPIM, and
- (b) has been included by the Commonwealth on a published list.

Part 2 Reporting and record keeping requirements

67 Collection of data from reporting facilities (cf 57D POEO (General) Regulation 1998)

(1) Subject to Part 4, the occupier of each facility is to provide the EPA with the following information if a reporting threshold for a substance is exceeded in a reporting period:

- (a) supporting data for the facility,

Public consultation draft

Clause 68 Protection of the Environment Operations (General) Regulation 2008
Chapter 4 National Pollutant Inventory
Part 2 Reporting and record keeping requirements

- (b) substance identity information and emission data, determined in accordance with Part 3, for each substance for which the reporting threshold is exceeded in the period,
 - (c) the type and mass of fuel or waste burned in the reporting period,
 - (d) any other information that may be required to assess the integrity of the emission data,
 - (e) substance identity information and mandatory transfer data for each substance for which a Category 1, Category 1b or Category 3 reporting threshold is exceeded in the period,
 - (f) any information that may be required to assess the integrity of the mandatory transfer data,
 - (g) a statement, signed by the occupier or a person authorised by the occupier for that purpose, that the occupier has exercised due diligence in gathering and providing the information referred to in paragraphs (a)–(f).
- (2) An occupier:
- (a) must provide the information referred to in subclause (1) to the EPA within 3 months after the end of the reporting period to which the information relates, and
 - (b) must not provide any information to the EPA that is false or misleading in a material particular.

Maximum penalty (subclause (2)): 40 penalty units (in the case of a corporation) or 20 penalty units (in the case of an individual).

68 Occupier must keep data for period of 4 years (cf 57E POEO (General) Regulation 1998)

- (1) The occupier of a reporting facility must keep the data used in deciding if the reporting threshold for a substance is exceeded in the reporting period for the occupier's facility for 4 years after the reporting period ends.

Maximum penalty: 40 penalty units (in the case of a corporation) or 20 penalty units (in the case of an individual).

- (2) The occupier must keep the data used in calculating emission or transfer data given to the EPA for 4 years after the emission or transfer data is required to be given.

Maximum penalty: 40 penalty units (in the case of a corporation) or 20 penalty units (in the case of an individual).

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008
National Pollutant Inventory
Estimation techniques

Clause 69
Chapter 4
Part 3

Part 3 Estimation techniques

69 Emission and transfer estimation techniques (cf 57F POEO (General) Regulation 1998)

In estimating emission data and mandatory transfer data for the purposes of providing information under Part 2, each occupier of a reporting facility must use one of the following estimation techniques:

- (a) the estimation technique set out in any industry reporting materials applying to the facility,
- (b) any of the methods provided in the load calculation protocol (within the meaning of Part 1 of Chapter 2) for the relevant activity,
- (c) another estimation technique approved by the EPA for the facility under this Part.

70 Application for approval of estimation technique (cf 57G POEO (General) Regulation 1998)

- (1) The occupier of a facility may apply to the EPA for approval of an estimation technique for emission or mandatory transfer data.
- (2) The application must be in writing, setting out the technique for which approval is sought and giving the information necessary to enable the EPA to determine the application.
- (3) The EPA may, by written notice given to the occupier, ask the occupier to give to the EPA, in the reasonable period specified in the notice, further relevant information to enable the EPA to determine the application.

71 Determination of application for approval estimation technique (cf 57H POEO (General) Regulation 1998)

- (1) The EPA may determine the application by approving the estimation technique (subject to such modifications as the EPA considers appropriate) or refuse to approve the technique.
- (2) In deciding whether to approve the technique the EPA must have regard to the accuracy of the technique compared with the accuracy of estimation techniques in the relevant industry reporting materials for the reporting facility concerned.
- (3) Without limiting the circumstances in which the EPA may refuse to approve the technique, the EPA may do so if the EPA has given the occupier a notice under clause 70 (3) asking for further information and the occupier does not comply with the request in the period specified in the notice.

Public consultation draft

Clause 72 Protection of the Environment Operations (General) Regulation 2008
Chapter 4 National Pollutant Inventory
Part 4 Exemptions from reporting requirements

- (4) On making a determination under this clause, the EPA must give the occupier written notice of the determination.
- (5) If the EPA approves the technique subject to any modification or refuses to approve the technique, the notice must specify the reasons for any such modification or refusal.
- (6) The EPA is taken to have refused to approve the technique if the EPA has not given the occupier written notice of the decision:
 - (a) except as provided by paragraph (b), within 60 days after the application has been made, or
 - (b) in a case where the occupier has given the EPA further information in response to a request under clause 70 (3)—within 60 days after the EPA has received the further information.

Part 4 Exemptions from reporting requirements

72 Exemption on ground of national security (cf 57I POEO (General) Regulation 1998)

- (1) This clause applies if the occupier of a facility gives the EPA written evidence that:
 - (a) the occupier has made a claim to the Commonwealth under the NPIM that information required to be given by the occupier under Part 2 should be treated as confidential on the grounds of national security, and
 - (b) the claim:
 - (i) has been granted, or
 - (ii) has not been assessed within the period by which the occupier is required to provide the information to the EPA under that clause.
- (2) Subject to subclause (3), the occupier is exempted from giving the information to the EPA.
- (3) If the exemption is given by reason of a claim referred to in subclause (1) (b) (ii) and the Commonwealth refuses the claim after the period within which the occupier is required to provide the information to the EPA, the occupier must provide the information to the EPA within 60 days after receiving notice of the Commonwealth's decision to refuse the claim.

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008
National Pollutant Inventory
Exemptions from reporting requirements

Clause 73
Chapter 4
Part 4

73 Exemption on ground of commercial confidentiality (cf 57J and 57K POEO (General) Regulation 1998)

- (1) The occupier of a facility may, by written notice given to the EPA, claim information required to be provided by the occupier under Part 2 should be treated as confidential on the grounds of commercial confidentiality.
- (2) The notice must contain the information necessary to enable the EPA to determine the claim.
- (3) The EPA may, by written notice given to the occupier, ask the occupier to give to the EPA, within a reasonable period specified in the notice, further relevant information to enable the EPA to determine the claim.
- (4) The EPA may grant the claim only if the EPA reasonably believes that a document referring to the information would be an exempt document under clause 7 or 8 of Schedule 1 to the *Freedom of Information Act 1989*.
- (5) If the EPA grants the claim, the occupier is exempted from giving the information to the EPA.
- (6) The EPA may refuse the claim if the EPA has given the occupier a notice under subclause (3) asking for further information and the occupier does not comply with the request in the period specified in the notice. This subclause does not limit the grounds on which the EPA may refuse the claim.
- (7) The EPA must give the occupier written notice of the EPA's determination of the claim.
- (8) If the EPA refuses the claim, the notice must specify the reasons for the refusal.
- (9) The EPA is taken to have refused the claim if the EPA has not given the occupier written notice of the decision:
 - (a) except as provided by paragraph (b), within 60 days after the notice under subclause (1) has been received by the EPA, or
 - (b) in a case where the occupier has given the EPA further information in response to a request under clause 70 (3)—within 60 days after the EPA has received the further information.

Public consultation draft

Clause 74	Protection of the Environment Operations (General) Regulation 2008
Chapter 5	Vehicle testing and inspection
Part 4	Exemptions from reporting requirements

Chapter 5 Vehicle testing and inspection

74 Definitions (cf 70 POEO (General) Regulation 1998)

In this Chapter:

approved inspection station means premises that are approved under this Chapter to be used for the purpose of carrying out tests or inspections.

approved mechanic means an individual who is approved under this Chapter to carry out tests or inspections.

proprietor, in relation to premises, means a person who:

- (a) carries on or proposes to carry on a business at the premises, or
- (b) is the occupier of the premises.

tests or inspections means tests or inspections of motor vehicles required to be carried out in accordance with a notice given for the purposes of section 207 (2) (c) of the Act.

vehicle inspection report means a vehicle inspection report referred to in clause 78.

75 Approved mechanics (cf 72 POEO (General) Regulation 1998)

- (1) An individual may apply to the EPA for an approval to carry out tests or inspections.
- (2) The application must:
 - (a) be made in the manner and form approved by the EPA, and
 - (b) be supported by any information required by the EPA.
- (3) In order to determine the suitability of an applicant, the EPA may require the applicant to furnish to the EPA, within a specified time, any further particulars that the EPA considers necessary.
- (4) The EPA is to determine an application under this clause by granting or refusing to grant the application.
- (5) The EPA may refuse to grant the application if, in its opinion, the individual is not a fit and proper person to carry out tests or inspections. This subclause does not limit the grounds on which the EPA may refuse to grant the application.
- (6) The EPA must give notice in writing of the determination of the application to the applicant, including, if the application is granted, notice of the date from which the approval takes effect and any conditions to which the approval is subject.
- (7) An approval under this clause:

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008
Vehicle testing and inspection
Exemptions from reporting requirements

Clause 76
Chapter 5
Part 4

- (a) applies to tests or inspections generally or to tests or inspections of the class or classes of motor vehicles specified in the approval, and
 - (b) remains in force until it is surrendered, suspended or revoked, and
 - (c) is to be given in the manner and in the form approved by the EPA, and
 - (d) may be given unconditionally or subject to such conditions as the EPA considers appropriate.
- (8) A person must not hold himself or herself out as a person authorised to carry out tests or inspections, or issue a vehicle inspection report in relation to any such test or inspection, unless the person is an approved mechanic.
- Maximum penalty:
- (a) in the case of a corporation—200 penalty units, or
 - (b) in the case of an individual—100 penalty units.

76 Approved inspection stations (cf 73 POEO (General) Regulation 1998)

- (1) A proprietor of premises may apply to the EPA for an approval of the premises to be used for the purpose of carrying out tests or inspections.
- (2) An application under this clause must:
 - (a) be made in the manner and form approved by the EPA, and
 - (b) be supported by any information required by the EPA.
- (3) In order to determine the suitability of an applicant for an approval under this clause, the EPA may require the applicant to furnish to the EPA, within a specified time, any further particulars that the EPA considers necessary.
- (4) The EPA is to determine an application under this clause by granting or refusing to grant the application.
- (5) The EPA may refuse to grant the application:
 - (a) if, in its opinion, the premises the subject of the application or the equipment on the premises are not suitable for the purpose of carrying out tests or inspections, or
 - (b) if, in its opinion, the applicant is not a fit and proper person to carry out the responsibilities associated with using the premises for that purpose, or
 - (c) for any other reason the EPA considers appropriate.

Public consultation draft

Clause 77 Protection of the Environment Operations (General) Regulation 2008
Chapter 5 Vehicle testing and inspection
Part 4 Exemptions from reporting requirements

- (6) The EPA must give notice in writing of the determination of the application for an approval under this clause to the applicant, including, if the application is granted, notice of the date from which the approval takes effect and any conditions to which the approval is subject.
- (7) An approval under this clause:
 - (a) applies to tests or inspections generally or to tests or inspections of the class or classes of motor vehicles specified in the approval, and
 - (b) remains in force until it is surrendered, suspended or revoked, and
 - (c) is to be given in the manner and in the form approved by the EPA, and
 - (d) may be given unconditionally or subject to such conditions as the EPA considers appropriate.
- (8) A proprietor of premises must not allow the premises to be used for the purpose of carrying out a test or inspection unless:
 - (a) the premises are an approved inspection station, and
 - (b) the test or inspection of the vehicle is a test or inspection of a vehicle to which the approval applies, and
 - (c) the test or inspection is carried out by an approved mechanic.Maximum penalty (subclause (8)):
 - (a) in the case of a corporation—200 penalty units, or
 - (b) in the case of an individual—100 penalty units.

77 Maximum fee for test or inspection (cf 74 POEO (General) Regulation 1998)

The maximum fee that may be charged for the carrying out of a test or inspection is:

- (a) in the case of a motorcycle—\$40.15, or
- (b) in any other case—\$60.50.

78 Vehicle inspection reports (cf 75 POEO (General) Regulation 1998)

- (1) An approved mechanic who carries out a test or inspection must, in accordance with conditions of the mechanic's approval, complete a vehicle inspection report in the form approved by the EPA.
- (2) Copies of a completed vehicle inspection report must be given to:
 - (a) the owner of the relevant motor vehicle or a person acting on behalf of the owner, and
 - (b) the EPA,

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008
Vehicle testing and inspection
Exemptions from reporting requirements

Clause 79
Chapter 5
Part 4

in accordance with the conditions of any approval under this Chapter.

- (3) A person must not issue a vehicle inspection report in relation to a test or inspection if the person knows, or ought reasonably to suspect, that the report is false or misleading in a material particular.

Maximum penalty:

- (a) in the case of a corporation—200 penalty units, or
- (b) in the case of an individual—100 penalty units.

- (4) The holder of an approval for an approved inspection station who allows a vehicle inspection report to be issued in relation to a test or inspection that is carried out at the station is guilty of an offence if the person knows, or ought reasonably to suspect, that the report is false or misleading in a material particular.

Maximum penalty (subclause (4)):

- (a) in the case of a corporation—200 penalty units, or
- (b) in the case of an individual—100 penalty units.

79 Variation of approvals under Chapter (cf 76 POEO (General) Regulation 1998)

- (1) The EPA may, by notice in writing, vary an approval given under this Chapter (including the conditions of an approval).
- (2) A variation includes the attaching of a condition to an approval (whether or not any conditions have already been attached), the substitution of a condition, the omission of a condition or the amendment of a condition.
- (3) An approval may be varied on application in writing to the EPA by the holder of the approval or on the initiative of the EPA.
- (4) An approval may be varied at any time during its currency.
- (5) A variation operates from the date of the EPA's decision to grant or issue the variation or another date specified by the EPA in the notice.

80 Surrender of approvals under Chapter (cf 77 POEO (General) Regulation 1998)

- (1) The holder of an approval under this Chapter may surrender the approval by giving notice in writing to the EPA.
- (2) The surrender of an approval under this clause does not take effect until 28 days, or some other period approved by the EPA, after the notice has been given to the EPA.

Public consultation draft

Clause 81 Protection of the Environment Operations (General) Regulation 2008
Chapter 5 Vehicle testing and inspection
Part 4 Exemptions from reporting requirements

81 Suspension or revocation of approvals under Chapter (cf 78 POEO
(General) Regulation 1998)

- (1) The EPA may, by notice in writing, suspend or revoke an approval under this Chapter if:
 - (a) the holder has contravened a provision of this Chapter, or
 - (b) the holder or the premises concerned no longer satisfies the relevant requirements for approval under this Chapter, or
 - (c) the holder has failed to comply with a condition to which the approval is subject, or
 - (d) the holder provided false or misleading information in the application for approval, or
 - (e) the EPA is, for any reason, of the opinion that the holder is not a fit and proper person to continue to hold the approval.
- (2) A suspension of an approval under this clause may be for a specified period or until further notice in writing by the EPA.
- (3) A suspension or revocation of an approval under this clause operates from the day the notice of the suspension or revocation is given to the holder of the approval or from such later day as the notice specifies.
- (4) The EPA must not suspend or revoke an approval unless before doing so:
 - (a) it has given notice to the holder of the approval that it intends to do so, and
 - (b) it has specified in that notice the reasons for its intention to do so, and
 - (c) it has given the holder a reasonable opportunity to make submissions in relation to the proposed suspension or revocation, and
 - (d) it has taken into consideration any such submissions by the holder.
- (5) An approval may be revoked under this clause during the currency of a suspension.

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008
Penalty notices
Exemptions from reporting requirements

Clause 82
Chapter 6
Part 4

Chapter 6 Penalty notices (POEO (Penalty Notices) Regulation 2004)

82 Penalty notice offences

- (1) Each offence created by a provision specified in Column 1 of Schedule 6 is prescribed as a penalty notice offence for the purposes of Division 3 of Part 8.2 of the Act.
- (2) If the reference to a provision in Column 1 of Schedule 6 is qualified by words that restrict its operation to specified kinds of offences or to offences committed in specified circumstances, an offence created by the provision is a prescribed offence only if it is an offence of a kind so specified or is committed in the circumstances so specified.

83 Enforcement officers

- (1) Persons of a class specified in Column 2 of Schedule 6 are, subject to this clause and section 226 of the Act, prescribed as enforcement officers in relation to the penalty notice offences concerned.
- (2) A member of staff of an organisation (being a local authority, Department, statutory authority or university that is referred to in subclause (6)) is an enforcement officer only if the organisation has duly authorised that person to exercise the functions of an enforcement officer under Division 3 of Part 8.2 of the Act.
- (3) A member of staff of a local council is an enforcement officer in respect of another local council only if that other local council has also duly authorised that person to exercise the functions of an enforcement officer under Division 3 of Part 8.2 of the Act.
- (4) A person is not an enforcement officer in relation to a penalty notice offence alleged to have been committed by:
 - (a) the organisation that has authorised the person as an enforcement officer, or
 - (b) a member of staff of that organisation.
- (5) A number included in Column 2 of Schedule 6 is a reference to persons of a class identified by that number.
- (6) The classes of persons in Schedule 6 are as follows:
 - (a) class 1—member of staff of:
 - (i) a local authority, or
 - (ii) the Department in relation to a penalty notice offence alleged to have been committed in Kosciuszko National Park,
 - (b) class 2—a member of staff of the Department,

Public consultation draft

Clause 83	Protection of the Environment Operations (General) Regulation 2008
Chapter 6	Penalty notices
Part 4	Exemptions from reporting requirements

- (c) class 3—a member of staff of the Department who is employed within a group of staff that is designated by the Director-General as comprising EPA regulatory staff,
- (d) class 4—a member of staff of a Port Corporation within the meaning of the *Ports and Maritime Administration Act 1995*,
- (e) class 5—a police officer,
- (f) class 6—a member of staff of the Sydney Water Corporation, the Hunter Water Corporation or a water supply authority within the meaning of the *Water Management Act 2000* (other than a water supply authority that is also a local council),
- (g) class 7—a member of staff of the Department of Primary Industries,
- (h) class 8—a member of staff of the Office of the Sydney Harbour Foreshore Authority,
- (i) class 9—a member of staff of:
 - (i) the Department of Arts, Sport and Recreation in relation to a penalty notice offence alleged to have been committed on land vested in the Centennial Park and Moore Park Trust or in the Parramatta Park Trust, or
 - (ii) the Parramatta Stadium Trust Division of the Government Service in relation to a penalty notice offence alleged to have been committed on land vested in the Parramatta Park Trust,
- (j) class 10—a member of staff of an Australian university within the meaning of the *Higher Education Act 2001*,
- (k) class 11—a member of staff of the Office of the Sydney Olympic Park Authority or the Western Sydney Parklands Trust (within the meaning of the *Western Sydney Parklands Act 2006*),
- (l) class 12—a marine park ranger within the meaning of the *Marine Parks Act 1997*,
- (m) class 13—a member of staff of the Sydney Catchment Authority Division of the Government Service,
- (n) class 14—a member of staff of the Maritime Authority of NSW Division of the Government Service.

Note. Section 4K (1) of the *Public Sector Employment and Management Act 2002* provides that a reference to a member of staff of a statutory corporation is to be read as including a reference to a member of staff of a Division of the Government Service comprising the group of staff who are employed under Chapter 1A of that Act to enable the statutory corporation to exercise its functions and to any other person whose services the statutory corporation makes use of (whether by way of secondment or otherwise).

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008
Penalty notices
Exemptions from reporting requirements

Clause 84
Chapter 6
Part 4

- (7) A reference in this clause to a member of staff of an organisation includes a reference to a person who:
- (a) is a member of staff of a body corporate (whether or not the body corporate is a public authority), and
 - (b) acts under the direction and control of the organisation in the provision of services that are the subject of an arrangement between the body corporate and the organisation.

84 Amounts of penalty payable

The prescribed penalty payable under a penalty notice in respect of a penalty notice offence is:

- (a) the amount specified in Column 3 of Schedule 6, or
- (b) if the person alleged to have committed the offence is a corporation, and if a greater amount is specified in Column 4 of Schedule 6, the amount specified in Column 4.

85 Service of penalty notices on owners of vehicles or vessels

- (1) This clause applies to offences under the Act or the regulations that apply specifically to the owner of a vehicle or vessel.
- (2) A penalty notice may, if it relates to an offence to which this clause applies, be served by leaving it on, or attaching it to, the vehicle or vessel.
- (3) A penalty notice may, if it relates to an offence to which this clause applies, be addressed to the owner of a vehicle or vessel without naming the owner or stating his or her address.

Public consultation draft

Clause 86	Protection of the Environment Operations (General) Regulation 2008
Chapter 7	Miscellaneous
Part 1	Appropriate regulatory authority

Chapter 7 Miscellaneous

Part 1 Appropriate regulatory authority

86 Marine Parks Authority (cf 64 POEO (General) Regulation 1998)

- (1) The Marine Parks Authority is declared, under section 6 (3) of the Act, to be the appropriate regulatory authority for non-scheduled activities in marine parks, except in relation to the following:
 - (a) the exercise of functions under Chapter 3 of the Act,
 - (b) premises defined in an environment protection licence as the premises to which the licence applies, and all activities carried on at those premises,
 - (c) activities carried on by the State or a public authority, whether at premises occupied by the State or a public authority or otherwise,
 - (d) a matter for which a public authority (other than the Marine Parks Authority or a local authority) is declared under section 6 (3) of the Act to be the appropriate regulatory authority.

- (2) In this clause:

marine park means a marine park within the meaning of the *Marine Parks Act 1997*, but does not include any part of a marine park:

- (a) that is on the landward side of the mean high water mark of the waters within the marine park, and
- (b) that is within an area within the meaning of the *Local Government Act 1993*.

Marine Parks Authority means the Marine Parks Authority constituted under the *Marine Parks Act 1997*.

87 Maritime Authority (cf 64A POEO (General) Regulation 1998)

- (1) The Maritime Authority is declared, under section 6 (3) of the Act, to be the appropriate regulatory authority for non-scheduled activities involving a non-pilotage vessel in navigable waters, except in relation to the following:
 - (a) the exercise of functions under Chapter 3 of the Act,
 - (b) premises defined in an environment protection licence as the premises to which the licence applies, and all activities carried on at those premises,
 - (c) activities carried on by the State or a public authority, whether at premises occupied by the State or a public authority or otherwise,

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008
Miscellaneous
Appropriate regulatory authority

Clause 88
Chapter 7
Part 1

- (d) a matter for which a public authority (other than a local authority or the Maritime Authority) is declared under section 6 (3) of the Act to be the appropriate regulatory authority,
- (e) non-scheduled activities in a marine park (within the meaning of clause 86).

(2) For the purposes of this clause:

Maritime Authority means the Maritime Authority of NSW constituted under Part 4 of the *Ports and Maritime Administration Act 1995*.

non-pilotage vessel means any vessel other than:

- (a) a vessel for which pilotage is compulsory under Part 6 of the *Ports and Maritime Administration Act 1995* in any port, and
- (b) a vessel for which pilotage would be compulsory under Part 6 of the *Ports and Maritime Administration Act 1995* in any port if the master did not hold a pilotage exemption certificate under the *Marine Pilotage Licensing Act 1971*.

88 Director-General of Department of Environment and Climate Change (cf 64B POEO (General) Regulation 1998)

The Director-General is declared, under section 6 (3) of the Act, to be the appropriate regulatory authority for non-scheduled activities in Kosciuszko National Park, except in relation to the following:

- (a) the exercise of functions under Chapter 3 of the Act,
- (b) premises defined in an environment protection licence as the premises to which the licence applies, and all activities carried on at those premises,
- (c) activities carried on by the State or a public authority, whether at premises occupied by the State or a public authority or otherwise,
- (d) a matter for which a public authority (other than a local authority or the Director-General) is declared under section 6 (3) of the Act to be the appropriate regulatory authority,
- (e) non-scheduled activities involving a non-pilotage vessel (within the meaning of clause 87) in navigable waters.

89 Burning of bio-material in electricity generating works (cf 57R POEO (General) Regulation 1998)

The EPA is declared, under section 6 (3) of the Act, to be the appropriate regulatory authority for any matter arising under Part 3 of this Chapter.

Public consultation draft

Clause 90	Protection of the Environment Operations (General) Regulation 2008
Chapter 7	Miscellaneous
Part 1	Appropriate regulatory authority

90 Inner West Light Rail (cf 66 POEO (General) Regulation 1998)

- (1) The EPA is declared, under section 6 (3) of the Act, to be the appropriate regulatory authority for non-scheduled activities on the route of a light rail system declared under section 104N (2) of the *Transport Administration Act 1988*.
- (2) This clause does not apply to buildings or other structures that were taken to be included in the route of a light rail system by clause 13 (1) (b) of the *Transport Administration (General) Regulation 2000*.

91 Outdoor entertainment activities (cf 67 POEO (General) Regulation 1998)

- (1) The EPA is declared, under section 6 (3) of the Act, to be the appropriate regulatory authority for outdoor entertainment activities involving 200 persons or more that are carried on at any of the following premises:
 - (a) the Trust lands within the meaning of the *Royal Botanic Gardens and Domain Trust Act 1980*,
 - (b) the Trust lands within the meaning of the *Centennial Park and Moore Park Trust Act 1983*,
 - (c) the Darling Harbour area within the meaning of Part 3 of the *Sydney Harbour Foreshore Authority Regulation 2006*,
 - (d) the trust lands within the meaning of *Parramatta Stadium Trust Act 1988*,
 - (e) the trust lands within the meaning of *Sydney Cricket and Sports Ground Act 1978*,
 - (f) the Sydney Olympic Park Development Area within the meaning of the *Sydney Olympic Park Authority Act 2001*,
 - (g) the Opera House within the meaning of the *Sydney Opera House Trust Act 1961*.
- (2) In this clause, ***outdoor entertainment activities*** means any of the following activities, but only if the activity is carried on outdoors (including if it is carried on under or within a tent, marquee or similar structure) and sound amplification equipment is used as part of the activity:
 - (a) concerts,
 - (b) festivals,
 - (c) cinematic and theatrical events,
 - (d) sporting events,
 - (e) a rehearsal, sound check or other preparation for an activity listed in paragraphs (a)–(d).

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008
Miscellaneous
Appropriate regulatory authority

Clause 92
Chapter 7
Part 1

92 Non-scheduled activities for which EPA is appropriate regulatory authority

- (1) This clause applies to the following non-scheduled activities:
- (a) the mixing of crushed or ground rock with bituminous materials, but only if that activity:
 - (i) has a capacity to produce more than 150 tonnes of bituminous mixture per day or 30,000 tonnes of bituminous mixture per year, and
 - (ii) is carried out otherwise than on or adjacent to a construction site by means of temporary works used to provide bituminous mixture for that site (that is, works used for periods totalling no more than 12 months),
 - (b) the production of pre-mixed concrete or concrete products (for example, concrete batching plants) having a capacity to produce more than 30,000 tonnes per year of concrete or concrete products,
 - (c) activities (other than mobile waste processing) that include any one or more of the scheduled activities described in Part 1 of Schedule 1 to the Act and that is carried on by means of mobile plant,
 - (d) the transport of hazardous and other waste of more than 200 kilograms per load (other than the transport of waste to which clause 48 of Schedule 1 to the Act applies or excluded waste),
 - (e) the transport of waste tyres of more than 2 tonnes per load (other than the transport of waste to which clause 48 of Schedule 1 to the Act applies or excluded waste).

Note. These activities were scheduled activities requiring an environment protection licence prior to their omission from Schedule 1 to the Act by the *Protection of the Environment Operations Amendment (Scheduled Activities and Waste) Regulation 2008*. The activities concerned were listed in that Schedule as bitumen mixing, concrete works, transport of waste and mobile plant activities, respectively.

- (2) The EPA is the appropriate regulatory authority for non-scheduled activities to which this clause applies.
- (3) In this clause:
- excluded waste*** means any of the following:
- (a) waste that is transported in the course of dealing with an accident or emergency,
 - (b) lead acid batteries or waste oil collected for recovery,
 - (c) stormwater.
- friable asbestos waste*** means asbestos waste:

Public consultation draft

Clause 93	Protection of the Environment Operations (General) Regulation 2008
Chapter 7	Miscellaneous
Part 2	Exemptions from provisions of Act

- (a) that is in the form of a powder, or
- (b) that can be crumbled or reduced to powder by hand pressure when dry.

transport of hazardous and other waste means the transport of hazardous waste, restricted solid waste, liquid waste, clinical and related waste or friable asbestos waste (or any combination of them).

- (4) Terms used in this clause that are defined in Schedule 1 to the Act have the same meanings as they have in that Schedule.

93 Waste activities licensed before replacement of Schedule 1 to Act (cf 67B POEO (General) Regulation 1998)

The EPA is declared, under section 6 (3) of the Act, to be the appropriate regulatory authority for any non-scheduled activity that, immediately before 28 April 2008 (the commencement of the *Protection of the Environment Operations Amendment (Scheduled Activities and Waste) Regulation 2008*), was licensed as a waste activity (within the meaning of Schedule 1 to the Act, as then in force) but only for so long as that waste activity continues.

Part 2 Exemptions from provisions of Act

Note. See Chapter 3 (Water pollution) for exemptions from section 120 of the Act (Prohibition of pollution of waters).

94 Exemption from prohibition on placing advertising material on vehicles (cf 68 POEO (General) Regulation 1998)

- (1) Section 146B of the Act does not apply to the depositing of the following material in or on a motor vehicle:
 - (a) community safety and crime prevention brochures deposited by or on behalf of the NSW Police Force,
 - (b) brochures, relating to the issue of mobility parking scheme authorities, deposited by or on behalf of the Roads and Traffic Authority.
- (2) In this clause, *mobility parking scheme authority* has the same meaning as in the *Road Transport (Safety and Traffic Management) Regulation 1999*.

95 Exemption for noise control and abatement provisions (cf 69 POEO (General) Regulation 1998)

- (1) Activities carried out at the Luna Park site are exempt from the following provisions of the Act:
 - (a) Part 4.3 (but only in so far as the provisions relate to the emission of noise),

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008
Miscellaneous
Burning of bio-material in electricity generating works

Clause 96
Chapter 7
Part 3

- (b) section 139,
- (c) Part 8.6.
- (2) Subclause (1) applies only if the activities carried out at the Luna Park site are subject to one or more of the following development consents granted by the Minister under section 80 of the *Environmental Planning and Assessment Act 1979* and are carried out in compliance with such of the conditions of those consents as are relevant to those activities:
 - (a) the consent to development application 154-06-01 granted on 31 January 2002,
 - (b) the consent to development application 151-5-2002 granted on 21 January 2003,
 - (c) the consent to development application 201-6-2002 granted on 21 January 2003.
- (3) In this clause:
 - development application* has the same meaning as in the *Environmental Planning and Assessment Act 1979*.
 - Luna Park site* has the same meaning as in the *Luna Park Site Act 1990*.
 - Minister*, in relation to a consent to a development application, means the Minister who was the consent authority for the development concerned under clause 10 of the *State Environmental Planning Policy No 56—Sydney Harbour Foreshores and Tributaries*, as in force immediately before its repeal by the *State Environmental Planning Policy (Major Projects) Amendment (Luna Park Site) Policy 2005*.

Part 3 Burning of bio-material in electricity generating works

96 Definitions (cf 57L POEO (General) Regulation 1998)

In this Part:

Australian native tree means any tree of a species indigenous to Australia.

electricity generating work means a work (including associated facilities) that supplies, or is capable of supplying, more than 200 kilowatts of electricity.

native forest bio-material means the bio-material comprised in Australian native trees, other than:

- (a) bio-material obtained from:
 - (i) an authorised plantation within the meaning of the *Plantations and Reafforestation Act 1999*, or

Public consultation draft

Clause 97	Protection of the Environment Operations (General) Regulation 2008
Chapter 7	Miscellaneous
Part 3	Burning of bio-material in electricity generating works

- (ii) an existing plantation within the meaning of section 9 of the *Plantations and Reafforestation Act 1999*, or
 - (iii) land on which exempt farm forestry (within the meaning of the *Plantations and Reafforestation Act 1999*) is being carried out, or
 - (iv) land on which ancillary plantation operations (within the meaning of section 9 of the *Plantations and Reafforestation Act 1999*) are being carried out, or
- (b) sawdust or other sawmill waste, or
 - (c) waste arising from wood processing or the manufacture of wooden products, other than waste arising from activities (such as woodchipping or the manufacture of railway sleepers) carried out at the location from which the Australian native trees are harvested.

97 Native forest bio-material not to be used for electricity generation (cf 57M POEO (General) Regulation 1998)

The occupier of any premises who causes or allows native forest bio-material to be burned in any electricity generating work in or on those premises is guilty of an offence.

Maximum penalty:

- (a) in the case of a corporation—400 penalty units, or
- (b) in the case of an individual—200 penalty units.

98 Record-keeping (cf 57N and 57Q POEO (General) Regulation 1998)

- (1) The occupier of any premises who causes or allows bio-material of any kind to be burned in any electricity generating work in or on those premises during a relevant period must:

- (a) keep records in relation to fuel held during the relevant period at those premises, and
- (b) retain those records for at least 4 years after the end of the relevant period.

Maximum penalty:

- (a) in the case of a corporation—200 penalty units, or
- (b) in the case of an individual—100 penalty units.

- (2) Records required to be kept under this clause must be kept in accordance with the guidelines (if any) established by the EPA and published in the Gazette.

- (3) In this clause:

relevant period, in relation to an electricity generating work, means:

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008
Miscellaneous
Other

Clause 99
Chapter 7
Part 4

- (a) in the case of a work the subject of an environment protection licence, the licence fee period in relation to that licence (within the meaning of Part 1 of Chapter 2), or
- (b) in the case of any other work, the year ending 30 June.

Part 4 Other

99 Fee for administrative costs of clean-up, prevention and noise control notices (cf 60, 61 and 61A POEO (General) Regulation 1998)

The following amounts are prescribed as the fees payable under section 94 (2), 100 (2) or 267A (2) of the Act in respect of a notice issued during the following periods:

- (a) before 1 July 2009—\$320,
- (b) on or after 1 July 2009 and before 1 July 2010—\$433,
- (c) on or after 1 July 2010 and before 1 July 2011—\$444,
- (d) on or after 1 July 2011 and before 1 July 2012—\$455,
- (e) on or after 1 July 2012—\$466.

100 Land pollution—meaning of certain expressions for defences relating to substances (cf 57S POEO (General) Regulation 1998)

For the purposes of section 142D of the Act:

manure, *virgin excavated natural material* and *biosolids* have the same meanings as they have in Division 2 of Part 3 of Schedule 1 to the Act.

non-hazardous agricultural or crop waste means agricultural or crop waste that is not hazardous waste or restricted solid waste within the meaning of Schedule 1 to the Act.

101 Notification of pollution incidents

For the purposes of section 149 of the Act, a pollution incident that is required to be notified to the EPA under Part 5.7 of the Act is to be notified verbally to the EPA by telephoning the EPA pollution line, followed by notification in writing within 7 days of the date on which the incident occurred.

102 Warrants relating to noise abatement directions (cf 58 POEO (General) Regulation 1998)

- (1) For the purposes of section 280 (5) of the Act, the prescribed form of the record to be made under that subsection is Form 1 in Schedule 7.
- (2) For the purposes of section 280 (10) of the Act, the prescribed form of the record to be made under that subsection is Form 2 in Schedule 7.

Public consultation draft

Clause 103 Protection of the Environment Operations (General) Regulation 2008
Chapter 7 Miscellaneous
Part 4 Other

- (3) For the purposes of section 280 (11) (a) of the Act, the prescribed form of the statement to be furnished under that Subsection is Form 3 in Schedule 7.

103 Appeals regarding noise (cf 59 POEO (General) Regulation 1998)

For the purposes of section 290 of the Act, the period within which a person may appeal to the Land and Environment Court against a noise control notice relating to the keeping of an animal at premises is 7 days (instead of 21 days) after service of the notice.

104 Evaluation of green offset schemes or works (cf 57T POEO (General) Regulation 1998)

- (1) Each green offset scheme, and each green offset work that is not part of a green offset scheme, must be evaluated in accordance with this clause.
- (2) An evaluation is to be carried out and reported on:
- (a) in the case of a green offset scheme—at the intervals (not being greater than 5 years) determined by the EPA for the duration of the scheme and at the end of the scheme, and
 - (b) in the case of a green offset work that is not part of a green offset scheme—at the intervals determined by the EPA in respect of the work.
- (3) An evaluation is to be carried out and reported on by the EPA or by a manager of a green offset scheme or green offset work if directed to do so in accordance with subclause (4).
- (4) The EPA may, by notice in writing given to the manager of a green offset scheme or green offset work, direct that the manager do any of the following:
- (a) provide the EPA with information relating to the effectiveness of the scheme or work,
 - (b) carry out and report on an evaluation required under this clause and provide a copy of the evaluation report to the EPA,
 - (c) amend any such evaluation report.
- (5) An evaluation report:
- (a) must list the participants in the green offset scheme or green offset work, and
 - (b) must relate to the period since the commencement of the scheme or work or, if the scheme or work has been evaluated under this clause, since the last evaluation of the scheme or work, and
 - (c) must set out the environmental effects and benefits arising from the scheme or work, and

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008
Miscellaneous
Other

Clause 105
Chapter 7
Part 4

- (d) in the case of a scheme, must contain any of the following matters that are relevant to the scheme:
 - (i) whether any applicable cap or target has been met,
 - (ii) particulars of the costs of and payments for the purposes of the scheme under Part 9.3B of the Act,
 - (iii) particulars of the implementation of any works for the purposes of the scheme, and
 - (e) in the case of a work that is not part of a scheme, must contain any of the following matters that are relevant to the work:
 - (i) particulars of the implementation of the work by or on behalf of the participants,
 - (ii) particulars of the costs of and payments for the purposes of the work under Part 9.3B of the Act, and
 - (f) must contain any other matters directed to be included by the EPA, and
 - (g) must be made publicly available in the manner determined by the EPA.
- (6) Nothing in this clause requires or permits the EPA or the manager of a green offset scheme or green offset work to make publicly available any information of a kind referred to in section 319 (1) of the Act.

105 Additional restriction on requiring financial assurances (cf 62 POEO (General) Regulation 1998)

The following matter is prescribed for the purposes of section 299 (d) of the Act:

The adequacy of financial assurances (if any) already provided, or required to be provided, by the same person to a public authority to secure or guarantee funding for or towards the carrying out of the same or substantially the same works or programs for which a financial assurance is contemplated under the Act.

Note. Section 299 of the Act prevents a regulatory authority from imposing a condition on a licence requiring a financial assurance to be provided unless it is satisfied that the condition is justified having regard to a number of specified matters, including any matters prescribed by the regulations.

106 Additional matters to be included in public register (cf 63 POEO (General) Regulation 1998)

Details of the following additional matters must be recorded in the public register kept by a regulatory authority under section 308 of the Act:

- (a) the application fee for an environment protection licence issued by the authority,

Public consultation draft

Clause 107	Protection of the Environment Operations (General) Regulation 2008
Chapter 7	Miscellaneous
Part 4	Other

- (b) the annual licence fee paid or payable in respect of an environment protection licence issued by the authority,
- (c) any approval granted under clause 6G or 31 of the *Protection of the Environment Operations (Clean Air) Regulation 2002* by the authority,
- (d) any information relating to the actual load, agreed load or weighted load of an assessable pollutant (within the meaning of Part 1 of Chapter 2) reported, as a condition of an environment protection licence, by the licence holder in an annual return to the authority,
- (e) details or summaries of undertakings given to the authority under section 253A of the Act,
- (f) details or summaries of any load reduction agreement that the authority has entered into with a licence holder in accordance with Division 5 of Part 1 of Chapter 2.

107 Keeping of register in relation to certain non-scheduled activities

- (1) A person who has management or control of non-scheduled activities set out in clause 92 (1) (a), (b) and (c) must keep a register of complaints made in relation to pollution arising from the activity.
- (2) The person must ensure that the following information is recorded in the register in relation to any such complaint as soon as practicable after the complaint is made:
 - (a) the date and time of the complaint,
 - (b) details of the method by which the complaint was made,
 - (c) any identifying particulars of the complainant that were provided or, if no such particulars were provided, a note to that effect,
 - (d) a summary of the complaint,
 - (e) any action taken to deal with the complaint, including any follow-up contact with the complainant,
 - (f) if any action was not taken to deal with the complaint, the reasons why no action was taken.
- (3) The person must retain the record of the information in the register in relation to a complaint for at least 4 years after the complaint was made.

108 Repeal of Regulations

The following Regulations are repealed:

- (a) *Protection of the Environment Operations (General) Regulation 1998*,

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008
Miscellaneous
Other

Clause 109
Chapter 7
Part 4

(b) *Protection of the Environment Operations (Penalty Notices) Regulation 2004,*

(c) *Protection of the Environment Operations (Savings and Transitional) Regulation 1998.*

109 Savings and transitional provisions

Schedule 8 has effect.

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Schedule 1 Licensing fees

Schedule 1 Licensing fees

(Clauses 4, 10, 14, 16, 17, 18, 40 and 47)

AGRICULTURAL PROCESSING

Dairy processing (see clause 2 (1) of Schedule 1 to the Act)

1 Units of measure: megalitres

2 Administrative fee

Annual production capacity	Administrative fee units
Not more than 30,000 megalitres	5
More than 30,000 but not more than 100,000 megalitres	15
More than 100,000 megalitres	50

3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

General agricultural processing (see clause 2 (1) of Schedule 1 to the Act)

1 Units of measure: tonnes

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Licensing fees

Schedule 1

AGRICULTURAL PROCESSING

2 Administrative fee

Annual processing capacity	Administrative fee units
Not more than 30,000 tonnes	5
More than 30,000 but not more than 100,000 tonnes	15
More than 100,000 but not more than 250,000 tonnes	50
More than 250,000 tonnes	135

3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

Grape processing (see clause 2 (1) of Schedule 1 to the Act)

1 Units of measure: tonnes

2 Administrative fee

Annual processing capacity	Administrative fee units
Not more than 30,000 tonnes	5
More than 30,000 but not more than 100,000 tonnes	15
More than 100,000 but not more than 250,000 tonnes	50
More than 250,000 tonnes	135

3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

AQUACULTURE AND MARICULTURE

Aquaculture and mariculture (see clause 3 (1) of Schedule 1 to the Act)

1 Units of measure: megalitres

2 Administrative fee

Annual volume of discharge	Administrative fee units
Not more than 2,000 megalitres	5
More than 2,000 but not more than 20,000 megalitres	15
More than 20,000 megalitres	50

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Schedule 1 Licensing fees

AQUACULTURE AND MARICULTURE

- 3 Load-based fee** (there are no assessable pollutants and therefore no load-based fee in relation to this activity)
-

BREWING AND DISTILLING

Brewing and distilling (see clause 5 (1) of Schedule 1 to the Act)

- 1 Units of measure: tonnes**

- 2 Administrative fee**

Annual production capacity	Administrative fee units
Not more than 10,000 tonnes	5
More than 10,000 but not more than 20,000 tonnes	50
More than 20,000 tonnes	135

- 3 Load-based fee** (there are no assessable pollutants and therefore no load-based fee in relation to this activity)
-

CEMENT OR LIME WORKS

Cement or lime handling (see clause 6 (1) of Schedule 1 to the Act)

- 1 Units of measure: tonnes**

- 2 Administrative fee**

Annual handling capacity	Administrative fee units
Not more than 30,000 tonnes	5
More than 30,000 but not more than 100,000 tonnes	8
More than 100,000 but not more than 500,000 tonnes	25
More than 500,000 but not more than 2,000,000 tonnes	65
More than 2,000,000 tonnes	165

- 3 Load-based fee** (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

Cement or lime production (see clause 6 (1) of Schedule 1 to the Act)

- 1 Units of measure: tonnes**

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Licensing fees

Schedule 1

CEMENT OR LIME WORKS

2 Administrative fee

Annual production capacity	Administrative fee units
Not more than 30,000 tonnes	5
More than 30,000 but not more than 100,000 tonnes	65
More than 100,000 but not more than 250,000 tonnes	165
More than 250,000 but not more than 500,000 tonnes	300
More than 500,000 tonnes	420

3 Load-based fee (but only if the annual production capacity exceeds 30,000 tonnes)

Air pollutants	Threshold factor
Coarse particulates	0.1
Fine particulates	0.28
Lead	0.00061
Mercury	0.00054
Nitrogen oxides and nitrogen oxides (summer)	3.2
Sulfur oxides	0.16
Water pollutants	Threshold factor
Nil	Not applicable

CERAMIC WORKS

Ceramic waste generation (see clause 7 (1) of Schedule 1 to the Act)

1 Units of measure: tonnes

2 Administrative fee (but only if the activity is a scheduled activity under clause 7 (2) of Schedule 1 to the Act)

Annual volume of waste generated or stored	Administrative fee units
More than 5 but not more than 100 tonnes	8
More than 100 tonnes	16

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Schedule 1 Licensing fees

CERAMIC WORKS

3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

Ceramics production (see clause 7 (1) of Schedule 1 to the Act)

1 Units of measure: tonnes

2 Administrative fee

Annual production capacity	Administrative fee units
Not more than 15,000 tonnes	8
More than 15,000 but not more than 50,000 tonnes	25
More than 50,000 but not more than 200,000 tonnes	65
More than 200,000 tonnes	165

3 Load-based fee (but only if the annual production capacity exceeds 15,000 tonnes)

Air pollutants	Threshold factor
Coarse particulates	0.085
Fine particulates	0.11
Fluoride	0.12
Nitrogen oxides and nitrogen oxides (summer)	0.22
Sulfur oxides	0.53
Water pollutants	Threshold factor
Nil	Not applicable

Glass production (see clause 7 (1) of Schedule 1 to the Act)

1 Units of measure: tonnes

2 Administrative fee

Annual melting capacity	Administrative fee units
Not more than 15,000 tonnes	8
More than 15,000 but not more than 30,000 tonnes	25
More than 30,000 but not more than 100,000 tonnes	65
More than 100,000 tonnes	165

3 Load-based fee (but only if the annual melting capacity exceeds 15,000 tonnes)

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Licensing fees

Schedule 1

CERAMIC WORKS

Production of container glass

Air pollutants	Threshold factor
Arsenic	0.00028
Coarse particulates	0.05
Fine particulates	0.05
Lead	0.0018
Nitrogen oxides and nitrogen oxides (summer)	4.02
Sulfur oxides	3.12

Water pollutants	Threshold factor
Nil	Not applicable

Production of float glass

Air pollutants	Threshold factor
Coarse particulates	0.11
Fine particulates	0.11
Nitrogen oxides and nitrogen oxides (summer)	2.00
Sulfur oxides	3.64

Water pollutants	Threshold factor
Nil	Not applicable

Production of other glass

Air pollutants	Threshold factor
Coarse particulates	2.75
Fine particulates	2.75
Nitrogen oxides and nitrogen oxides (summer)	4.29
Sulfur oxides	4.16

Water pollutants	Threshold factor
Nil	Not applicable

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Schedule 1 Licensing fees

CHEMICAL PRODUCTION

Agricultural fertiliser (inorganic) production (see clause 8 (1) of Schedule 1 to the Act)

1 Units of measure: tonnes

2 Administrative fee

Annual production capacity	Administrative fee units
Not more than 50,000 tonnes	25
More than 50,000 but not more than 100,000 tonnes	65
More than 100,000 tonnes	165

3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

Agricultural fertiliser (phosphate) production (see clause 8 (1) of 1 to the Act)

1 Units of measure: tonnes

2 Administrative fee

Annual production capacity	Administrative fee units
Not more than 50,000 tonnes	25
More than 50,000 but not more than 100,000 tonnes	65
More than 100,000 tonnes	165

3 Load-based fee (but only if the activity is a scheduled activity under clause 8 (2) of Schedule 1 to the Act)

Air pollutants	Threshold factor
Coarse particulates	0.022
Fine particulates	0.13
Fluoride	1.1
Water pollutants	Threshold factor
Total phosphorous	0.002

Ammonium nitrate production (see clause 8 (1) of Schedule 1 to the Act)

1 Units of measure: tonnes

2 Administrative fee

Annual production capacity	Administrative fee units
-----------------------------------	---------------------------------

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Licensing fees

Schedule 1

CHEMICAL PRODUCTION

Not more than 50,000 tonnes 25

More than 50,000 but not more than 100,000 tonnes 65

More than 100,000 tonnes 165

3 Load-based fee (but only if the activity is a scheduled activity under clause 8 (2) of Schedule 1 to the Act)

Air pollutants **Threshold factor**

Coarse particulates 0.77

Fine particulates 0.33

Nitrogen oxides and nitrogen oxides (summer) 1.5

Water pollutants **Threshold factor**

Total nitrogen 0.11

Battery production (see clause 8 (1) of Schedule 1 to the Act)

1 Units of measure: tonnes

2 Administrative fee

Annual production capacity **Administrative fee units**

Not more than 500 tonnes 15

More than 500 but not more than 1,500 tonnes 50

More than 1,500 tonnes 135

3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

Carbon black production (see clause 8 (1) of Schedule 1 to the Act)

1 Units of measure: tonnes

2 Administrative fee

Annual production capacity **Administrative fee units**

Not more than 5,000 tonnes 25

More than 5,000 but not more than 20,000 tonnes 65

More than 20,000 tonnes 165

3 Load-based fee (but only if the activity is a scheduled activity under clause 8 (2) of Schedule 1 to the Act)

Air pollutants **Threshold factor**

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Schedule 1 Licensing fees

CHEMICAL PRODUCTION

Benzo(a)pyrene	0.005
Fine particulates	0.3
Nitrogen oxides and nitrogen oxides (summer)	11.0
Sulfur oxides	8.0
VOCs and VOCs (summer)	0.4

Water pollutants

Threshold factor

Nil	Not applicable
-----	----------------

Chemical production waste generation (see clause 8 (1) of Schedule 1 to the Act)

1 Units of measure: tonnes

2 Administrative fee (but only if the activity is a scheduled activity under clause 8 (2) of Schedule 1 to the Act)

Annual volume of waste generated or stored	Administrative fee units
--	--------------------------

More than 5 but not more than 100 tonnes	8
More than 100 tonnes	16

3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

Dangerous goods production (see clause 8 (1) of Schedule 1 to the Act)

1 Units of measure: tonnes

2 Administrative fee

Annual production capacity	Administrative fee units
----------------------------	--------------------------

Not more than 10,000 tonnes	15
More than 10,000 but not more than 25,000 tonnes	50
More than 25,000 tonnes	135

3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

Explosives production (see clause 8 (1) of Schedule 1 to the Act)

1 Units of measure: tonnes

2 Administrative fee

Annual production capacity	Administrative fee units
----------------------------	--------------------------

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Licensing fees

Schedule 1

CHEMICAL PRODUCTION

Not more than 2,000 tonnes 15

More than 2,000 but not more than 10,000 tonnes 50

More than 10,000 tonnes 135

3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

Paints/polishes/adhesives production (see clause 8 (1) of Schedule 1 to the Act)

1 Units of measure: tonnes

2 Administrative fee

Annual production capacity	Administrative fee units
-----------------------------------	---------------------------------

Not more than 5,000 tonnes	25
----------------------------	----

More than 5,000 but not more than 15,000 tonnes	65
---	----

More than 15,000 tonnes	165
-------------------------	-----

3 Load-based fee (but only if the activity is a scheduled activity under clause 8 (2) of Schedule 1 to the Act)

Air pollutants	Threshold factor
-----------------------	-------------------------

Benzene	0.015
---------	-------

Fine particulates	0.035
-------------------	-------

Nitrogen oxides and nitrogen oxides (summer)	0.068
--	-------

VOCs and VOCs (summer)	2.1
------------------------	-----

Water pollutants	Threshold factor
-------------------------	-------------------------

Nil	Not applicable
-----	----------------

Pesticides and related products production (see clause 8 (1) of Schedule 1 to the Act)

1 Units of measure: tonnes

2 Administrative fee

Annual production capacity	Administrative fee units
-----------------------------------	---------------------------------

Not more than 2,000 tonnes	15
----------------------------	----

More than 2,000 but not more than 10,000 tonnes	50
---	----

More than 10,000 but not more than 30,000 tonnes	135
--	-----

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Licensing fees

Schedule 1

CHEMICAL PRODUCTION

Water pollutants	Threshold factor
-------------------------	-------------------------

Nil	Not applicable
-----	----------------

Pharmaceutical and veterinary products production (see clause 8 (1) of Schedule 1 to the Act)

1 Units of measure: tonnes

2 Administrative fee

Annual production capacity	Administrative fee units
-----------------------------------	---------------------------------

Not more than 2,000 tonnes	15
----------------------------	----

More than 2,000 but not more than 5,000 tonnes	50
--	----

More than 5,000 tonnes	135
------------------------	-----

3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

Plastic resins production (see clause 8 (1) of Schedule 1 to the Act)

1 Units of measure: tonnes

2 Administrative fee

Annual production capacity	Administrative fee units
-----------------------------------	---------------------------------

Not more than 2,000 tonnes	25
----------------------------	----

More than 2,000 but not more than 10,000 tonnes	65
---	----

More than 10,000 tonnes	165
-------------------------	-----

3 Load-based fee (but only if the activity is a scheduled activity under clause 8 (2) of Schedule 1 to the Act)

Air pollutants	Threshold factor
-----------------------	-------------------------

Benzene	0.00073
---------	---------

Fine particulates	0.041
-------------------	-------

Nitrogen oxides and nitrogen oxides (summer)	0.092
--	-------

VOCs and VOCs (summer)	8.5
------------------------	-----

Water pollutants	Threshold factor
-------------------------	-------------------------

Nil	Not applicable
-----	----------------

Plastics reprocessing (see clause 8 (1) of Schedule 1 to the Act)

1 Units of measure: tonnes

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Schedule 1 Licensing fees

CHEMICAL PRODUCTION

2 Administrative fee

Annual reprocessing capacity	Administrative fee units
Not more than 5,000 tonnes	25
More than 5,000 but not more than 10,000 tonnes	65
More than 10,000 tonnes	165

3 Load-based fee (but only if the activity is a scheduled activity under clause 8 (2) of Schedule 1 to the Act)

Air pollutants	Threshold factor
Benzene	0.00073
Fine particulates	0.041
Nitrogen oxides and nitrogen oxides (summer)	0.092
VOCs and VOCs (summer)	8.5

Water pollutants	Threshold factor
Nil	Not applicable

Rubber products/tyres production (see clause 8 (1) of Schedule 1 to the Act)

1 Units of measure: tonnes

2 Administrative fee

Annual production capacity	Administrative fee units
Not more than 5,000 tonnes	50
More than 5,000 tonnes	135

3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

Soap and detergents production (see clause 8 (1) of Schedule 1 to the Act)

1 Units of measure: tonnes

2 Administrative fee

Annual production capacity	Administrative fee units
Not more than 2,500 tonnes	15
More than 2,500 but not more than 5,000 tonnes	50

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Licensing fees

Schedule 1

CHEMICAL PRODUCTION

More than 5,000 tonnes	135
------------------------	-----

3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

Soap and detergents (toxic substances) production (see clause 8 (1) of Schedule 1 to the Act)

1 Units of measure: tonnes

2 Administrative fee

Annual production capacity	Administrative fee units
Not more than 2,500 tonnes	15
More than 2,500 but not more than 5,000 tonnes	50
More than 5,000 tonnes	135

3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

Synthetic rubber production (see clause 8 (1) of Schedule 1 to the Act)

1 Units of measure: tonnes

2 Administrative fee

Annual production capacity	Administrative fee units
Not more than 2,000 tonnes	15
More than 2,000 but not more than 5,000 tonnes	50
More than 5,000 tonnes	135

3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

Toxic substance production (see clause 8 (1) of Schedule 1 to the Act)

1 Units of measure: tonnes

2 Administrative fee

Annual production capacity	Administrative fee units
Not more than 10,000 tonnes	15
More than 10,000 but not more than 25,000 tonnes	50
More than 25,000 tonnes	135

3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Schedule 1 Licensing fees

CHEMICAL STORAGE

Chemical storage waste generation (see clause 9 (1) of Schedule 1 to the Act)

1 Units of measure: tonnes

2 Administrative fee (but only if the activity is a scheduled activity under clause 9 (2) of Schedule 1 to the Act)

Annual volume of waste generated or stored	Administrative fee units
---	---------------------------------

More than 5 but not more than 100 tonnes	8
--	---

More than 100 tonnes	16
----------------------	----

3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

General chemicals storage (see clause 9 (1) of Schedule 1 to the Act)

1 Units of measure: kilolitres

2 Administrative fee

Storage capacity	Administrative fee units
-------------------------	---------------------------------

Not more than 5,000 kilolitres	8
--------------------------------	---

More than 5,000 but not more than 100,000 kilolitres	25
--	----

More than 100,000 kilolitres	65
------------------------------	----

3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

Petroleum products storage (see clause 9 (1) of Schedule 1 to the Act)

1 Units of measure: kilolitres

2 Administrative fee

Storage capacity	Administrative fee units
-------------------------	---------------------------------

Not more than 5,000 kilolitres	8
--------------------------------	---

More than 5,000 but not more than 100,000 kilolitres	25
--	----

More than 100,000 kilolitres	65
------------------------------	----

3 Load-based fee (but only if the activity is a scheduled activity under clause 9 (2) of Schedule 1 to the Act)

Air pollutants	Threshold factor
-----------------------	-------------------------

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Licensing fees

Schedule 1

CHEMICAL STORAGE

Benzene	0.0005
VOCs and VOCs (summer)	0.05
Water pollutants	Threshold factor
Nil	Not applicable

COAL WORKS

Coal works (see clause 10 (1) of Schedule 1 to the Act)

1 Units of measure: tonnes

2 Administrative fee

Annual handling capacity	Administrative fee units
Not more than 2,000,000 tonnes	50
More than 2,000,000 but not more than 5,000,000 tonnes	135
More than 5,000,000 tonnes	335

3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

COKE PRODUCTION

Coke production (see clause 11 (1) of Schedule 1 to the Act)

1 Units of measure: tonnes

2 Administrative fee

Annual handling capacity	Administrative fee units
Not more than 100,000 tonnes	65
More than 100,000 tonnes	165

3 Load-based fee (but only if the activity is a scheduled activity under clause 11 (2) of Schedule 1 to the Act)

Air pollutants	Threshold factor
Arsenic	0.00085
Benzene	0.028

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Schedule 1 Licensing fees

COKE PRODUCTION

Benzo(a)pyrene (equivalent)	0.00003
Coarse particulates	0.22
Fine particulates	0.3
Lead	0.0021
Mercury	0.0022
Hydrogen sulfide	0.002
Nitrogen oxides and nitrogen oxides (summer)	0.03
Sulfur oxides	0.4
VOCs and VOCs (summer)	0.015

Water pollutants

Threshold factor

Oil and grease	0.011
Suspended solids	0.13
Total PAHs	0.000032
Total phenolics	0.000032

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Licensing fees

Schedule 1

COMPOSTING

Composting (see clause 12 (1) of Schedule 1 to the Act)

1 Units of measure: tonnes

2 Administrative fee

Annual capacity to receive organics	Administrative fee units
Not more than 5,000 tonnes	5
More than 5,000 but not more than 50,000 tonnes	15
More than 50,000 tonnes	50

3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Schedule 1 Licensing fees

CONTAINER RECONDITIONING

Container reconditioning (see clause 14 (1) of Schedule 1 to the Act)

1 Units of measure (not applicable)

2 Administrative fee

Annual capacity to recondition, recover, treat or store	Administrative fee units
--	---------------------------------

Any capacity	50
--------------	----

3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

CONTAMINATED SOIL TREATMENT

Contaminated soil treatment (see clause 15 (1) of Schedule 1 to the Act)

1 Units of measure (not applicable)

2 Administrative fee

Annual handling capacity	Administrative fee units
---------------------------------	---------------------------------

Any capacity	50
--------------	----

3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

CONTAMINATED WATER TREATMENT

Contaminated water treatment (see clause 15A (1) of Schedule 1 to the Act)

1 Units of measure (not applicable)

2 Administrative fee

Annual handling capacity	Administrative fee units
---------------------------------	---------------------------------

Any capacity	50
--------------	----

3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Licensing fees

Schedule 1

CRUSHING, GRINDING OR SEPARATING

Crushing, grinding or separating (see clause 16 (1) of Schedule 1 to the Act)

1 Units of measure: tonnes

2 Administrative fee

Annual processing capacity	Administrative fee units
Not more than 30,000 tonnes	5
More than 30,000 but not more than 100,000 tonnes	15
More than 100,000 but not more than 500,000 tonnes	50
More than 500,000 but not more than 2,000,000 tonnes	135
More than 2,000,000 tonnes	335

3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

ELECTRICITY GENERATION

Electricity generation (see clause 17 (1) of Schedule 1 to the Act)

1 Units of measure: gigawatt-hours

2 Administrative fee

Annual generating capacity	Administrative fee units
Not more than 450 gigawatt-hours (GWh)	25
More than 450 but not more than 1,000 gigawatt-hours (GWh)	65
More than 1,000 but not more than 4,000 gigawatt-hours (GWh)	165
More than 4,000 gigawatt-hours (GWh)	420

3 Load-based fee (but only if the annual generating capacity exceeds 250 gigawatt-hours)

Generation of electrical power from coal

Air pollutants	Threshold factor
Arsenic	0.0037

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Schedule 1 Licensing fees

ELECTRICITY GENERATION

Benzo(a)pyrene (equivalent)	0.00066
Coarse particulates	80.0
Fine particulates	54.0
Fluoride	14.0
Lead	0.019
Mercury	0.0042
Nitrogen oxides and nitrogen oxides (summer)	2,700
Sulfur oxides	5,300
Water pollutants	Threshold factor
Salt	3.6
Selenium	0.025
Suspended solids	0.18
Generation of electrical power from diesel	
Air pollutants	Threshold factor
Benzo(a)pyrene (equivalent)	0.0036
Fine particulates	54.0
Nitrogen oxides and nitrogen oxides (summer)	2,700
Sulfur oxides	2,650
VOCs and VOCs (summer)	76.0
Water pollutants	Threshold factor
Nil	Not applicable
Generation of electrical power from gas	
Air pollutants	Threshold factor
Nitrogen oxides and nitrogen oxides (summer)	1,655
Water pollutants	Threshold factor
Salt	0.0029
Suspended solids	0.066

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Licensing fees

Schedule 1

ELECTRICITY GENERATION

Generation of electrical power otherwise than from coal, diesel or gas
(there are no assessable pollutants and therefore no load-based fee in relation to this activity)

ENERGY RECOVERY

Energy recovery from general waste (see clause 18 (1) of Schedule 1 to the Act)

1 Units of measure: tonnes

2 Administrative fee

Annual capacity

Administrative fee units

Any capacity

65

3 Load-based fee (but only if the activity is a scheduled activity under clause 18 of Schedule 1 to the Act)

Air pollutants

Threshold factor

Arsenic

0.00005

Benzene

0.0000011

Benzo(a)pyrene

0.00002

Fine particulates

0.7

Lead

0.035

Mercury

0.003

Nitrogen oxides and nitrogen oxides (summer)

2.5

Sulfur oxides

0.07

Water pollutants

Threshold factor

Nil

Not applicable

Energy recovery from hazardous and other waste (see clause 18 (1) of Schedule 1 to the Act)

1 Units of measure: tonnes

2 Administrative fee

Annual capacity

Administrative fee units

Any capacity

65

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Schedule 1 Licensing fees

ENERGY RECOVERY

3 Load-based fee (but only if the activity is a scheduled activity under clause 18 of Schedule 1 to the Act)

Air pollutants	Threshold factor
Arsenic	0.00005
Benzene	0.0000011
Benzo(a)pyrene	0.00002
Fine particulates	0.7
Lead	0.035
Mercury	0.003
Nitrogen oxides and nitrogen oxides (summer)	2.5
Sulfur oxides	0.07
Water pollutants	Threshold factor
Nil	Not applicable

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Licensing fees

Schedule 1

EXTRACTIVE ACTIVITIES

Land-based extractive activity (see clause 19 (1) of Schedule 1 to the Act)

1 Units of measure: tonnes

2 Administrative fee

Extractive, processing or storage capacity	Administrative fee units
---	---------------------------------

Not more than 30,000 tonnes	5
-----------------------------	---

More than 30,000 but not more than 50,000 tonnes	15
--	----

More than 50,000 but not more than 100,000 tonnes	50
---	----

More than 100,000 but not more than 500,000 tonnes	135
--	-----

More than 500,000 but not more than 2,000,000 tonnes	335
--	-----

More than 2,000,000 tonnes	600
----------------------------	-----

3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

Water-based extractive activity (see clause 19 (1) of Schedule 1 to the Act)

1 Units of measure: cubic metres

2 Administrative fee

Extractive capacity	Administrative fee units
----------------------------	---------------------------------

Not more than 30,000 cubic metres	5
-----------------------------------	---

More than 30,000 but not more than 50,000 cubic metres	15
--	----

More than 50,000 but not more than 100,000 cubic metres	50
---	----

More than 100,000 but not more than 500,000 cubic metres	135
--	-----

More than 500,000 but not more than 2,000,000 cubic metres	335
--	-----

More than 2,000,000 cubic metres	600
----------------------------------	-----

3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Schedule 1 Licensing fees

HELICOPTER-RELATED ACTIVITIES

Helicopter-related activity (see clause 20 (1) of Schedule 1 to the Act)

1 Units of measure: flights

2 Administrative fee

Annual flight movement capacity	Administrative fee units
Not more than 1,500 flights	5
More than 1,500 but not more than 5,000 flights	15
More than 5,000 flights	50

3 **Load-based fee** (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

IRRIGATED AGRICULTURE

Irrigated agriculture (see clause 21 (1) of Schedule 1 to the Act)

1 Units of measure: hectares

2 Administrative fee

Total area of existing area of operations of irrigation corporation	Administrative fee units
Not more than 10,000 hectares	15
More than 10,000 but not more than 100,000 hectares	50
More than 100,000 hectares	135

3 **Load-based fee** (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

LIVESTOCK INTENSIVE ACTIVITIES

Animal accommodation (see clause 22 (1) of Schedule 1 to the Act)

1 Units of measure: tonnes

2 Administrative fee

Live weight capacity to accommodate	Administrative fee units
Not more than 25,000 tonnes	5

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Licensing fees

Schedule 1

LIVESTOCK INTENSIVE ACTIVITIES

More than 25,000 but not more than 60,000 tonnes 15

More than 60,000 tonnes 50

Note. Live weight capacity is to be calculated either by using the actual live weight, or estimating live weight on the basis that 1 tonne live weight equals 2 cattle, 22 sheep, 2 horses, 5 deer, 17 emus, 13 kangaroos, 5 breeding sows, 17 porker or finisher pigs or 11 bacon pigs.

3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

Bird accommodation (see clause 22 (1) of Schedule 1 to the Act)

1 Units of measure: tonnes

2 Administrative fee

Live weight capacity to accommodate	Administrative fee units
Not more than 375 tonnes	5
More than 375 but not more than 1,000 tonnes	15
More than 1,000 tonnes	50

Note. Live weight capacity is to be calculated either by using the actual live weight, or estimating live weight on the basis that 1 tonne live weight equals 555 layer chickens, 1,100 broiler chickens, 17 emus, 310 ducks, 165 geese or 110 turkeys.

3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

Cattle, sheep or horse accommodation (see clause 22 (1) of Schedule 1 to the Act)

1 Units of measure: tonnes

2 Administrative fee

Live weight capacity to accommodate	Administrative fee units
Not more than 500 tonnes	5
More than 500 but not more than 2,500 tonnes	15
More than 2,500 tonnes	50

Note. Live weight capacity is to be calculated either by using the actual live weight, or estimating live weight on the basis that 1 tonne live weight equals 2 cattle, 2 horses or 22 sheep.

3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

Dairy animal accommodation (see clause 22 (1) of Schedule 1 to the Act)

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Schedule 1 Licensing fees

LIVESTOCK INTENSIVE ACTIVITIES

1 Units of measure: tonnes

2 Administrative fee

Live weight capacity to accommodate	Administrative fee units
Not more than 500 tonnes	5
More than 500 but not more than 1,000 tonnes	15
More than 1,000 tonnes	50

Note. Live weight capacity is to be calculated either by using the actual live weight, or estimating live weight on the basis that 1 tonne live weight equals 1.6 milking cows or 13 other dairy animals.

3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

Pig accommodation (see clause 22 (1) of Schedule 1 to the Act)

1 Units of measure: tonnes

2 Administrative fee

Live weight capacity to accommodate	Administrative fee units
Not more than 250 tonnes	5
More than 250 but not more than 500 tonnes	15
More than 500 tonnes	50

Note. Live weight capacity is to be calculated either by using the actual live weight, or estimating live weight on the basis that 1 tonne live weight equals 5 breeding sows, 62 weaner pigs, 31 grower pigs, 17 porker or finisher pigs or 11 bacon pigs.

3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

LIVESTOCK PROCESSING ACTIVITIES

General animal products production (see clause 23 (1) of Schedule 1 to the Act)

1 Units of measure: tonnes

2 Administrative fee

Annual production capacity	Administrative fee units
Not more than 100,000 tonnes	5
More than 100,000 tonnes	15

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Licensing fees

Schedule 1

LIVESTOCK PROCESSING ACTIVITIES

3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

Greasy wool or fleece processing (see clause 23 (1) of Schedule 1 to the Act)

1 Units of measure (not applicable)

2 Administrative fee

Annual processing capacity	Administrative fee units
Any capacity	5

3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

Rendering or fat extraction (see clause 23 (1) of Schedule 1 to the Act)

1 Units of measure: tonnes

2 Administrative fee

Annual production capacity	Administrative fee units
Not more than 4,000 tonnes	5
More than 4,000 tonnes	15

3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

Slaughtering or processing animals (see clause 23 (1) of Schedule 1 to the Act)

1 Units of measure: tonnes

2 Administrative fee

Annual processing capacity	Administrative fee units
Not more than 30,000 tonnes	5
More than 30,000 tonnes	15

3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

Tanneries or fellmongeries (see clause 23 (1) of Schedule 1 to the Act)

1 Units of measure: tonnes

2 Administrative fee

Annual processing capacity	Administrative fee units
-----------------------------------	---------------------------------

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Schedule 1 Licensing fees

LIVESTOCK PROCESSING ACTIVITIES

Not more than 10,000 tonnes 5

More than 10,000 tonnes 15

3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

LOGGING OPERATIONS

Logging operations (see clause 24 (1) of Schedule 1 to the Act)

1 Units of measure (not applicable)

2 Administrative fee

Annual capacity

Administrative fee units

Any capacity

1,100

3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

MARINAS AND BOAT REPAIRS

Boat construction/maintenance (dry/floating docks) (see clause 25 (1) of Schedule 1 to the Act)

1 Units of measure (not applicable)

2 Administrative fee

Annual handling capacity

Administrative fee units

Any capacity

135

3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

Boat construction/maintenance (general) (see clause 25 (1) of Schedule 1 to the Act)

1 Units of measure (not applicable)

2 Administrative fee

Annual handling capacity

Administrative fee units

Any capacity

50

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Licensing fees

Schedule 1

MARINAS AND BOAT REPAIRS

3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

Boat mooring and storage (see clause 25 (1) of Schedule 1 to the Act)

1 Units of measure (not applicable)

2 Administrative fee

Annual handling capacity

Administrative fee units

Any capacity

15

3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Schedule 1 Licensing fees

METALLURGICAL ACTIVITIES

Aluminium production (alumina) (see clause 26 (1) of Schedule 1 to the Act)

1 Units of measure: tonnes

2 Administrative fee

Annual production capacity	Administrative fee units
Any capacity	420

3 Load-based fee (but only if the activity is a scheduled activity under clause 26 (2) of Schedule 1 to the Act)

Air pollutants	Threshold factor
Coarse particulates	0.75
Benzo(a)pyrene	0.07
Fine particulates	0.96
Fluoride	0.75
Lead	0.00011
Nitrogen oxides and nitrogen oxides (summer)	0.2
Sulfur oxides	20

Water pollutants	Threshold factor
Nil	Not applicable

Aluminium production (scrap metal) (see clause 26 (1) of Schedule 1 to the Act)

1 Units of measure: tonnes

2 Administrative fee

Annual production capacity	Administrative fee units
Not more than 10,000 tonnes	65
More than 10,000 tonnes	165

3 Load-based fee (but only if the activity is a scheduled activity under clause 26 (2) of Schedule 1 to the Act)

Air pollutants	Threshold factor
Coarse particulates	0.048
Fine particulates	0.066

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Licensing fees

Schedule 1

METALLURGICAL ACTIVITIES

Fluoride 0.056

Nitrogen oxides and nitrogen oxides (summer) 0.74

Sulfur oxides 0.46

VOCs and VOCs (summer) 0.68

Water pollutants **Threshold factor**

Nil Not applicable

Iron or steel production (iron ore) (see clause 26 (1) of Schedule 1 to the Act)

1 Units of measure: tonnes

2 Administrative fee

Annual processing capacity **Administrative fee units**

Any capacity 2,650

3 Load-based fee (but only if the activity is a scheduled activity under clause 26 (2) of Schedule 1 to the Act)

Air pollutants **Threshold factor**

Arsenic 0.000014

Benzene 0.0011

Benzo(a)pyrene (equivalent) 0.003

Coarse particulates 0.47

Fine particulates 0.38

Hydrogen sulfide 0.018

Lead 0.0014

Mercury 0.000041

Nitrogen oxides and nitrogen oxides (summer) 3.81

Sulfur oxides 6.6

VOCs and VOCs (summer) 7

Water pollutants **Threshold factor**

Arsenic 0.0091

Cadmium 0.0018

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Schedule 1 Licensing fees

METALLURGICAL ACTIVITIES

Chromium	0.0054
Copper	0.0036
Lead	0.0018
Mercury	0.000091
Oil and grease	0.015
Selenium	0.00091
Suspended solids	0.24
Zinc	0.0091

Iron or steel production (scrap metal) (see clause 26 (1) of Schedule 1 to the Act)

1 Units of measure: tonnes

2 Administrative fee

Annual production capacity	Administrative fee units
Not more than 10,000 tonnes	65
More than 10,000 tonnes	165

3 Load-based fee (but only if the activity is a scheduled activity under clause 26 (2) of Schedule 1 to the Act)

Air pollutants	Threshold factor
Arsenic	0.000057
Coarse particulates	0.085
Fine particulates	0.33
Lead	0.00024
Mercury	0.00013
Nitrogen oxides and nitrogen oxides (summer)	0.12
Sulfur oxides	0.5
VOCs and VOCs (summer)	0.09
Water pollutants	Threshold factor
Nil	Not applicable

Metal coating (see clause 26 (1) of Schedule 1 to the Act)

1 Units of measure: tonnes

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Licensing fees

Schedule 1

METALLURGICAL ACTIVITIES

2 Administrative fee

Annual capacity to coat metal	Administrative fee units
Not more than 100,000 tonnes	15
More than 100,000 but not more than 1,000,000 tonnes	50
More than 1,000,000 tonnes	135

3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

Metal processing (see clause 26 (1) of Schedule 1 to the Act)

1 Units of measure: tonnes

2 Administrative fee

Annual processing capacity	Administrative fee units
Not more than 100,000 tonnes	15
More than 100,000 but not more than 500,000 tonnes	50
More than 500,000 tonnes	135

3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

Metal waste generation (see clause 26 (1) of Schedule 1 to the Act)

1 Units of measure: tonnes

2 Administrative fee (but only if the activity is a scheduled activity under clause 26 (2) of Schedule 1 to the Act)

Annual volume of waste generated or stored	Administrative fee units
More than 5 but not more than 100 tonnes	8
More than 100 tonnes	16

3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

Non-ferrous metal production (ore concentrates) (see clause 26 (1) of Schedule 1 to the Act)

1 Units of measure: tonnes

2 Administrative fee

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Schedule 1 Licensing fees

METALLURGICAL ACTIVITIES

Annual production capacity	Administrative fee units
Any capacity	660
3 Load-based fee (but only if the activity is a scheduled activity under clause 26 (2) of Schedule 1 to the Act)	
Air pollutants	Threshold factor
Arsenic	0.03
Coarse particulates	0.33
Fine particulates	0.49
Lead	0.06
Mercury	0.03
Sulfur oxides	230
Water pollutants	Threshold factor
Arsenic	0.0003
Cadmium	0.0003
Chromium	0.0003
Copper	0.0026
Lead	0.03
Mercury	0.0003
Selenium	0.0003
Suspended solids	0.78
Zinc	0.02
Non-ferrous metal production (scrap metal) (see clause 26 (1) of Schedule 1 to the Act)	
1 Units of measure: tonnes	
2 Administrative fee	
Annual production capacity	Administrative fee units
Not more than 10,000 tonnes	65
More than 10,000 tonnes	165

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Licensing fees

Schedule 1

METALLURGICAL ACTIVITIES

3 Load-based fee (but only if the activity is a scheduled activity under clause 26 (2) of Schedule 1 to the Act)

Air pollutants	Threshold factor
Coarse particulates	0.011
Fine particulates	0.033
Lead	0.002
Nitrogen oxides and nitrogen oxides (summer)	0.37
Sulfur oxides	0.99
VOCs and VOCs (summer)	0.11
Water pollutants	Threshold factor
Nil	Not applicable

Scrap metal processing (see clause 26 (1) of Schedule 1 to the Act)

1 Units of measure: tonnes

2 Administrative fee

Annual production capacity	Administrative fee units
Not more than 100,000 tonnes	15
More than 100,000 but not more than 500,000 tonnes	50
More than 500,000 tonnes	135

3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

MINERAL PROCESSING

Mineral processing (see clause 27 (1) of Schedule 1 to the Act)

1 Units of measure: tonnes

2 Administrative fee

Annual processing capacity	Administrative fee units
Not more than 30,000 tonnes	5
More than 30,000 but not more than 100,000 tonnes	15

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Schedule 1 Licensing fees

MINERAL PROCESSING

More than 100,000 but not more than 500,000 tonnes	50
More than 500,000 but not more than 2,000,000 tonnes	135
More than 2,000,000 tonnes	335
3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)	
Mineral waste generation (see clause 27 (1) of Schedule 1 to the Act)	
1 Units of measure: tonnes	
2 Administrative fee (but only if the activity is a scheduled activity under clause 27 (2) of Schedule 1 to the Act)	
Annual volume of waste generated or stored	Administrative fee units
More than 5 but not more than 100 tonnes	8
More than 100 tonnes	16
3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)	

MINING FOR COAL

Mining for coal (see clause 28 (1) of Schedule 1 to the Act)	
1 Units of measure: tonnes	
2 Administrative fee	
Annual production capacity	Administrative fee units
Not more than 500,000 tonnes	50
More than 500,000 but not more than 2,000,000 tonnes	135
More than 2,000,000 but not more than 3,500,000 tonnes	335
More than 3,500,000 but not more than 5,000,000 tonnes	600
More than 5,000,000 tonnes	850
3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)	

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Licensing fees

Schedule 1

MINING FOR MINERALS

Mining for minerals (see clause 29 (1) of Schedule 1 to the Act)

1 Units of measure: tonnes

2 Administrative fee

Annual production capacity	Administrative fee units
Not more than 30,000 tonnes	5
More than 30,000 but not more than 50,000 tonnes	15
More than 50,000 but not more than 100,000 tonnes	50
More than 100,000 but not more than 500,000 tonnes	135
More than 500,000 but not more than 2,000,000 tonnes	335
More than 2,000,000 but not more than 5,000,000 tonnes	600
More than 5,000,000 tonnes	850

3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

PAPER OR PULP PRODUCTION

Paper or pulp production (see clause 30 (1) of Schedule 1 to the Act)

1 Units of measure: tonnes

2 Administrative fee

Annual production capacity	Administrative fee units
Not more than 150,000 tonnes	65
More than 150,000 tonnes	165

3 Load-based fee (but only if the activity is a scheduled activity under clause 30 (2) of Schedule 1 to the Act)

Air pollutants	Threshold factor
Coarse particulates	0.026
Fine particulates	0.075
Nitrogen oxides and nitrogen oxides (summer)	1.53

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Schedule 1 Licensing fees

PAPER OR PULP PRODUCTION

Water pollutants	Threshold factor
BOD	0.41
Salt	3.0
Suspended solids	0.57
Total nitrogen	0.078
Total phosphorous	0.001
Zinc	0.0013

Paper or pulp waste generation (see clause 30 (1) of Schedule 1 to the Act)

1 Units of measure: tonnes

2 Administrative fee

Annual volume of waste generated or stored	Administrative fee units
More than 5 but not more than 100 tonnes	8
More than 100 tonnes	16

3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Licensing fees

Schedule 1

PETROLEUM AND FUEL PRODUCTION

Crude oil/shale oil production (see clause 31 (1) of Schedule 1 to the Act)

1 Units of measure: tonnes

2 Administrative fee

Annual production capacity	Administrative fee units
Not more than 10,000 tonnes	25
More than 10,000 but not more than 200,000 tonnes	65
More than 200,000 but not more than 500,000 tonnes	165
More than 500,000 tonnes	660

3 Load-based fee (but only if the activity is a scheduled activity under clause 31 (2) of Schedule 1 to the Act)

Air pollutants	Threshold factor
Benzene	0.004
Benzo(a)pyrene (equivalent)	0.005
Fine particulates	0.2
Hydrogen sulfide	0.031
Nitrogen oxides and nitrogen oxides (summer)	0.5
Sulfur oxides	0.6
VOCs and VOCs (summer)	0.4
Water pollutants	Threshold factor
BOD	0.14
Oil and grease	0.12
Suspended solids	0.36
Total PAHs	0.07
Total phenolics	0.27

Natural gas/methane production (see clause 31 (1) of Schedule 1 to the Act)

1 Units of measure: tonnes

2 Administrative fee

Annual production capacity	Administrative fee units
-----------------------------------	---------------------------------

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Schedule 1 Licensing fees

PETROLEUM AND FUEL PRODUCTION

Not more than 10,000 tonnes	25
More than 10,000 but not more than 200,000 tonnes	65
More than 200,000 but not more than 500,000 tonnes	165
More than 500,000 tonnes	660

3 Load-based fee (but only if the activity is a scheduled activity under clause 31 (2) of Schedule 1 to the Act)

Air pollutants	Threshold factor
Benzene	0.004
Benzo(a)pyrene (equivalent)	0.005
Fine particulates	0.2
Hydrogen sulfide	0.031
Nitrogen oxides and nitrogen oxides (summer)	0.5
Sulfur oxides	0.6
VOCs and VOCs (summer)	0.4
Water pollutants	Threshold factor
BOD	0.14
Oil and grease	0.12
Suspended solids	0.36
Total PAHs	0.07
Total phenolics	0.27

Petroleum products and fuel production (see clause 31 (1) of Schedule 1 to the Act)

1 Units of measure: tonnes

2 Administrative fee

Annual production capacity	Administrative fee units
Not more than 10,000 tonnes	25
More than 10,000 but not more than 200,000 tonnes	65
More than 200,000 but not more than 500,000 tonnes	165
More than 500,000 tonnes	660

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Licensing fees

Schedule 1

PETROLEUM AND FUEL PRODUCTION

3 Load-based fee (but only if the activity is a scheduled activity under clause 31 (2) of Schedule 1 to the Act and has an annual production capacity of more than 10,000 tonnes)

Air pollutants	Threshold factor
Arsenic	0.000011
Benzene	0.0004
Benzo(a)pyrene (equivalent)	0.000002
Fine particulates	0.039
Hydrogen sulfide	0.002
Lead	0.000059
Mercury	0.000011
Nitrogen oxides and nitrogen oxides (summer)	0.33
Sulfur oxides	0.44
VOCs and VOCs (summer)	0.4
Water pollutants	Threshold factor
BOD	0.0034
Oil and grease	0.0015
Suspended solids	0.0052
Total PAHs	0.000005
Total phenolics	0.00011

PRINTING, PACKAGING AND VISUAL COMMUNICATIONS

Printing, packaging and visual communications waste generation (see clause 32 (1) of Schedule 1 to the Act)

1 Units of measure: tonnes

2 Administrative fee

Annual volume of waste generated or stored Administrative fee units

More than 5 but not more than 100 tonnes 8

More than 100 tonnes 16

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Schedule 1 Licensing fees

PRINTING, PACKAGING AND VISUAL COMMUNICATIONS

- 3 Load-based fee** (there are no assessable pollutants and therefore no load-based fee in relation to this activity)
-

RAILWAY SYSTEMS ACTIVITIES

Railway systems activities (see clause 33 (1) of Schedule 1 to the Act)

- 1 Units of measure** (not applicable)

2 Administrative fee

Annual capacity	Administrative fee units
Any capacity	50

- 3 Load-based fee** (there are no assessable pollutants and therefore no load-based fee in relation to this activity)
-

RESOURCE RECOVERY

Recovery of general waste (see clause 34 (1) of Schedule 1 to the Act)

- 1 Units of measure** (not applicable)

2 Administrative fee

Type of material recovered	Administrative fee units
General waste	16

- 3 Load-based fee** (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

Recovery of hazardous and other waste (see clause 34 (1) of Schedule 1 to the Act)

- 1 Units of measure** (not applicable)

2 Administrative fee

Type of material recovered	Administrative fee units
Hazardous and other waste	32

- 3 Load-based fee** (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

Recovery of waste oil (see clause 34 (1) of Schedule 1 to the Act)

- 1 Units of measure: tonnes**

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Licensing fees

Schedule 1

RESOURCE RECOVERY

2 Administrative fee

Annual recovery capacity	Administrative fee units
Not more than 1,000 tonnes	25
More than 1,000 tonnes	65

3 Load-based fee (but only if the annual capacity exceeds 20,000 tonnes)

Air pollutants	Threshold factor
Lead	0.2
VOCs and VOCs (summer)	0.05

Water pollutants	Threshold factor
Oil and grease	4.8

Recovery of waste tyres (see clause 34 (1) of Schedule 1 to the Act)

1 Units of measure (not applicable)

2 Administrative fee

Type of material recovered	Administrative fee units
Waste tyres	12

3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

ROAD CONSTRUCTION

Road construction (see clause 35 (1) of Schedule 1 to the Act)

1 Units of measure: kilometres

2 Administrative fee

Design length of road to be constructed, widened or re-routed

Not more than 10 kilometres	50
More than 10 but not more than 30 kilometres	135
More than 30 kilometres	335

3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Schedule 1 Licensing fees

SEWAGE TREATMENT

Sewage treatment (see clause 36 (1) of Schedule 1 to the Act)

1 Units of measure: megalitres

2 Administrative fee

Annual maximum volume of discharge	Administrative fee units
Not more than 20 megalitres	5
More than 20 but not more than 100 megalitres	8
More than 100 but not more than 1,000 megalitres	25
More than 1,000 but not more than 5,000 megalitres	65
More than 5,000 but not more than 10,000 megalitres	165
More than 10,000 but not more than 20,000 megalitres	300
More than 20,000 but not more than 30,000 megalitres	420
More than 30,000 megalitres	2,650

3 Load-based fee (but only if the maximum annual volume of sewage that the relevant licence authorises to be discharged exceeds 219 megalitres)

Processing by small plants (up to 10,000 megalitres annual capacity)

Air pollutants	Threshold factor
Nil	Not applicable
Water pollutants	Threshold factor
BOD	10
Oil and grease	2
Total nitrogen	10
Total phosphorous	0.3
Suspended solids	15

Processing by large plants (more than 10,000 megalitres annual capacity)

Air pollutants	Threshold factor
Nil	Not applicable
Water pollutants	Threshold factor

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Licensing fees

Schedule 1

SEWAGE TREATMENT

BOD	10
Cadmium	0.00005
Chromium	0.0025
Copper	0.01
Lead	0.0005
Mercury	0.00005
Oil and grease	2
Selenium	0.0025
Suspended solids	15
Total nitrogen	10
Pesticides and PCBs	0.00012
Total phosphorous	0.3
Zinc	0.012

SHIPPING IN BULK

Shipping in bulk (see clause 37 (1) of Schedule 1 to the Act)

1 Units of measure: tonnes

2 Administrative fee

Annual capacity to load and unload	Administrative fee units
Not more than 100,000 tonnes	15
More than 100,000 but not more than 500,000 tonnes	50
More than 500,000 tonnes	135

3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

STERILISATION ACTIVITIES

Sterilisation activities (see clause 38 (1) of Schedule 1 to the Act)

1 Units of measure (not applicable)

2 Administrative fee

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Schedule 1 Licensing fees

STERILISATION ACTIVITIES

Annual capacity	Administrative fee units
Any capacity	32
3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)	

WASTE DISPOSAL (APPLICATION TO LAND)

Waste disposal by application to land (see clause 39 (1) of Schedule 1 to the Act)

1 Units of measure (not applicable)

2 Administrative fee

Annual capacity	Administrative fee units
Any capacity	32

3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

WASTE DISPOSAL (THERMAL TREATMENT)

Thermal treatment of general waste (see clause 40 (1) of Schedule 1 to the Act)

1 Units of measure: tonnes

2 Administrative fee

Annual capacity	Administrative fee units
Any capacity	65

3 Load-based fee (but only if the activity is a scheduled activity under clause 40 of Schedule 1 to the Act)

Air pollutants	Threshold factor
Arsenic	0.00005
Benzene	0.0000011
Benzo(a)pyrene	0.00002
Fine particulates	0.7
Lead	0.035

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Licensing fees

Schedule 1

WASTE DISPOSAL (THERMAL TREATMENT)

Mercury	0.003
---------	-------

Nitrogen oxides and nitrogen oxides (summer)	2.5
--	-----

Sulfur oxides	0.07
---------------	------

Water pollutants	Threshold factor
-------------------------	-------------------------

Nil	Not applicable
-----	----------------

Thermal treatment of hazardous and other waste (see clause 40 (1) of Schedule 1 to the Act)

1 Units of measure: tonnes

2 Administrative fee

Annual capacity	Administrative fee units
------------------------	---------------------------------

Any capacity	65
--------------	----

3 Load-based fee (but only if the activity is a scheduled activity under clause 40 of Schedule 1 to the Act)

Air pollutants	Threshold factor
-----------------------	-------------------------

Arsenic	0.00005
---------	---------

Benzene	0.0000011
---------	-----------

Benzo(a)pyrene	0.00002
----------------	---------

Fine particulates	0.7
-------------------	-----

Lead	0.035
------	-------

Mercury	0.003
---------	-------

Nitrogen oxides and nitrogen oxides (summer)	2.5
--	-----

Sulfur oxides	0.07
---------------	------

Water pollutants	Threshold factor
-------------------------	-------------------------

Nil	Not applicable
-----	----------------

WASTE PROCESSING (NON-THERMAL TREATMENT)

Non-thermal treatment of general waste (see clause 41 (1) of Schedule 1 to the Act)

1 Units of measure (not applicable)

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Schedule 1 Licensing fees

WASTE PROCESSING (NON-THERMAL TREATMENT)

2 Administrative fee

Type of waste treated	Administrative fee units
General waste	16

3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

Non-thermal treatment of hazardous and other waste (see clause 41 (1) of Schedule 1 to the Act)

1 Units of measure (not applicable)

2 Administrative fee

Type of waste treated	Administrative fee units
Hazardous and other waste	32

3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

Non-thermal treatment of waste tyres (see clause 41 (1) of Schedule 1 to the Act)

1 Units of measure (not applicable)

2 Administrative fee

Type of waste treated	Administrative fee units
Waste tyres	12

3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

WASTE STORAGE

Waste storage (see clause 42 (1) of Schedule 1 to the Act)

1 Units of measure (not applicable)

2 Administrative fee

Type of waste stored	Administrative fee units
Hazardous waste, restricted solid waste, liquid waste, clinical and related waste and asbestos waste	32
Waste tyres	12
Other types of waste	16

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Licensing fees

Schedule 1

WASTE STORAGE

- 3 Load-based fee** (there are no assessable pollutants and therefore no load-based fee in relation to this activity)
-

WOOD OR TIMBER MILLING OR PROCESSING

Wood or timber milling or processing (see clause 43 (1) of Schedule 1 to the Act)

- 1 Units of measure: cubic metres**

- 2 Administrative fee**

Annual processing capacity	Administrative fee units
Not more than 50,000 cubic metres	5
More than 50,000 but not more than 100,000 cubic metres	15
More than 100,000 but not more than 200,000 cubic metres	50
More than 200,000 cubic metres	135

- 3 Load-based fee** (there are no assessable pollutants and therefore no load-based fee in relation to this activity)
-

WOOD PRESERVATION

Wood preservation (see clause 44 (1) of Schedule 1 to the Act)

- 1 Units of measure: cubic metres**

- 2 Administrative fee**

Annual processing capacity	Administrative fee units
Not more than 10,000 cubic metres	15
More than 10,000 but not more than 30,000 cubic metres	50
More than 30,000 cubic metres	135

- 3 Load-based fee** (there are no assessable pollutants and therefore no load-based fee in relation to this activity)
-

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Schedule 1 Licensing fees

MOBILE WASTE PROCESSING

Mobile waste processing (see clause 47 (1) of Schedule 1 to the Act)

1 Units of measure (not applicable)

2 Administrative fee

Type of activity

Administrative fee units

Any capacity

32

3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

TRANSPORT OF TRACKABLE WASTE

Transport of category 1 trackable waste (see clause 48 (1) of Schedule 1 to the Act)

1 Units of measure (not applicable)

2 Administrative fee

Annual capacity to transport

Administrative fee units

Any capacity

4

3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

Transport of category 2 trackable waste (see clause 48 (1) of Schedule 1 to the Act)

1 Units of measure (not applicable)

2 Administrative fee

Annual capacity to transport

Administrative fee units

Any capacity

4

3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Licensing fees

Schedule 1

MISCELLANEOUS WATER ACTIVITIES

Miscellaneous licensed discharge to waters (wet weather only), meaning any activity (other than a scheduled activity) in relation to which a licence to discharge pollutants to waters during or immediately following periods of wet weather (but not at any other time) has been granted under the Act

1 Units of measure: megalitres

2 Administrative fee

Maximum annual volume of discharge authorised by licence - **Administrative fee units**
(calculated by multiplying maximum allowable daily discharge by 50)

Not more than 3 megalitres	5
More than 3 but not more than 15 megalitres	15
More than 15 but not more than 150 megalitres	50
More than 150 megalitres	135

3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

Miscellaneous licensed discharge to waters (at any time), meaning any activity (other than a scheduled activity) in relation to which a licence to discharge pollutants to waters has been granted under the Act

1 Units of measure: megalitres

2 Administrative fee

Maximum annual volume of discharge authorised by licence - **Administrative fee units**

Not more than 20 megalitres	5
More than 20 but not more than 100 megalitres	15
More than 100 but not more than 1,000 megalitres	50
More than 1,000 megalitres	135

3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

OTHER ACTIVITIES NOT OTHERWISE LISTED

Other activities, meaning any activity (other than a scheduled activity or miscellaneous water activity)

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Schedule 1 Licensing fees

OTHER ACTIVITIES NOT OTHERWISE LISTED

1 Units of measure (not applicable)

2 Administrative fee

Type of activity

Administrative fee units

Any capacity

5

3 Load-based fee (there are no assessable pollutants and therefore no load-based fee in relation to this activity)

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Load-based fee calculation

Schedule 2

Schedule 2 Load-based fee calculation

(Clauses 4 and 19)

Part 1 Pollutant critical zone weightings

The catchments referred to in the Table are the catchments as shown on the maps marked “Catchments of NSW displayed for the purpose of Load-Based Licensing” deposited in the office of the EPA.

Table

Critical zones for air pollutants

Pollutant	Local government areas in zone	Weighting
Nitrogen oxides and VOCs	Local government areas in the Sydney basin area, Blue Mountains City, Kiama, Shellharbour City and Wollongong City	7
Nitrogen oxides and VOCs	Cessnock, Gosford, Lake Macquarie, Maitland, Muswellbrook, Newcastle, Port Stephens, Singleton, Wollondilly, Wyong	2

Critical zones for water pollutants

Pollutant	Catchments in zone	Weighting
Salt	Benanee, Bulloo River, Castlereagh, Condamine/Culgoa, Cooper Creek, Darling, Lachlan, Lake Bancannia, Lake Frome, Macquarie River, Moonie, Murray Riverina, Murray (Lower), Murray (Upper), Murrumbidgee, Paroo, Warrego	3
Total phosphorous and total nitrogen	Benanee, Border Rivers, Bulloo River, Castlereagh, Condamine/Culgoa, Cooper Creek, Darling, Gwydir, Hawkesbury-Nepean, Lachlan, Lake Bancannia, Lake Frome, Macquarie River, Moonie, Murray Riverina, Murray (Lower), Murray (Upper), Murrumbidgee, Namoi, Paroo, Warrego	3

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Schedule 2 Load-based fee calculation

Part 2 Pollutant weightings

Table

Air pollutants

Pollutant	Definition	Weighting
Arsenic	Total arsenic calculated using the method prescribed in the Approved Methods Publication	52,000
Benzene	Benzene	740
Benzo[a]pyrene (equivalent)	Benzo[a]pyrene plus 0.1 times the mass of benzo[a]anthracene, benzo[b]fluoranthene, benzo[k]fluoranthene and idenof[1,2,3-c,d]pyrene plus 0.4 times the mass of dibenz[a,h]anthracene	29,000
Coarse particulates	All solid particulates entrained in air but not including fine particulates as defined in this Table	18
Fine particulates	The fraction of all solid particulates entrained in air with an aerodynamic diameter smaller than 10 micrometres	125
Fluoride	Fluorine, hydrogen fluoride and all other inorganic fluoride compounds expressed as hydrogen fluoride equivalent	84
Hydrogen sulfide	Hydrogen sulfide	320
Lead	Total lead calculated using the method prescribed in the Approved Methods Publication	11,000
Mercury	Total mercury calculated using the method prescribed in the Approved Methods Publication	110,000
Nitrogen oxides and Nitrogen oxides (summer)	The sum of nitrogen oxide and nitrogen dioxide expressed as nitrogen dioxide equivalent	9
Sulfur oxides	Sulfur dioxide and (where specified in the load calculation protocol for the activity or in the licence for the premises) sulfur trioxide and sulfuric acid mist	2.2
VOCs and VOCs (summer)	Volatile compounds of hydrogen and carbon that may or may not contain other elements but not including methane or benzene	6.6

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Load-based fee calculation

Schedule 2

Water pollutants

Pollutant	Definition	Weighting		
		Open coastal waters	Estuarine waters	Enclosed waters
Arsenic	Total arsenic calculated using the method prescribed in the Approved Methods Publication	2,500	2,500	2,500
BOD ₅	Biochemical oxygen demand calculated using the method prescribed in the Approved Methods Publication	0	0.5	1
Cadmium	Total cadmium calculated using the method prescribed in the Approved Methods Publication	67,000	67,000	67,000
Chromium	All trivalent chromium plus ten times hexavalent chromium, whether present in elemental form or contained in compounds or complexes	840	4,200	4,200
Copper	Total copper calculated using the methods prescribed in the Approved Methods Publication	1,700	1,700	1,700
Lead	Total lead calculated using the method prescribed in the Approved Methods Publication	6,400	6,400	6,400

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Schedule 2 Load-based fee calculation

Water pollutants

Pollutant	Definition	Weighting		
		Open coastal waters	Estuarine waters	Enclosed waters
Mercury	Total mercury calculated using the method prescribed in the Approved Methods Publication	180,000	180,000	180,000
Oil and grease	Oil and grease calculated using the method prescribed in the Approved Methods Publication	13	30	74
Pesticides and PCBs	The sum of aldrin, chlordane, DDE, DDT, dieldrin, endosulphan (a,b), heptachlor, lindane, PCBs, chlorpyrifos, diazinon, malathion and parathion	930,000	930,000	930,000
Salt Note. The pollutant weighting for salt is zero if the salt is discharged into naturally salty surface waters with an electrical conductivity of more than 10,000 micro siemens per centimetre	Total dissolved solids calculated using the conductivity method prescribed in the Approved Methods Publication, or using a method provided in a load calculation protocol for the activity	0	0	8.4
Selenium	Total selenium calculated using the methods prescribed in the Approved Methods Publication	710	10,000	10,000
Total nitrogen	Total nitrogen calculated using the method prescribed in the Approved Methods Publication	6	12	23

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Load-based fee calculation

Schedule 2

Water pollutants

Pollutant	Definition	Weighting		
		Open coastal waters	Estuarine waters	Enclosed waters
Total PAHs	The total of polyaromatic hydrocarbons	3,800	3,800	3,800
Total phenolics	Total phenolic compounds calculated using the method prescribed in the Approved Methods Publication	4,900	4,900	4,900
Total phosphorous	Total phosphorous calculated using the method prescribed in the Approved Methods Publication	0	120	680
Total suspended solids	Non-filterable solids calculated using the method prescribed in the Approved Methods Publication	9.5	9.5	78
Zinc	Total zinc calculated using the method prescribed in the Approved Methods Publication	7	7	7

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Schedule 3 Open coastal waters

Schedule 3 Open coastal waters

(Clause 19 (9))

Open coastal waters for the purposes of clause 19 are ocean waters east of the natural coast line of New South Wales, defined as follows:

- (a) The natural coast line is defined by a line drawn along the high water mark of the sea.
- (b) Where an estuary meets the coast, the natural coast line is defined as follows (unless paragraph (c) applies):
 - (i) if an estuary has two break walls at the confluence with the South Pacific Ocean, by a line drawn across the easternmost extremity of both break walls,
 - (ii) if an estuary has only one break wall, by a line drawn from the easternmost extremity of the break wall to the northern or southern extremity of the high water mark on the opposite bank,
 - (iii) if an estuary enters the South Pacific Ocean and there are no defined points available, by a line drawn across the entrance between the easternmost extremity of the drying points on each bank.
- (c) In relation to the following waters, the natural coast line is defined as follows:
 - (i) Port Stephens—by a line drawn between the southern extremity of Yacaaba Point to the northern extremity of Tomaree Point,
 - (ii) Broken Bay—by a line drawn from the southern extremity of Box Head to the northern extremity of Barrenjoey Head,
 - (iii) Port Jackson—by a line drawn from the southern extremity of North Head to the northern extremity of South Head,
 - (iv) Botany Bay—by a line drawn from Endeavour Light to the northern extremity of Sutherland Point,
 - (v) Port Hacking—by a line drawn from the southernmost extremity of Hungry Point to the northernmost extremity of Cabbage Tree or Pulpit Point,
 - (vi) Jervis Bay—by a line drawn from the southeastern point of Point Perpendicular to the southeastern point of Bowen Island thence to the northeastern point of Governor Head,
 - (vii) Wogonga River—by a line drawn northwest across the entrance from the northernmost extremity of Wogonga Head,
 - (viii) Batemans Bay—by a line drawn from the southwestern extremity of Square Point to the northernmost extremity of Observation Point.

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Membership and procedure of Load-Based Licensing Technical Review Panel

Schedule 4

Schedule 4 Membership and procedure of Load-Based Licensing Technical Review Panel

(Clause 46)

1 Chairperson

- (1) One of the members of the Review Panel is to be appointed by the Minister as Chairperson of the Review Panel. The appointment may be made at the time the person is appointed as a member or after that appointment.
- (2) A person vacates the office of Chairperson if the person:
 - (a) ceases to be a member, or
 - (b) resigns that office by instrument in writing addressed to the Minister, or
 - (c) is removed from that office under this clause.
- (3) The Minister may at any time remove a person from the office of Chairperson.

2 Deputies of members

- (1) The Minister may, from time to time, appoint a person to be the deputy of a member of the Review Panel, and the Minister may revoke any such appointment.
- (2) In the absence of a member, the member's deputy:
 - (a) may, if available, act in the place of the member, and
 - (b) while so acting, has all the functions of the member and is to be taken to be a member.
- (3) The deputy of a member who is the Chairperson does not (because of this clause) have the member's functions as Chairperson.
- (4) A person while acting in the place of a member is entitled to be paid such allowances as the Minister may from time to time determine in respect of the person.

3 Terms of office

Subject to this Schedule, a member of the Review Panel holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Schedule 4 Membership and procedure of Load-Based Licensing Technical Review Panel

4 Allowances

A member of the Review Panel is entitled to be paid such allowances as the Minister from time to time determines in respect of the member.

5 Vacancy in office of member

- (1) The office of a member of the Review Panel becomes vacant if the member:
- (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) resigns the office by instrument in writing addressed to the Minister, or
 - (d) is removed from office under this clause, or
 - (e) is absent from 4 consecutive meetings of the Review Panel of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Review Panel or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Review Panel for having been absent from those meetings, or
 - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
 - (g) becomes a mentally incapacitated person, or
 - (h) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
- (2) The Minister may remove a member from office at any time.

6 Filling of vacancy in office of member

If the office of a member of the Review Panel becomes vacant, a person may, subject to this Regulation, be appointed to fill the vacancy.

7 Disclosure of pecuniary interests

- (1) If:
- (a) a member of the Review Panel has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Review Panel, and

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Membership and procedure of Load-Based Licensing Technical Review
Panel

Schedule 4

- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,
- the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Review Panel.
- (2) A disclosure by a member at a meeting of the Review Panel that the member:
- (a) is a member, or is in the employment, of a specified company or other body, or
 - (b) is a partner, or is in the employment, of a specified person, or
 - (c) has some other specified interest relating to a specified company or other body or to a specified person,
- is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person that may arise after the date of the disclosure and that is required to be disclosed under subclause (1).
- (3) Particulars of any disclosure made under this clause must be recorded by the Review Panel in a book kept for the purpose and that book must be open at all reasonable hours for inspection by any person on payment of the fee (if any) determined by the Review Panel.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Review Panel otherwise determines:
- (a) be present during any deliberation of the Review Panel with respect to the matter, or
 - (b) take part in any decision of the Review Panel with respect to the matter.
- (5) For the purpose of the making of a determination by the Review Panel under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
- (a) be present during any deliberation of the Review Panel for the purpose of making the determination, or
 - (b) take part in the making by the Review Panel of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Review Panel.

8 General procedure

The procedure for the calling of meetings of the Review Panel and for the conduct of business at those meetings is, subject to this Regulation

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Schedule 4 Membership and procedure of Load-Based Licensing Technical Review Panel

and to any direction of the Minister, to be as determined by the Review Panel.

9 Quorum

The quorum for a meeting of the Review Panel is a majority of the members for the time being of the Review Panel.

10 Presiding member

- (1) The Chairperson of the Review Panel or, in the absence of the Chairperson, another member elected to chair the meeting by the members present is to preside at a meeting of the Review Panel.
- (2) The person presiding at any meeting of the Review Panel has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

11 Voting

A decision supported by a majority of the votes cast at a meeting of the Review Panel at which a quorum is present is the decision of the Review Panel.

12 Minutes of meetings

The Review Panel is required to keep minutes of proceedings at its meetings.

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Prescribed matter for the definition of water pollution

Schedule 5

Schedule 5 Prescribed matter for the definition of water pollution

(Clause 61)

- 1** Any animal matter of any description, including (but not limited to) carcasses of animals, parts or remains of animals, offal, flesh and bones.
- 2** Any plant matter of any description, including (but not limited to) vegetable or fruit wastes, leaves, grass, trees, wood, sawdust, shavings, chips, bark or other forest products or refuse.
- 3** Any ashes, soil, earth, mud, stones, sand, clay or similar inorganic matter.
- 4** Any washings or spoil from any mineral processing or extractive operation, from any dredging operation or from any other industrial, agricultural or commercial activity.
- 5** Any ballast.
- 6** Any excreta, manure or urine, or any waste from an on-site human waste storage facility or treatment device.
- 7** Any matter of an infectious nature.
- 8** Any scrap metal, glass, junk, paper, plastic, rubbish, vehicle or vehicle tyres, any industrial waste and any refuse of any other description.
- 9** Any oil, grease or flammable liquid of any description.
- 10** Any thermal waste (being any liquid which, after being used in or in connection with any activity, is more than 2 degrees Celsius hotter or colder than the water into which it is discharged).
- 11** Any matter that causes biochemical oxygen demand.
- 12** Any matter that causes chemical oxygen demand.
- 13** Any liquid that contains suspended or dissolved solids.
- 14** Any gas other than oxygen.
- 15** Any methylene blue active substance.
- 16** Any matter that contains faecal coliform or faecal streptococci.
- 17** Any matter that has a pH value of less than 6.5 or more than 8.5.

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Schedule 5 Prescribed matter for the definition of water pollution

- 18** Any pesticide (within the meaning of the *Pesticides Act 1999*).
- 19** Any poisonous substance of any description.
- 20** Any radioactive substance.
- 21** Any substance classified as dangerous goods under the Transport of Dangerous Goods Code.
- 22** Any substance listed in Schedule 10 to the *Sydney Water Act 1994*.
- 23** Any substance listed in the Hazardous Substances Information System published and maintained by the Office of the Australian Safety and Compensation Council.
- 24** Any chemical toxicant for which guidelines are prescribed by the publication entitled *Australian and New Zealand Guidelines for Fresh and Marine Water Quality* published in 2000 by the Australian and New Zealand Environment and Conservation Council and the Agriculture and Resource Management Council of Australia and New Zealand.
- 25** Any of the following substances:
arsenic, barium, boron, cadmium, chloride, chromium (hexavalent), copper, cyanide, fluoride, iron (dissolved), lead, manganese (dissolved), mercury, selenium, silver, uranyl ion or zinc.
- 26** Any matter that contains any nitrogen, sulphur, phenolic or phosphorous compound.
- 27** Any matter that contains matter referred to above.

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Penalty notice offences

Schedule 6

Schedule 6 Penalty notice offences

(Clauses 82–84)

Environmentally Hazardous Chemicals Act 1985

Column 1	Column 2	Column 3	Column 4
Provision of Act	Officer	Penalty (individuals)	Penalty (corporations)
Section 26	2	\$1500	\$5000
Section 32 (2)	2	\$1500	\$5000

Ozone Protection Act 1989

Column 1	Column 2	Column 3
Provision of Act	Officer	Penalty
Section 14 (3)	2A	\$300

Protection of the Environment Operations Act 1997

Column 1	Column 2	Column 3	Column 4
Provision of the Act	Officer	Penalty (individuals)	Penalty (corporations)
Section 47	3	\$750	\$1500
Section 48	3	\$750	\$1500
Section 49	3	\$750	\$1500
Section 64	3	\$750	\$1500
Section 66 (2)	3	\$750	\$1500
Section 66 (4)	3	\$750	\$1500
Section 86	3	\$750	\$1500
Section 88	3	\$750	\$1500
Section 91	1, 2, 12, 13, 14	\$750	\$1500
Section 94	1, 2, 12, 13, 14	\$500	\$1000
Section 97	1, 2, 12, 13, 14	\$750	\$1500
Section 100	1, 2, 12, 13, 14	\$500	\$1000

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Schedule 6 Penalty notice offences

Column 1	Column 2	Column 3	Column 4
Provision of the Act	Officer	Penalty (individuals)	Penalty (corporations)
Section 120	1, 2, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14	\$750	\$1500
Section 124	1, 2, 14	\$750	\$1500
Section 125	1, 2, 14	\$750	\$1500
Section 126	1, 2, 14	\$750	\$1500
Section 128	1, 2, 14	\$750	\$1500
Section 129	3	\$750	\$1500
Section 135	1, 2	\$200	\$400
Section 135C (1)	1 (limited to officer or employee of local authority)	\$200	\$400
Section 136: Sell article of prescribed class (other than a motor vehicle horn or motor vehicle intruder alarm) if, when in use or operation, the article emits noise that, when measured at any point specified in or determined in accordance with the regulations, is in excess of the level prescribed in respect of the class to which it belongs by less than 5dB(A).	3	\$200	\$400
Section 136: Sell article of prescribed class (other than a motor vehicle horn or motor vehicle intruder alarm) if, when in use or operation, the article emits noise that, when measured at any point specified in or determined in accordance with the regulations, is in excess of the level prescribed in respect of the class to which it belongs by 5dB(A) or more.	3	\$400	\$800

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Penalty notice offences

Schedule 6

Column 1	Column 2	Column 3	Column 4
Provision of the Act	Officer	Penalty (individuals)	Penalty (corporations)
Section 136: Sell article of prescribed class (being a motor vehicle horn or a motor vehicle intruder alarm) if, when in use or operation, the article emits noise that, when measured at any point specified in or determined in accordance with the regulations, is in excess of the level prescribed in respect of the class to which it belongs.	3	\$300	\$600
Section 137	1, 2	\$200	\$400
Section 139	1, 2, 14	\$200	\$400
Section 140	1, 2, 14	\$200	\$400
Section 142A	1, 2	\$750	\$1500
Section 143: Transport waste, being waste comprising asbestos waste or hazardous waste (within the meaning of Schedule 1 to the Act), or any other waste greater than 1 cubic metre in volume or 2 tonnes in weight, to a place that cannot lawfully be used as a waste facility for that waste.	1, 2, 5, 13	\$1500	\$5000
Section 143: Transport waste to a place that cannot lawfully be used as a waste facility for that waste.	1, 2, 5, 13	\$750	\$1500
Section 144	1, 2, 5, 13	\$1500	\$5000
Section 144AA (1): Supply information, or cause or permit information to be supplied, that is false or misleading in a material respect about waste that is asbestos waste or hazardous waste (within the meaning of Schedule 1 to the Act)	2	\$1500	\$5000

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Schedule 6 Penalty notice offences

Column 1	Column 2	Column 3	Column 4
Provision of the Act	Officer	Penalty (individuals)	Penalty (corporations)
Section 144AA (1): Supply information, or cause or permit information to be supplied, that is false or misleading in a material respect about any other waste	2	\$750	\$1500
Section 145: Deposit litter, being a small item including confectionary wrapper, cigarette packet, ATM statement, or bus or train ticket (excluding cigarette, and excluding litter deposited from vehicle).	1, 2, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14	\$60	—
Section 145: Deposit litter (excluding cigarette, and excluding litter deposited from vehicle).	1, 2, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14	\$200	\$400
Section 145: Deposit litter, being unlit or extinguished cigarette (excluding litter deposited from vehicle).	1, 2, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14	\$60	—
Section 145: Deposit litter, being lit cigarette (excluding litter deposited from vehicle).	1, 2, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14	\$200	—
Section 145: Deposit litter from vehicle.	1, 2, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14	\$200	\$400
Section 145A: Deposit litter (for example, lit cigarette) in dangerous circumstances, including deposit of syringe.	1, 2, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14	\$375	\$750
Section 146A	1, 2, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14	\$200	\$400

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Penalty notice offences

Schedule 6

Column 1	Column 2	Column 3	Column 4
Provision of the Act	Officer	Penalty (individuals)	Penalty (corporations)
Section 146B	1, 2, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14	\$200	\$400
Section 146C	1, 2, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14	\$200	\$400
Section 146E (1)	1, 2, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14	\$200	\$400
Section 146E (2)	1, 2, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14	\$200	\$400
Section 146E (3)	1, 2, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14	\$375	\$750
Section 152	1, 2	\$750	\$1500
Section 155	3	\$750	\$1500
Section 156	3	\$750	\$1500
Section 157 (1)	3	\$750	\$1500
Section 157 (2)	3	\$750	\$1500
Section 161 (4)	3	\$300	\$600
Section 161 (7)	3	\$300	\$600
Section 167	1, 2	\$750	\$1500
Section 211 (1)	1, 2, 4, 5, 13, 14	\$500	\$1000
Section 211 (2)	1, 2, 4, 5, 13, 14	\$500	\$1000
Section 265	1, 2, 4, 14	\$200	\$400
Section 267A (7)	1, 2, 4, 14	\$500	\$1000
Section 277 (1) (a)	1, 2, 4, 5, 8, 14	\$200	\$400
Section 277 (1) (b)	1, 2, 4, 5, 8, 14	\$200	\$400
Section 277 (2) (a)	1, 2, 4, 5, 8, 14	\$200	\$400
Section 277 (2) (b)	1, 2, 4, 5, 8, 14	\$200	\$400

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Schedule 6 Penalty notice offences

Protection of the Environment Operations (Clean Air) Regulation 2002

Column 1	Column 2	Column 3	Column 4
Provision of Regulation	Officer	Penalty for individuals (and corporations where no penalty in Column 4)	Penalty for corporations
Clause 6C (1)	1, 2	\$500	\$1000
Clause 6D (1)	1, 2	\$500	\$1000
Clause 6E (1)	1, 2	\$500	\$1000
Clause 6E (2)	1, 2	\$500	\$1000
Clause 6E (3)	1, 2	\$500	\$1000
Clause 9 (1)	3	\$200	\$400
Clause 15 (1): In relation to a failure to have a vertical exhaust pipe fitted so that the exhaust vent is directed away from the nearside of the vehicle.	3	\$200	
Clause 15 (1): In any other case.	3	\$300	
Clause 16 (1)	3	\$300	
Clause 17 (1)	3	\$300	
Clause 19 (2)	3	\$300	
Clause 19 (3)	3	\$300	
Clause 19B (2)	3	\$300	\$600
Clause 19C (1)	3	\$300	\$600
Clause 19F (1)	3	\$750	\$1500
Clause 19F (2)	3	\$750	\$1500
Clause 19G (1)	3	\$300	\$600
Clause 19H (1)	3	\$300	\$600
Clause 37	3	\$600	
Clause 48 (1)	3	\$600	
Clause 48 (2)	3	\$600	
Clause 53 (2)	3	\$600	

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Penalty notice offences

Schedule 6

Column 1	Column 2	Column 3	Column 4
Provision of Regulation	Officer	Penalty for individuals (and corporations where no penalty in Column 4)	Penalty for corporations
Clause 54 (2)	3	\$600	
Clause 54 (3)	3	\$600	
Clause 54 (4)	3	\$600	
Clause 55 (1)	3	\$600	
Clause 55 (2)	3	\$600	

Protection of the Environment Operations (General) Regulation 2008

Column 1	Column 2	Column 3	Column 4
Provision of Regulation	Officer	Penalty for individuals (and corporations where no penalty in Column 4)	Penalty for corporations
Clause 55 (1)	3	\$500	
Clause 67 (2) (a)	3	\$500	\$1000
Clause 67 (2) (b)	3	\$500	\$1000
Clause 68 (1)	3	\$500	\$1000
Clause 68 (2)	3	\$500	\$1000
Clause 75 (8)	3	\$500	\$1000
Clause 76 (8)	3	\$500	\$1000
Clause 78 (3)	3	\$500	\$1000
Clause 78 (4)	3	\$500	\$1000
Clause 97	3	\$750	\$1500
Clause 98 (1) (a)	3	\$750	\$1500
Clause 98 (1) (b)	3	\$750	\$1500

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Schedule 6 Penalty notice offences

Protection of the Environment Operations (Hunter River Salinity Trading Scheme) Regulation 2002

Column 1	Column 2	Column 3	Column 4
Provision of Regulation	Officer	Penalty (individuals)	Penalty (corporations)
Clause 61	3	\$750	\$1500

Protection of the Environment Operations (Noise Control) Regulation 2008

Column 1	Column 2	Column 3	Column 4
Provision of Regulation	Officer	Penalty (individuals)	Penalty (corporations)
Clause 5 (1)	3	\$300	\$600
Clause 10	3	\$300	\$600
Clause 11 (1)	3	\$300	\$600
Clause 12 (1): Cause or permit use of vehicle capable of emitting noise exceeding maximum level by up to 5 dB(A).	3	\$150	\$300
Clause 12 (1): Cause or permit use of vehicle capable of emitting noise exceeding maximum level by between 5 and 15 dB(A).	3	\$250	\$500
Clause 12 (1): Cause or permit use of vehicle capable of emitting noise exceeding maximum level by more than 15 dB(A).	3	\$500	\$1000
Clause 13	1, 2, 5	\$200	\$400
Clause 14 (1)	1, 2, 5	\$200	\$400
Clause 15 (1)	1, 2, 5	\$200	\$400
Clause 16	1, 2, 5	\$150	\$300
Clause 17 (1)	2, 5	\$150	
Clause 18 (1)	2, 5	\$200	\$400
Clause 19 (1)	3	\$200	\$400
Clause 21 (1)	3	\$200	\$400
Clause 21 (2)	3	\$200	\$400

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Penalty notice offences

Schedule 6

Column 1	Column 2	Column 3	Column 4
Provision of Regulation	Officer	Penalty (individuals)	Penalty (corporations)
Clause 23	1, 2, 5	\$200	\$400
Clause 24 (1): Cause or permit use of noisy alarm (for up to 4 hours).	1, 2, 5, 8	\$200	\$400
Clause 24 (1): Cause or permit use of noisy alarm (for more than 4 hours and up to 8 hours).	1, 2, 5, 8	\$400	\$800
Clause 24 (1): Cause or permit use of noisy alarm (for more than 8 hours).	1, 2, 5, 8	\$600	\$1200
Clause 25 (1)	3	\$200	\$400
Clause 26 (5)	2, 5	\$300	\$600
Clause 27 (4)	2, 5	\$300	\$600
Clause 27 (5)	2, 5	\$300	\$600
Clause 29	1, 4, 5, 14	\$200	\$400
Clause 30	1, 4, 5, 14	\$300	\$600
Clause 32 (1)	4, 5, 14	\$200	\$400
Clause 32 (2)	4, 5, 14	\$200	\$400
Clause 33	1, 4, 5, 14	\$300	\$600
Clause 34 (5)	4, 5, 14	\$300	\$600
Clause 35 (4)	4, 5, 14	\$300	\$600
Clause 35 (5)	4, 5, 14	\$300	\$600
Clause 50 (1)	1, 5	\$200	\$400
Clause 51 (1)	1, 5	\$200	\$400
Clause 52 (1)	1, 5	\$200	\$400
Clause 53 (1): Cause or permit use of noisy intruder alarm (for up to 4 hours).	1, 2, 5	\$200	\$400
Clause 53 (1): Cause or permit use of noisy intruder alarm (for more than 4 hours and up to 8 hours).	1, 2, 5	\$400	\$800

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Schedule 6 Penalty notice offences

Column 1	Column 2	Column 3	Column 4
Provision of Regulation	Officer	Penalty (individuals)	Penalty (corporations)
Clause 53 (1): Cause or permit use of noisy intruder alarm (for more than 8 hours).	1, 2, 5	\$600	\$1200

Protection of the Environment Operations (Waste) Regulation 2005

Column 1	Column 2	Column 3
Provision of Regulation	Officer	Penalty
Clause 6 (5)	3	\$500
Clause 10 (2)	3	\$500
Clause 10 (3) (a)	3	\$500
Clause 10 (3) (b)	3	\$500
Clause 12 (1)	3	\$500
Clause 12 (2)	3	\$500
Clause 12 (3)	3	\$500
Clause 13	3	\$500
Clause 14 (1)	3	\$500
Clause 14 (2)	3	\$500
Clause 15 (1)	3	\$500
Clause 15 (2)	3	\$500
Clause 16 (3)	3	\$500
Clause 22 (1)	3	\$500
Clause 22 (2)	3	\$500
Clause 22 (3)	3	\$500
Clause 23	3	\$500
Clause 24 (1)	3	\$500
Clause 24 (2)	3	\$500
Clause 24 (3)	3	\$500
Clause 24 (4)	3	\$500
Clause 24 (6)	3	\$500

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Penalty notice offences

Schedule 6

Column 1	Column 2	Column 3
Provision of Regulation	Officer	Penalty
Clause 25 (1)	3	\$500
Clause 25 (3)	3	\$500
Clause 25 (4)	3	\$500
Clause 25 (5)	3	\$500
Clause 25 (6)	3	\$500
Clause 26 (2)	3	\$500
Clause 27 (4)	3	\$500
Clause 27 (5)	3	\$500
Clause 28 (5)	3	\$500
Clause 29 (4)	3	\$500
Clause 32	3	\$500
Clause 33	3	\$500
Clause 34	3	\$500
Clause 35	3	\$500
Clause 36	3	\$500
Clause 40 (1)	3	\$500
Clause 40 (2)	3	\$500
Clause 42 (2)	1, 2	\$500
Clause 43	1, 2	\$500
Clause 45 (1)	1, 2	\$750
Clause 46K (1)	2	\$500
Clause 46L (1) or (6)	2	\$500
Clause 46M	2	\$500
Clause 47 (3)	3	\$500
Clause 47 (4)	1, 2	\$500
Clause 47 (5)	3	\$500
Clause 48	1, 2	\$500
Clause 49	1,2	\$500
Clause 50 (11)	3	\$500

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Schedule 6 Penalty notice offences

Column 1	Column 2	Column 3
Provision of Regulation	Officer	Penalty
Clause 51 (10)	3	\$500
Clause 52	1, 2	\$500

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Forms relating to noise abatement directions

Schedule 7

Schedule 7 Forms relating to noise abatement directions

(Clause 102)

Form 1 Protection of the Environment Operations Act 1997

(Section 280)

MAGISTRATE'S RECORD OF COMPLAINT REQUESTING THE ISSUE OF A WARRANT TO ENTER PREMISES

Details of the complaint

On at am/pm, I, the undersigned Magistrate, received a complaint alleging that the complainant had been denied entry to premises at

The complaint was made in person*/by telephone*.

The complaint was made by, a police officer stationed at

The complainant caused the complaint to be transmitted to me by, a police officer stationed at *

Further details of the complaint are set out on the other side of this page.

Grounds of the complaint

The complainant stated their belief that:

- offensive noise was being emitted from the premises*
- offensive noise had, within the 7 days preceding the complaint, been emitted from the premises*.

The police officer requested the grant of a warrant because the officer believed it was necessary to enter the premises immediately in order:

- to give a noise abatement direction in relation to offensive noise emitted from the premises*
- to investigate whether a noise abatement direction has been contravened*.

Outcome of consideration of the complaint

After considering the complaint I was satisfied that there were reasonable grounds for that belief.

The grounds on which I relied to justify my finding that there were reasonable grounds for that belief are as follows:

.....
.....
.....

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Schedule 7 Forms relating to noise abatement directions

Details of grant of warrant

I have granted my warrant authorising and requiring the complainant to enter the premises and:

- to give a noise abatement direction*
- to investigate whether a noise abatement direction has been contravened*.

The warrant was granted on at am/pm

Signed

(Magistrate)

* Delete if inapplicable.

(Overleaf)

Details of Complaint

1. Names of persons involved (if known):
2. Location of premises:
3. Name of civilian informant (if known):
4. The complainant police officer believed that:
 - (a) offensive noise was being emitted from the premises*
 - (b) offensive noise had, within the past 7 days, been emitted from the premises*.

* Delete if inapplicable.
5. Other information obtained by complainant police officer:
 - (a) Personal observations by police (eg noise from the house is being emitted, type of noise, etc):
 - (b) Civilian informant's information (indications that noise has recently been emitted):
 - (c) Any other information cited as grounds for the belief of the complainant by reason of which the warrant was requested and granted:
6. The officer had been denied entry to the premises, details of which (including anything said or done) are:

Form 2 Protection of the Environment Operations Act 1997

(Section 280)

NOTICE OF GRANT OF WARRANT TO ENTER PREMISES

A warrant has been granted to enter premises at

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Forms relating to noise abatement directions

Schedule 7

The warrant was granted on the basis of a complaint made by a police officer stationed at police station.

The warrant was granted at am/pm on

The warrant was granted by a Magistrate of the Local Court.

The warrant was granted subject to the following additional terms: *

..... Signature of complainant police officer

* Delete if inapplicable.

Form 3 Protection of the Environment Operations Act 1997

(Section 280)

IMPORTANT INFORMATION FOR OCCUPIERS CONCERNING THE WARRANT

A warrant has been granted by a Magistrate.

The warrant gives the authority and power to police to enter premises and:

- (a) to give a noise abatement direction (which is a direction under the *Protection of the Environment Operations Act 1997* to cause the emission of offensive noise to stop or to stop making or contributing to offensive noise), or
- (b) to investigate whether a noise abatement direction has been breached.

Reasons for the issue of the warrant

A member of the police force has made a complaint to a Magistrate that the police officer was denied entry to the premises and that the member of the police force believed:

- (a) that offensive noise was being emitted from the premises (or that offensive noise had been emitted within the previous 7 days), and
- (b) that it was necessary for a police officer to enter the premises immediately in order to give a noise abatement direction in relation to offensive noise emitted from the premises or to investigate whether a noise abatement direction has been contravened.

The Magistrate was satisfied that there were reasonable grounds for that belief.

Details of the warrant

The police officer who was the complainant should have prepared a form containing details of:

- (a) the address of the premises the subject of the warrant, and
- (b) the name of the Magistrate who granted the warrant, and
- (c) the name of the police officer, and
- (d) the time at which the warrant was granted.

You should have been given that form by the police officer who entered the premises.

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Schedule 7 Forms relating to noise abatement directions

Expiry

The warrant must be executed as soon as practicable after the time it is granted.

The warrant must be executed within 24 hours after the time it was granted.

The warrant may be executed at any time during the day or night.

Use of force

The police may use such force as is necessary for the purpose of entering any premises.

This may include breaking open any door.

Any force used must be reasonably necessary.

Limitations on the powers conferred

Only functions and powers authorised under the warrant or by the Act authorising the issue of the warrant may be performed.

The police officer is not authorised to stay on your premises any longer than is necessary.

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Savings and transitional provisions

Schedule 8

Schedule 8 Savings and transitional provisions

(Clause 109)

Part 1 Provisions consequent on enactment of Act

1 Definition (cf 3 POEO (S & T) Regulation 1998)

In this Part:

repealed Act means the *Clean Air Act 1961*, the *Clean Waters Act 1970*, the *Environmental Offences and Penalties Act 1989*, the *Noise Control Act 1975*, the *Pollution Control Act 1970*, the provisions of the *Ozone Protection Act 1989* omitted by Schedule 4.14 to the Act or the provisions of the *Waste Minimisation and Management Act 1995* omitted by Schedule 4.19 to the Act.

2 Criminal and other proceedings (cf 17 POEO (S & T) Regulation 1998)

- (1) Parts 8.2 and 8.4 and sections 261 and 262 of the Act extend (subject to this clause) to proceedings in connection with a repealed Act in respect of offences committed against a repealed Act or regulation under a repealed Act before its repeal or in respect of any related matter that continues to have force or effect. This subclause applies whether the proceedings were pending on the commencement of the Act or whether the proceedings are instituted after that commencement.
- (2) Parts 8.2 and 8.4 and sections 261 and 262 of the Act apply with such modifications as are necessary for the purposes of applying those provisions to any such proceedings. In particular, the following references in those provisions are to be read as follows:
 - (a) a reference to an offence arising under Part 5.2 of the Act is to be read as including a reference to a Tier 1 offence under the *Environmental Offences and Penalties Act 1989*,
 - (b) a reference to a prescribed offence for the purposes of section 216 of the Act is to be read as including a reference to a prescribed offence within the meaning of section 12 of the *Environmental Offences and Penalties Act 1989*,
 - (c) a reference in section 218 of the Act to an authority or officer entitled to institute proceedings is to be read as including a reference to an authority or officer entitled under section 13 of the *Environmental Offences and Penalties Act 1989* to institute the proceedings.
- (3) The provisions of a repealed Act relating to the orders that a court may make when it finds an offence proved continue to have effect in respect of any such proceedings.

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Schedule 8 Savings and transitional provisions

3 Other existing exemptions, notices, directions, orders or requirements

(cf 22 POEO (S & T) Regulation 1998)

- (1) A notice, direction, order, requirement or exemption that:
 - (a) is given, issued or made under a repealed Act, and
 - (b) is in force on that repeal,continues to have effect for the purposes of the repealed Act.
- (2) Any such notice, direction, order, requirement or exemption does not have effect for the purposes of a corresponding provision of or made under the Act, unless this Regulation or any other regulation under the Act so provides.
- (3) Accordingly, any such notice, direction, order, requirement or exemption may be enforced in accordance with the provisions of the relevant repealed Act.

4 Existing authorised officers (cf 23 POEO (S & T) Regulation 1998)

- (1) This clause applies to persons appointed or authorised as authorised officers under a repealed Act and holding office on the repeal.

Note. Clause 9 of Schedule 5 to the Act provides that such persons are taken to be appointed as authorised officers under the Act, subject to the regulations under the Act.
- (2) Any such person is taken to be an authorised officer for the purposes of the Act, but only in respect of a matter that the person commenced to investigate before the commencement of the Act.
- (3) Any such person ceases to be an authorised officer for the purposes of the Act, by the operation of clause 9 of Schedule 5 to the Act and this clause, at the end of the period of 3 years after the commencement of the Act.
- (4) Until its replacement under section 189 of the Act, an identification card or certificate of authority issued to any such person under a repealed Act is taken to be the person's identification card for the purposes of that section.
- (5) This clause does not affect any separate appointment of such a person, on or after the commencement of the Act, as an authorised officer under the Act.

5 Clean-up by public authorities in respect of previous incidents (cf 26 POEO (S & T) Regulation 1998)

Directions may be given, and action taken, under section 92 of the Act in respect of pollution incidents occurring before as well as after the commencement of the Act.

Public consultation draft

Protection of the Environment Operations (General) Regulation 2008

Savings and transitional provisions

Schedule 8

Part 2 Provisions consequent on commencement of Protection of the Environment Operations (General) Regulation 2008

6 General savings of acts, matters and things done under repealed Regulations

Any act, matter or thing that, immediately before the repeal of a regulation by the *Protection of the Environment Operations (General) Regulation 2008*, had effect under that repealed regulation, continues to have effect under this Regulation.

7 Amounts payable on termination or expiration of existing load reduction agreements

Clause 28B of the *Protection of the Environment Operations (General) Regulation 1998*, as in force immediately before its repeal, continues to apply to load reduction agreements entered into before that repeal as if that clause had not been repealed.